

Draft Independence Referendum Bill

March 2021

Ministerial Foreword

The Scottish Government has been laser-focused over the past year on tackling the pandemic. That will remain the case as we work to keep Scotland safe.

We know, however, that because of the incredible efforts of the people of Scotland and the vaccination programme, better times lie ahead.

The question we face as we come out of the health crisis is this: who has the right to decide the kind of country Scotland should be after the pandemic?

Should it be the people who live here – or Westminster governments?

The Scottish Government believes that the people of Scotland have the right to decide how Scotland recovers from the pandemic and what sort of country they wish to build after the crisis. To ensure the people of Scotland have that right, the Scottish Government believes there should be an independence referendum within the next term of the Scottish Parliament once the public health crisis is over.

The evidence of recent years tells us what will happen if Westminster maintains, and tightens, its control.

The jobs recovery we all want to see will be held back by the permanent hit of a hard Brexit which is already hitting our economy.

There will be no legal guarantee that our NHS will be safe from post-Brexit trade deals.

The steady and systematic undermining of devolution and the Scottish Parliament since the Brexit vote is likely to continue.

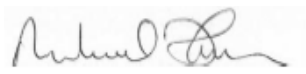
In an independent Scotland we will always get the governments we vote for. As we recover from the pandemic those governments will put Scotland's economy – not Brexit – first.

Protection of our NHS and control of Scotland's abundant resources as well as spending and taxation decisions will be in Scotland's hands.

If there is a majority in the Scottish Parliament after the forthcoming election for this bill there can be no democratic justification whatsoever for any Westminster government to seek to block a post-pandemic referendum.

The timing of that referendum should be a matter for the next Scottish Parliament to decide, taking account of the state of the pandemic. The Scottish Government believes that it should be within the first half of the next parliamentary term, when it is safe to do so.

Scotland's recovery should be made in Scotland by the people who live here and who care most about Scotland. That is why Scotland's future should be Scotland's choice.

A handwritten signature in black ink, appearing to read 'Michael Russell', written in a cursive style.

Michael Russell MSP

Cabinet Secretary for Constitution, Europe and External Affairs

Introduction

The Scottish Government's Programme for Government for 2021 included a commitment to publish a draft independence referendum bill within the term of this Parliament. This publication includes the draft Bill, and the background.

On the pages that follow is a draft Bill that sets out details of a referendum for independence for Scotland.

Background

Last year the Scottish Parliament passed the Referendums (Scotland) Act 2020. That Act set out detailed conduct and campaign rules that can be used for any referendum on a devolved subject-matter. The timing and the question posed at such a referendum would be set by a further Act of the Scottish Parliament.

Scottish Government Ministers have been clear that a referendum on Scottish independence should be held within the next term of the Parliament, taking into account the COVID-19 pandemic.

Draft Bill

The Bill covers the following matters.

Date of the referendum

The date of the referendum poll will be decided taking account of a range of factors, including the state of the pandemic, the requirements for a proper period of campaigning to allow the people of Scotland to make a fully informed choice and for the necessary administrative arrangements to be put in place once the Bill has been passed.

The final decision on a date for the referendum will be for the next Scottish Parliament to take.

Question and the form of the ballot paper

The Scottish Government proposes that the referendum question should be the same as that used at the 2014 referendum. The draft Bill therefore includes the question and the form of the ballot paper used in 2014. The question continues to be well understood by the Scottish public, giving a high degree of confidence that it remains the most appropriate question to use¹.

Except in certain circumstances, the question should be tested if it is to be used in the next term of the Parliament. The Referendums (Scotland) Act 2020 will require the Electoral Commission to consider the wording of the referendum question and publish a statement of any views of the Commission as to the intelligibility of the question as soon as reasonably practicable after a referendum Bill is introduced.

¹ See, for example, Survation poll from early October 2019.

In 2014, the referendum question was presented only in English. The Scottish Government is committed to supporting and promoting the use of Gaelic. The Scottish Government intends to translate the question into Gaelic, and ask the Electoral Commission to consider the translation as part of any question testing process as described above. The Scottish Government would also engage with electoral stakeholders, including the Electoral Management Board, on how best to make Gaelic-language ballot papers available to voters.

Franchise

The draft Bill includes provision to extend the franchise to include foreign nationals with leave to remain in Scotland (or who do not require such leave). This fulfils the commitment made during the passage of the Referendums (Scotland) Act 2020 to align the referendum franchise with the elections franchise after the passage of the Scottish Elections (Franchise and Representation) Act 2020. The Scottish Government is committed to ensuring those who live in Scotland, and have made their lives here, can influence decisions about the future of Scotland.

It may be necessary to make some additional technical adjustments, including to accommodate the expansion of the franchise. If required, these could be made by separate legislation, for example secondary legislation under section 37 of the Referendums (Scotland) Act 2020.



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