

## Would UK democracy be enhanced by the increased use of referendums?

### Terminology

*Referendums* and *referenda* are both commonly used as plurals of *referendum*. However, the use of *referenda* is deprecated by the Oxford English Dictionary, which advises that:

- “ *Referendums* is logically preferable as a plural form meaning *ballots on one issue* (as a Latin gerund, *referendum* has no plural). The Latin plural gerundive *referenda*, meaning *things to be referred*, necessarily connotes a plurality of issues.”

Referendums are only occasionally held by the government of the United Kingdom. Nine referendums have been held so far (excluding referendums held under the Local Government Act 1972 - see below), the first in 1973; only one of these covered the whole UK. Although few referendums have been held at national or regional level, there have been numerous referendums at local level to determine whether there is support for a directly-elected mayor. The current Conservative-Liberal Democrat coalition government has promised a referendum on any further EU treaty that transfers any powers from the UK government to the European Union.

### Status of referendums

Referendums have traditionally been rare in the UK. Major referendums have always been on constitutionally related issues. Before Tony Blair's Labour government came to power in 1997, only four such referendums had been held.

There are two types of referendum that have been held in the UK, pre-legislative (held before proposed legislation is passed) and post-legislative (held after legislation is passed). Referendums are not legally binding, so legally the government can ignore the results; for example, even if the result of a pre-legislative referendum were a majority of 'No' for a proposed law, Parliament could pass it anyway, because parliament is sovereign.

Legally, Parliament at any point in future could reverse legislation approved by referendum because the concept of parliamentary sovereignty means no Parliament can prevent a future Parliament from amending/repealing legislation. However, it is unlikely many governments would attempt to reverse legislation approved by referendum as it would probably be controversial and potentially damaging to its popularity.

Finally, under the Local Government Act 1972, there is a little-known provision under which non-binding local referendums on any issue can be called by small groups of voters. This power exists only for parish councils, and not larger authorities, it is commonly known as the "Parish Poll". Six local voters may call a meeting, and if ten voters or a third of the meeting (whichever is smaller) agree, the council must carry out a referendum in

14–25 days. The referendum is merely advisory, but if there is a substantial majority and the results are well-publicised, it may be influential.

### Recent referendums

Since 1997, the Labour government has held five referendums on devolution, four of which received a yes majority. One concerning the Treaty establishing a Constitution for Europe was cancelled, given the French and Dutch rejections of the treaty. Another, on whether the UK should adopt the euro, did not happen as the Labour Government would only have gone ahead with it if they felt they could recommend the adoption of the Euro.

The Labour manifesto for the 1997 general election stated 'We are committed to a referendum on the voting system for the House of Commons.' Despite the research carried out by the Jenkins Commission in 1998 suggesting an AV+ system for Westminster elections, the 2001 manifesto did not make such a promise. After the inconclusive 2010 General Election the Liberal Democrats and Conservatives formed a coalition. As part of the coalition agreement, both parties formally committed to holding a referendum on changes to the electoral system.

Since the Government of Wales Act 2006 became law, there can be referendums in Wales asking the people whether the National Assembly for Wales should be given greater law making powers. The Welsh Labour Party - Plaid Cymru Coalition Government in the Welsh Assembly have promised such a referendum before 2011.

The Scottish National Party (SNP) government in Scotland planned to hold a referendum on Scottish independence prior to the next Scottish general election in May 2011. As stated in its 2007 manifesto, in its third year as the Scottish Government it intended to bring the Referendum Bill before Parliament in January 2010, in order to lead to a referendum to be held in November 2010. It did not however expect to pass due the SNP's status as a minority government, and due to the opposition to the Bill from the 3 unionist opposition parties in the Scottish Parliament.

### Organisation

Until 2000, there was no body to regulate referendums. In 2000, the government set out a framework for the running of future referendums when the Political Parties, Elections and Referendums Act 2000 or PPERA was passed, giving the Electoral Commission responsibility for running referendums.

