

Written evidence on Referendums in the UK's Constitutional Experience for The Constitution Committee

1. The role of referendums depends largely on how they are initiated and how their agenda is set. Depending on agenda-setting and initiative procedures, referendums may be triggered by government, opposition, or non-governmental organizations. Further, certain types of referendums can be used to promote new legislation whereas other types can be used to impede a particular law. The variety of referendum institutions raises the question whether there can be “a general theory of referendums”.

2. The importance of referendums varies considerably in different political systems. Switzerland is an example of a political system where various forms of referendums have become central instruments of political contestation. According to the Swiss constitution, referendums are required on all constitutional changes. In addition, 100.000 voters can make a popular initiative demanding a referendum on a legislative (constitutional) change put forward in the initiative. The Swiss constitution also allows 50.000 voters to demand a referendum on any law that has been recently been passed by the parliament. All Swiss referendums are legally binding. During the past 10 years, the Swiss voters have voted yearly on average on about 10 issues in national referendums, and in addition to these there have been a number of referendums at the level of municipalities and cantons.

3. In the UK political system where there are few restraints on the powers of a parliamentary majority, referendums tend to play a marginal role. As a contrast, in some countries referendums have been particularly designed to function as a check on a parliamentary majority. For example, in Denmark a retrospective referendum can be initiated by a parliamentary minority. According to the Danish constitution, 1/3 of parliamentarians can demand a binding referendum on a recently passed bill. Although this type of a rejective referendum has actualized in Denmark only once (1963), the possibility of a referendum has strengthened the position of opposition parties and

enhanced consensual forms of policy-making. Switzerland has a stronger institution of a rejective referendum as according to the Swiss constitution 50.000 voters can demand a referendum on a recently passed law. This gives an opportunity for extra-parliamentary opposition groups to try to veto legislation. The possibility of a rejective referendum has very much contributed to the consensual character of the Swiss political system.

4. The question of the types of issues that can or should be submitted to a referendum may not be as relevant as the question on the agenda-setting and the initiation of referendums. However, the constitutions of countries such as Australia, Ireland, Denmark and Switzerland require that all constitutional amendments need to be submitted a referendum. In some cases, the requirement of a mandatory referendum has proven to be a major obstacle for any constitutional changes. This is the case especially in Australia, largely due to its compulsory voting and double majority requirements.

5. In the UK context, only one type of a referendum is possible at the national level, that is, a referendum initiated by a parliamentary majority (i.e. government). In this respect, the UK is not unique as this is the only type of a referendum experienced in many other West European democracies (e.g. Sweden, Norway, Finland, the Netherlands and Austria). Whenever the initiation of a referendum is in the hands of a parliamentary majority, public debate on referendums can often be understood in terms of party political tactics. Governmental parties may use referendums in order to remove a divisive issue from the political agenda. Opposition parties may demand referendums in order to achieve particular policy goals. Sometimes referendums are, however, called in order to legitimize some major constitutional decisions, such as membership in the EU. In the British context, regional referendums on devolution have been very important, and these can be motivated by the need to legitimize new constitutional and fiscal arrangements.

6. It is notable that British referendums are formally advisory which means that the power to legislate remains exclusively in the hands of the parliamentary majority. The advisory character of referendums appears to be congruent with the idea of parliamentary sovereignty. However, based on the experience on national level referendums in

established democracies, it seems to be very difficult for parliamentarians to vote against the result of an advisory referendum. Therefore, it is often argued that formally advisory referendums are binding *de facto*.

7. When it comes to the procedures used in referendums, questions allowing more than two options might be recommendable in the UK context where referendums are advisory. Multi-option questions might help to highlight the advisory character of a referendum to voters. Also, multi-option questions may help to emphasize the responsibility of the parliamentarians as ultimate decision-makers because the referendum outcome does not entail such a clear indication of “the will of the majority”. In advisory referendums, there is no need for threshold requirements or quorums as the formal decision-making power remains with the elected representative bodies. However, also in case of advisory referendums governments should take responsibility for the quality of campaigns and the information provided for voters.

8. Overall, the adoption of new forms of referendums would potentially change the character UK political system. Therefore, the implications of such reforms should be carefully considered. The recently adopted Treaty of Lisbon includes a provision for a citizens’ indirect initiative which is submitted to the European Commission for consideration. As a consequence of the Lisbon Treaty, there will be a need to develop the infrastructure for making citizens’ initiatives also in the UK context. This seems to provide a good opportunity to consider the adoption of a citizens’ initiative also in the UK. If the Swiss format of popular initiatives triggering binding referendums appears too radical, one option would be to follow the example of New Zealand where citizens’ initiatives lead to advisory referendums. A further option is to allow indirect initiatives (or agenda initiatives), which means that citizens’ initiatives are considered by the parliament only and no referendums follow. Such institutions exist at the national level, for example, in Austria, Spain and Poland.

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This evidence is submitted on an individual basis.