The Constitutional Law Sub-Committee of the Society has had the opportunity to consider the Draft Order and has the following comments to make.

**Article 3**

This Article provides the Scottish Parliament with the power to legislate for a referendum on the independence of Scotland from the rest of the United Kingdom provided that certain requirements are met. These requirements operate as pre-conditioned on the Parliament having competence to legislate for a referendum. They are:

1. That the date of the poll at the referendum must not be the date of any other poll at any other referendum under law made by the Parliament.

2. That the date of the poll must be no later than 31 December 2014; and

3. That there must be only one ballot paper and that the ballot paper must give the voter a choice between only two responses.

If these requirements are not complied with, the Parliament will not have legislative competence to enact a Referendum Bill.

If the Parliament complies with these requirements, the Order will provide the competence to enact a Referendum Bill.

**The mechanism for competence**

Article 3 inserts a new Paragraph 5A into Part 1 of Schedule 5 to the Scotland Act 1998. This provides that the reservation of aspects of the constitution in paragraph 1 of Schedule 5 does not reserve "a referendum on the independence of Scotland from the rest of the United Kingdom" if the three requirements at Article 3(2), (3) and (4) are met.

The Society is of the view that Article 3 is necessary to meet the objective of the Edinburgh Agreement that the Referendum Bill should have a clear legal base.

**Article 4 – Supplementary provision**

Article 4(1) applies with modifications section 127 (Referendum campaign broadcast) and paragraph 1 of Schedule 12 (Right to send referendum address post free) of the Political Parties, Elections and Referendums Act 2000 to an independence referendum. These provisions do not affect the power of the Parliament to legislate for an independence referendum which is contained in Article 3, however they do affect the way in which a referendum campaign will be conducted.
I hope that these comments are helpful to the Committee.

Michael P Clancy OBE  
Director of Law Reform  
The Law Society of Scotland  
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