## List of major referendums

- Northern Ireland referendum, 1973, on whether Northern Ireland should remain part of the United Kingdom or join the Republic of Ireland (UK)
- United Kingdom European Communities membership referendum, 1975, on whether the UK should remain part of the European Economic Community (yes)
- Scottish devolution referendum, 1979, on whether there should be a Scottish Assembly (small majority voted yes, but fell short of the 40% threshold required to enact devolution)
- Welsh devolution referendum, 1979, on whether there should be a Welsh Assembly (no)
- Scottish devolution referendum, 1997, Two questions: On whether there should be a Scottish Parliament (yes); On whether a Scottish Parliament should have tax varying powers (yes)
- Welsh devolution referendum, 1997, on whether there should be a Welsh Assembly (yes)
- Greater London Authority referendum, 1998, on whether there should be a Mayor of London and Greater London Authority (yes)
- Northern Irish Belfast Agreement referendum, 1998, on the Good Friday Agreement (yes)
- Northern English devolution referendums, 2004, on elected regional assemblies for North East England (no), North West England (vote postponed) and Yorkshire and the Humber (vote postponed)
- Welsh Devolution referendum 2011 (yes)
- United Kingdom alternative vote referendum, 5<sup>th</sup> May 2011 (no)

Alex Salmond, the leader of the Scottish National Party (SNP), stated prior to the Scottish parliamentary election in May 2007 that a referendum on Scottish independence would be a condition for his party joining a ruling coalition in the Scottish Parliament. The UK government has stated since that it would not oppose such a referendum.

## Minor (local) referendums

Thirty-five local referendums have taken place in local authorities to establish whether there is support for directly-elected mayors. Twelve received a "Yes" majority and twenty-three a "No" majority. The highest turnout was 64% in Berwick-upon-Tweed and the lowest was 10% in Ealing. On average, the turnout was similar to that of local elections.

The majority of those were held between June 2001 and May 2002—a further eight have been held since. In 2008 a reorganisation of Stoke-on-Trent's system of local government required a further referendum; this abolished the post of Mayor.

## Prohibition referendums

The Temperance (Scotland) Act 1913 provided that polls could be held in small local areas in Scotland to determine whether to institute a level of prohibition on the purchase of alcoholic beverages; the provisions were later incorporated into the Licensing (Scotland) Act 1959. Between 1913 and 1965 1,131 such polls were held, with the vast majority (1,079) held before 1930.

The Sunday Closing (Wales) Act 1881 mandated that all public houses in Wales be closed on Sundays. The Act was extended to Monmouthshire in 1921. Under the terms of the Licensing Act 1961, on the application of 500 local electors, a referendum could be held in each local government area at seven-year intervals on whether that district should be "wet" or "dry" on the Sabbath. Most districts in the border area and the southern

industrial area went "wet" in 1961 or 1968, with most others following suit in 1975. In 1982, the last district, Dwyfor, in western Gwynedd, went "wet" and it was thought that the influence of the Sabbatarian temperance movement had expired and few referendums were called, but surprisingly a further referendum was called in Dwyfor in 1989 and the area went "dry" for another seven years on a 9% turnout. The whole of Wales was "wet" from 1996, and the facility for further referendums was removed by the Sunday Licensing Act 2003.

## Transport referendums

The City of Edinburgh Council held a postal-ballot referendum in February 2005 over whether voters supported the Council's proposed transport strategy. These plans included a congestion charge which would have required motorists to pay a fee to enter the city at certain times of the day. The result was announced on 22 February 2005 and the people of Edinburgh had rejected the proposals. 74% voted against, 26% voted in favour, and the turnout was 62%

"when you find yourself in the majority, question yourself" - Mark Twain

## Criticisms of Referendums

Although some advocates of direct democracy would have the referendum become the dominant institution of government, in practice and in principle, in almost all cases, the referendum exists solely as a complement to the system of representative democracy, in which most major decisions are made by an elected legislature. An often cited exception is the Swiss canton of Glarus, in which meetings are held on the village lawn to decide on matters of public concern. In most jurisdictions that practice them, referendums are relatively rare occurrences and are restricted to important issues.

