

**1. What are your views on the overall policy objectives of the Bill?**

The Faculty of Advocates understands and acknowledges the benefits of having a standing framework for referendums, principally in obviating the need to legislate about process each time a specific referendum is contemplated.

**2. What are your views on the extent to which the Bill reflects good practice in holding referendums?**

We are aware of the recent reports produced by the House of Commons Public Administration and Constitutional Affairs Committee and the Independent Commission on Referendums, as well as of the Code of Good Practice on Referendums produced by the European Commission for Democracy through Law. The Scottish Law Commission and the Law Commission of England and Wales also addressed many of the issues surrounding the conduct of referendums in their project on Electoral Law. These publications emanate from bodies which have studied extensively the practical issues which arise in the holding of referendums. The Faculty of Advocates does not have academic or practical expertise in these matters, and would therefore defer to the views of these other commentators.

**3. The Bill allows for Scottish Ministers to make regulations providing for the holding of a referendum throughout Scotland....What are your views on these regulation-making powers?**

The only previous Scottish legislation relating to a referendum was the pair of statutes which allowed the referendum on Scottish independence to take place in 2014. The draft Bill presented in 2016 followed a similar format to the Scottish Independence Referendum Act 2013, in that the question and the date (albeit subject to a power to modify) were set out in section 1.

Although the present Bill is being considered without reference to any particular proposed referendum, comparisons with this previous legislative material appear inevitable. We note the observation in the Scottish Parliament Information Centre briefing on the present Bill that

The central difference[s] in the provisions of the Bill are those contained in sections 1 - 3. These give Ministers powers which they did not have, or did not have to the same extent, under the Scottish Independence Referendum Act 2013.

While section 1 of the present Bill does allow Ministers to make provision for the holding of a referendum, and section 3 allows regulations to specify the question in any such referendum, section 3 also refers to the introduction of a Bill to the Scottish Parliament which provides for the holding of a referendum throughout Scotland, and specifies the wording of the question. It is therefore contemplated that some referendums will be initiated by primary legislation.

The Policy Memorandum states that the Bill provides a legal framework for the holding of referendums on matters that are within the competence of the Scottish Parliament. As the First Minister said earlier this year, there would need to be an Order under section 30 of the Scotland Act 1998 to put beyond doubt or challenge the ability to apply the Bill to an independence referendum.

Disregarding the issues about legislative competence, it is difficult to envisage circumstances in which the holding of such a referendum and the framing of the question to be put would be more appropriately initiated under secondary legislation than by the Scottish Parliament considering and debating a Bill.

**4. *Should the Bill provide for the possibility of citizen-initiative referendums?*** We have considered the arguments concerning citizen-initiated referendums which are set out in chapter 5 of the Report of the Independent Commission on Referendums, whose final recommendation on this topic was that citizen-initiated referendums should not be introduced in the UK at present. We note also that, in 2010, the House of Lords Constitution Committee did not recommend adoption of this mechanism. We are persuaded by these arguments. We regard the idea of a citizens' assembly, as discussed in particular in chapter 7 of the Report of the Independent Commission, as offering a more promising opportunity for widening citizens' participation in the preparatory stages of a referendum in Scotland.

**5. *What are your views on the Bill's approach as to who is entitled to vote?*** We regard this as a matter of policy. It is not therefore something on which we propose to offer a view.

**6. *What are your views on the extent to which the Bill will provide for referendum polls and counts to be run in an efficient, transparent and fair manner?*** On this question, we would defer to those who have practical experience and academic expertise in the holding of polls and the administration of counts.

**7. *What are your views on whether the Bill will ensure that campaigns in support of a referendum outcome are conducted in a fair and transparent manner?*** Again, we have insufficient practical experience to offer comment on this aspect. We do however support the principle of having clear legal rules in relation to conduct of referendums and campaigning for particular results. Perhaps above all other issues, the need for regulation of the use of data and for transparency in relation to donations and the funding of campaigns is obvious.

**8. *What are your views on the extent to which the provisions for franchise, conduct and campaigns within the Bill reflect lessons learned from previous referendums within Scotland and the UK?*** On this question, we would defer to those who have practical experience of, or academic expertise in, the way in which previous referendums in Scotland and the UK have been conducted.

**9. *What are your views on whether the FM adequately identifies the financial implications of the Bill?*** We are not in a position to offer comment on the financial implications of the Bill.