

## **STUC RESPONSE TO UK GOVERNMENT CONSULTATION: “SCOTLAND’S CONSTITUTIONAL FUTURE”.**

### **What are your views on using the order making power provided in the Scotland Act 1998**

STUC is aware that varying opinion exists, including unpublished and apparently contradictory legal advice provided to the respective Governments, as to whether the Scotland Act 1998 allows for the Scottish Government to legislate for a referendum on independence through an Act of the Scottish Parliament. All parties should be committed to avoiding circumstances in which that dispute is decided by the Supreme Court. Thus it is sensible to attempt to resolve the disagreement in another way. The STUC therefore generally welcomes this consultation which potentially paves the way for ensuring the right of the Scottish Parliament to legislate for the referendum.

Our overriding concern is that the all possible steps are taken to ensure that the outcome of the referendum is not open to legal challenge and that it properly determines the will of the people of Scotland.

A new constitutional arrangement is a matter which to varying degrees affects all UK citizens. This notwithstanding, the most directly affected by any constitutional change are those living in Scotland. The STUC, as one of the architects of, and a signatory to, the Claim of Right, supports its central tenet enshrining the sovereignty of the people of Scotland. It follows from this that the Scottish Parliament should be empowered to legislate for a referendum without precondition.

The foregoing should not be taken to imply that STUC does not have views, or that it may not take views in the future, as to the best way such a referendum should be organised.

### **What are your views on the UK Parliament legislating to deliver a referendum on independence?**

Whilst Scotland remains part of the United Kingdom, the Westminster Parliament will be empowered to hold UK-wide referenda with the potential to alter the constitutional relationship between Scotland and the rest of the UK. But that is not to say that it should do so. As previously outlined, the Claim of Right and the subsequent formation of the Scottish Parliament provide both the rationale and the vehicle for legislating for an independence referendum. The 2011 Scottish elections provided the mandate for holding such a referendum during the current Scottish Parliamentary term, whereas in the 2010 UK General Election no such much mandate was sought or received.

**What are your views on whether the Scotland Bill should be used either to:**  
**i) give the Scottish Parliament the power to legislate for a referendum; or**  
**ii) directly deliver a referendum?**

As outlined above, STUC supports the use of the Scotland Bill to ensure the right of the Scottish Parliament to legislate for a referendum on independence.

**What are your views on the oversight arrangements for a referendum on Scottish independence?**

STUC has called for the appointment of an independent commission which should report to the Scottish Parliament on recommendations for the organisation and oversight of a referendum.

**Do you think the Electoral Commission should have a role in overseeing a referendum on Scottish independence?**

The Electoral Commission is well placed to oversee the referendum. It would be necessary for the Electoral Commission to report to the Scottish Parliament. A number of issues still to be resolved, including whether a third option is offered and how such a question is formulated, will dictate whether all the of the functions which would require independent oversight can be undertaken by the Electoral Commission or whether the STUC's recommendation - for the creation of an independent commission - could still be helpful.

**What are your views on which people should be entitled to vote in a Scottish independence referendum?**

STUC does not believe that the franchise should be extended to those living outside Scotland except insofar as this already occurs for Scottish elections. Whilst absolutely recognising the interest of all non Scottish based citizens in constitutional change affecting the UK, it is an interest of a different order and magnitude.

STUC recognises the advantages with respect to clarity and fairness of using the current arrangements for eligibility to vote. In particular it can see no helpful or fair way in which the franchise could be extended to those Scots who are currently not entitled to vote in Scottish elections through reasons of residency.

However STUC is sympathetic to the view that 16 and 17 year olds should be entitled to vote. It is far from ideal that this should be solely for the purpose of the referendum and not for other elections. Nor is it clear that the extension of the franchise could apply to all 16 and 17 year olds given the way the electoral register is currently constructed and updated. This notwithstanding our in principle position is to support the extension of the franchise to those who are 16 and 17 and meet all other existing conditions.

**What are your views on the timing of a referendum?**

Following the last Scottish election, the STUC called for an early referendum, a move which would have given recognition to the significant shift which had taken place in Scottish politics and also militated against prolonged uncertainty.

However, it is now nearly a year since that election, and given the growing expectation that the referendum will be held in autumn 2014, STUC is not uncomfortable with a referendum being held on that timescale.

This would provide sufficient time to resolve all matters of process, to ensure the proper legal basis for the referendum is clearly established, and to ensure that the people of Scotland are able to engage in the widest possible debate on the constitutional future of our country.

### **What are your views on the question or questions to be asked in a referendum?**

The STUC recognises the attraction from a number of perspectives of holding a YES/NO referendum in which the question or questions is/are put in a form which is/are easily understood and asked in a fair way. It also recognises the political desire of those on both sides of the debate to be on the 'YES' side of the argument. It is for this reason that STUC is initially attracted to the idea of vesting powers of recommendation in these matters to an independent commission, albeit the commission would ultimately be answerable to the Scottish Parliament.

STUC recognises a number of difficulties associated with offering a third option as part of this process.

Assuming that such an option would be for enhanced devolution, it should be conceded that the act of extending devolution is qualitatively different from voting to become independent. In practical terms, a vote for further devolution, whether described as fiscal autonomy or otherwise, would rely on more complicated and detailed assumptions about the attitude of the Westminster Parliament to a new arrangement of powers following such a vote. This would have implications in relation to the 'picture' that could be described of an enhanced devolution settlement and provide some difficulty in devising a way in which such a question could be put clearly.

However, it is also worth noting that, to the extent that detail has been provided, a number of the key aspects of proposed future independence also rely on the assumption that Westminster would support new arrangements. An independent Scotland is envisaged as maintaining Sterling as its currency, with the Queen as its Head of State and likely to be engaged in a number of agreements with the new UK Government with respect to matters such as defence.

A second concern raised is that a referendum with three options would not provide a definitive answer given that it would either be decided through using a single three question ballot paper involving preferential voting or through two questions asked sequentially.

This is open to question.

There are examples of the successful use of a 'gateway' question in referenda. One could ask an initial question such as, 'do you support further powers for Scotland?'

(Yes/No), followed by a second question, 'if a majority exists for further powers should this be a) independence b) enhanced powers short of independence'. (It should be noted that the aforementioned example is for indicative purposes rather than being a proposal for actual wording).

Equally, the validity of a ballot result in which voters are asked to support preferentially a) the status quo b) enhanced powers short of independence c) independence, should not be automatically ruled out simply because the final result might be resolved through the use of second preference votes.

There is little controversy over the fact that significant numbers of Scots are attracted to what might be described as this 'third option' though it should be conceded that little detail has been put to them as to what such an option might precisely mean. If a 'third option' is to be included in the referendum it would be preferable if it is clearly defined and emerges from a credible source and is the product of significant input from Scotland's political, academic and civic communities.

In this context the STUC's view is that the potential for a third option should be left open at this stage and that there should not be a 'single question' condition within the S30.

### **What are your views on the draft section 30 Order?**

It follows from STUC's earlier responses that the provisions within part 3 of the draft section Order *Modification of Schedule 5 to the Scotland Act 1998* should not be included as preconditions.