Advocates of the referendum argue that certain decisions are best taken out of the hands of representatives and determined directly by the people. Some adopt a strict definition of democracy, saying elected parliaments are a necessary expedient to make governance possible in the large, modern nation-state, though direct democracy is nonetheless preferable and the referendum takes precedence over Parliamentary decisions.

Other advocates insist that the principle of popular sovereignty demands that certain foundational questions, such as the adoption or amendment of a constitution, the secession of a state or the altering of national boundaries, be determined with the directly expressed consent of the people.

Advocates of representative democracy say referendums are used by politicians to avoid making difficult or controversial decisions.

### Criticism of populist aspect

Critics of the referendum argue that voters in a referendum are more likely driven by transient whims than careful deliberation, or that they are not sufficiently informed to make decisions on complicated or technical issues. Also, voters might be swayed by strong personalities, propaganda and expensive advertising campaigns. James Madison argued that direct democracy is the "tyranny of the majority."

Some opposition to the referendum has arisen from its use by dictators such as Adolf Hitler and Benito Mussolini who, it is argued, used the plebiscite to disguise oppressive policies as populism. Hitler's use of the plebiscite is argued as reason why, since World War II, there has been no provision in Germany for the holding of referendums at the federal level.

### Patten's criticism

British politician Chris Patten summarized many of the arguments used by those who oppose the referendum in an interview in 2003 when discussing the possibility of a referendum in the United Kingdom on the European Union Constitution:

" I think referendums are awful. They were the favourite form of plebiscitary democracy of Mussolini and Hitler. They undermine Westminster [parliament]. What they ensure, as we saw in the last election, is if you have a referendum on an issue politicians, during an election campaign, say oh we're not going to talk about that, we don't need to talk about that, that's all for the referendum. So during the last election campaign the Euro was hardly debated. I think referendums are fundamentally anti-democratic in our system and I wouldn't have anything to do with them. On the whole, governments only concede them when governments are weak. (BBC, 2004)

### 'Never-end-um'

A further perceived flaw of the referendum is that, in some circumstances, the democratic spirit of the referendum may be flouted by the repeated submission to the referendum of a proposal until it is eventually endorsed, perhaps due to a low turn-out or public fatigue with the issue. This is especially a problem where a proposal may be difficult to reverse, such as secession from a larger country or the abolition of a monarchy. The repeated holding of a referendum on a single issue has been pejoratively referred to as a "never-end-um".

Many critics of the EU point to the Treaty of Nice's ratification procedure in Ireland, where the government submitted the Treaty to a referendum twice, getting the required "Yes" vote on the second attempt.

### Closed questions and the separability problem

Some critics of the referendum attack the use of closed questions. A difficulty which can plague a referendum of two issues or more is called the separability problem. If one issue is in fact, or in perception, related to another on the ballot, the imposed simultaneous voting of first preference on each issue can result in an outcome that is displeasing to most.

### Undue limitations on regular government power

Several commentators have noted that the use of citizens' initiatives to amend constitutions has so tied the government to a mishmash of popular demands as to render the government unworkable. *The Economist* has made this point about the US State of California, which has passed so many referendums restricting the ability of the state government to tax the people and pass the budget that the state has become effectively ungovernable. Calls for an entirely new California constitution have been made.

## Review exercise

1. Write out five examples of different types of referendum held in the UK
2. Answer the question in the title of this handout by constructing a table which lists the pros and cons of holding referendums in a democracy (remember that the UK is a representative / parliamentary democracy)

### Additional exercise:

Compare the use of referendums in the UK to their use in the USA

pejorative / derogatory  
↳ negative

capriciousness → whim

efficient & useful

maybe little turn out

pejorative

appeal to the masses

"the last refuge of the tyrant"



# A Brief History of the devolved Parliament & Assembly in Northern Ireland

1. want to preserve the union of England and NI,  
don't want to join with ~~Ireland~~ ROI.

## Previous legislatures

From 7 June 1921 until 30 March 1972, the devolved legislature for Northern Ireland was the Parliament of Northern Ireland. That Parliament consistently chose the Ulster Unionist Party to govern the region. The Parliament was suspended on 30 March 1972 and formally abolished in 1973 under the Northern Ireland Constitution Act 1973.

Shortly after this first parliament was abolished, attempts began to restore devolution on a new basis that would see power shared between nationalists and unionists. To this end a new parliament, the Northern Ireland Assembly, was established in 1973. However, this body was brought down by opposition from hard-line unionists and republicans and was abolished in 1974. In 1982 another Northern Ireland Assembly was established at Stormont, initially as a body to scrutinise the actions of the Secretary of State, the British minister with responsibility for Northern Ireland. It received little support from nationalists and was officially dissolved in 1986.

## The modern Assembly and suspensions Tony Blair - 1997.

The modern Northern Ireland Assembly was first elected on 25 June 1998 and first met on 1 July 1998. However, it only existed in "shadow" form until 2 December 1999 when full powers were devolved to the Assembly. Since then the Assembly has operated only intermittently and has been suspended on four occasions:

- 11 February – 30 May 2000
- 10 August 2001 (24 hour suspension)
- 22 September 2001 (24 hour suspension)
- 14 October 2002 – 7 May 2007

Attempts to secure its operation on a permanent basis have been frustrated by disagreements between the two main unionist parties (the Democratic Unionist Party and the Ulster Unionist Party) and Sinn Féin, the largest nationalist party. Unionists refused to participate in the Good Friday Agreement's institutions alongside Sinn Féin until they were assured that the IRA had discontinued its activities, decommissioned its arms and disbanded. → IRA

The most recent suspension occurred after unionists withdrew from the Northern Ireland Executive after Sinn Féin's offices at Stormont were raided by the police investigating alleged intelligence gathering on behalf of the IRA by members of the party's support staff. The Assembly, already suspended, dissolved on 28 April 2003 as scheduled, but the elections due the following month were postponed by the United Kingdom government and were not held until November that year.

On 8 December 2005, three Belfast men at the centre of the alleged IRA spying incident (dubbed *Stormontgate*) were acquitted of all charges. The prosecution offered no evidence "in the public interest." Afterwards Denis Donaldson, one of those arrested, said that the "charges should never have been brought" as the police action was "political." On 17 December 2005, Donaldson publicly confirmed that he had been a spy for British intelligence since the early 1980s.<sup>[8]</sup> Mr Donaldson was killed on 4 April 2006 by the Real IRA.

## Question:

What does the power to suspend the Northern Ireland Assembly demonstrate about the convention of parliamentary sovereignty?



## Powers of the Devolved Assemblies / Parliaments in the UK

### The Welsh Assembly

The National Assembly consists of 60 elected members. They use the title Assembly Member (AM) or *Aelod y Cynulliad* (AC). The executive arm of the National Assembly for Wales, the Welsh Government, has been a Labour administration led by First Minister, Carwyn Jones, since May 2011. The previous administration (then known as the Welsh Assembly Government), had been a coalition between Labour—led by First Minister, Carwyn Jones—and Plaid Cymru—led by Deputy First Minister, Ieuan Wyn Jones — from December 2009 and to May 2011.

The executive and civil servants are mainly based in Cardiff's Cathays Park while the Assembly Members, the Assembly Commission and Ministerial support staff are based in Cardiff Bay where a new £67 million Assembly Building, known as the Senedd, has recently been built.

One important feature of the National Assembly until 2007 was that there was no legal or constitutional separation of the legislative and executive functions, since it was a single corporate entity. Compared with other parliamentary systems, and arrangements for devolution in other countries of the UK, this was unusual. In practice, however, there was separation of functions, and the terms "Assembly" and "Assembly Parliamentary Service" came into use to distinguish between the two arms. The Government of Wales Act 2006 regularised the separation when it came into effect following the 2007 Assembly Election.

Initially, the Assembly did not have primary legislative or fiscal powers, as these powers were reserved by Westminster. The Assembly did have powers to pass secondary legislation in devolved areas. Sometimes secondary legislation could be used to amend primary legislation, but the scope of this was very limited. For example, the first Government of Wales Act gave the Assembly power to amend primary legislation relating to the merger of certain public bodies. However, most secondary powers were conferred on the executive by primary legislation to give the executive (i.e., Ministers) more powers, and the Assembly has had wider legislative powers than appearances might suggest. For example, the Assembly delayed local elections due to be held in 2003 for a year by use of secondary powers, so that they would not correspond with Assembly elections. In 2001 the UK parliament used primary legislation to delay for one month local elections in England during the Foot and Mouth Disease epidemic.

The Assembly gained limited primary legislative powers following the 2007 election and the passage of the Government of Wales Act 2006. These laws are known as Assembly Measures and can be enacted in specific fields and matters within the legislative competency of the Assembly. New matters and fields can be devolved by Acts of the UK Parliament or by LCOs approved by Parliament.

While in principle the Assembly has no tax-varying powers, in reality it has some very limited power over taxes. For example, in Wales, as in England, the rate of Council Tax is set by local authorities, but

since the Assembly largely determines the level of grants to local councils, it can influence the level of local taxation indirectly. It also has some discretion over charges for government services. Notable examples where this discretion has been used to create significant differences from other areas in the UK include:

1. *Charges for NHS prescriptions in Wales* — these have now been abolished.
2. *Charges for University Tuition* — are different for Welsh resident students studying at Welsh Universities, compared with students from or studying elsewhere in the UK.
3. *Charging for Residential Care* — In Wales there is a flat rate of contribution towards the cost of nursing care, (roughly comparable to the highest level of English Contribution) for those who require residential care.

This means in reality that there is a wider definition of "nursing care" than in England and therefore less dependence on means testing in Wales than in England, meaning that more people are entitled to higher levels of state assistance. These variations in the levels of charges may be viewed as *de facto* tax varying powers.

This model of more limited legislative powers was partly due to the fact that Wales has had the same legal system as England since 1536, when it was merged with England. Ireland and Scotland were never merged by England, and so always retained some distinct differences in their legal systems. The Scottish Parliament and the Northern Ireland Assembly both have deeper and wider powers.

The Assembly inherited the powers and budget of the Secretary of State for Wales and most of the functions of the Welsh Office. It has power to vary laws passed by Westminster using secondary legislation. Cheryl Gillan, who represents the English constituency of Chesham and Amersham, in the Westminster Parliament is currently the Secretary of State for Wales.

Following a referendum on 4 March 2011, the Welsh Assembly gained direct law making powers, without the need to consult Westminster.

### The Scottish Parliament

The Scotland Act 1998, which was passed by the Parliament of the United Kingdom and given Royal Assent by Queen Elizabeth II on 19 November 1998, governs the functions and role of the Scottish Parliament and delimits its legislative competence. For the purposes of parliamentary sovereignty, the Parliament of the United Kingdom at Westminster continues to constitute the supreme legislature of Scotland, however, under the terms of the Scotland Act, Westminster agreed to devolve some of its responsibilities over the domestic policy of Scotland to a new directly elected Scottish Parliament. Such matters are known as "devolved matters" and include education, health, agriculture and justice.



The Scotland Act enabled the Scottish Parliament to pass primary legislation on these issues. A degree of domestic authority, and all foreign policy, remains at present with the UK Parliament in Westminster. The Scottish Parliament has the power to pass laws and has limited tax-varying capability. Another of the roles of the Parliament is to hold the Scottish Government to account.

The specific devolved matters are all subjects which are not explicitly stated in Schedule 5 to the Scotland Act as reserved matters. All matters that are not specifically reserved are automatically devolved to the Scottish Parliament. Most importantly, this includes agriculture, fisheries and forestry, economic development, education, environment, food standards, health, home affairs, Scots law – courts, police and fire services, local government, sport and the arts, transport, training, tourism, research and statistics and social work. The Scottish Parliament has the ability to alter income tax in Scotland by up to 3 pence in the pound.

Reserved matters are subjects that are outside the legislative competence of the Scotland Parliament. The Scottish Parliament is unable to legislate on such issues that are reserved to, and dealt with at, Westminster (and where Ministerial functions usually lie with UK Government ministers). These include abortion, broadcasting policy, civil service, common markets for UK goods and services, constitution, electricity, coal, oil, gas, nuclear energy, defence and national security, drug policy, employment, foreign policy and relations with Europe, most aspects of transport safety and regulation, National Lottery, protection of borders, social security and stability of UK's fiscal, economic and monetary system.

Members of the public take part in Parliament in two ways that are not the case at Westminster: a public petitioning system, and cross-party groups on policy topics which the interested public join and attend meetings of, alongside MSPs. The Parliament is able to debate any issue (including those reserved to Westminster) but is unable to make laws on issues that are outside its legislative competence.

## The Northern Ireland Assembly

The Assembly has both legislative powers and responsibility for electing the Northern Ireland Executive. The First and deputy First Ministers were initially elected on a cross-community vote, although this was changed in 2006 and they are now appointed as leaders of the largest and second largest Assembly 'bloc' (understood to mean 'Unionist', 'Nationalist' and 'Other'). However the remaining ministers are not elected but rather chosen by the nominating officers of each party, each party being entitled to a share of ministerial positions roughly proportionate to its share of seats in the Assembly. The Assembly has authority to legislate in a field of competences known as "transferred matters". These matters are not explicitly enumerated in the Northern Ireland Act 1998. Rather they include any competence not explicitly retained by the Parliament at Westminster.

→ authority to legislate on, except foreign policy etc.; no discrimination; nothing against Human Rights.

Powers reserved by Westminster are divided into "excepted matters", which it retains indefinitely, and "reserved matters", which may be transferred to the competence of the Northern Ireland Assembly at a future date. A list of transferred, reserved and excepted matters is given below.

While the Assembly was in suspension, its legislative powers were exercised by the UK Government, which effectively has power to legislate by decree. Laws that would have normally been within the competence of the Assembly were passed by the UK Parliament in the form of Orders-in-Council rather than legislative acts.

Like laws enacted by the Westminster Parliament, Acts of the Northern Ireland Assembly are subject to judicial review. A law can be struck down if it is found to:

- exceed the competences of the Assembly; *parliamentary sovereignty.*
- violate European Union law;
- violate the European Convention on Human Rights; or
- discriminate against individuals on the grounds of political opinion or religious belief.

Although the British monarch is not formally a component of the Assembly (as is the case at Westminster), all bills passed by the Assembly must receive Royal Assent to become law. If the Secretary of State believes that a bill violates the constitutional limitations on the powers of the Assembly, the Secretary of State will refuse to submit the bill to the monarch for Assent. If submitted by the Secretary of State, the monarch will, by convention, sign a bill into law. Acts of the Northern Ireland Assembly begin with the enacting formula: "Be it enacted by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:".

### Exercises:

1. Highlight the key powers of each devolved parliament/assembly
2. Make lists of similarities and differences between the powers of the devolved bodies
3. What are the implications of these devolved powers for the doctrine of parliamentary sovereignty?

### Extension exercise:

- What are the contextual issues that have led these bodies to having differing powers?