



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# REFERENDUM (SCOTLAND) BILL COMMITTEE

Thursday 15 November 2012

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**Thursday 15 November 2012**

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**REFERENDUM (SCOTLAND) BILL COMMITTEE**  
**4<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*James Kelly (Rutherglen) (Lab)

**COMMITTEE MEMBERS**

\*Annabelle Ewing (Mid Scotland and Fife) (SNP)

\*Linda Fabiani (East Kilbride) (SNP)

\*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

\*Annabel Goldie (West Scotland) (Con)

\*Patrick Harvie (Glasgow) (Green)

\*Stewart Maxwell (West Scotland) (SNP)

\*Stuart McMillan (West Scotland) (SNP)

Tavish Scott (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Navraj Singh Ghaleigh (University of Edinburgh)

Dr Nicola McEwen (University of Edinburgh)

Willie Rennie (Mid Scotland and Fife) (LD) (Committee Substitute)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

**CLERK TO THE COMMITTEE**

Andrew Mylne

**LOCATION**

Committee Room 1



**Scottish Parliament**  
**Referendum (Scotland) Bill**  
**Committee**

*Thursday 15 November 2012*

[The Convener *opened the meeting at 09:30*]

**Interests**

**The Convener (Bruce Crawford):** Good morning and welcome to the fourth meeting of the Referendum (Scotland) Bill Committee. Tavish Scott has sent his apologies, and Willie Rennie is attending in his place. There are no other apologies.

Does Willie Rennie have relevant interests to declare?

**Willie Rennie (Mid Scotland and Fife) (LD):**  
No.

**The Convener:** Thank you.

**Decision on Taking Business in**  
**Private**

09:31

**The Convener:** Item 2 is a decision on whether to take in private a discussion about whether, in principle, the committee should have an adviser. The discussion will not be about who the adviser would be, so I think that we would all agree that the decision should be taken in public. Do members agree?

**Members** *indicated agreement.*

## Subordinate Legislation

### Scotland Act 1998 (Modification of Schedule 5) Order 2013 [Draft]

09:31

**The Convener:** I warmly welcome our first panel of witnesses, who are from the University of Edinburgh: Mr Navraj Singh Ghaleigh is a lecturer in public law; and Dr Nicola McEwen is from the school of social and political science. Professor Walker had to pull out at the last minute, so I am particularly pleased that Mr Ghaleigh was able to submit a paper to us and give evidence at such short notice. I am very grateful.

If the witnesses do not want to make brief opening remarks, we will go straight to questions. I have a fundamental question. I was interested to read the report from the House of Lords Select Committee on the Constitution—I do not know whether you have seen it. After some paragraphs of deliberation on the section 30 order, the committee concluded:

“It cannot safely be said that the arrangements proposed put the matter beyond all legal challenge.”

That surprised me. If the committee had added “successful”, I might have understood what it meant, because someone might yet raise a legal challenge. How do you react to that comment from the House of Lords?

**Dr Nicola McEwen (University of Edinburgh):** I should say—probably not for the last time this morning—that I am not a constitutional lawyer. I have the utmost respect for the opinions of colleagues who are constitutional lawyers, and I am fairly confident that the section 30 order overcomes some of the uncertainties around the legal status. That is not to say that I think that the section 30 order was necessary, but I think that it puts the issue beyond legal doubt.

**Navraj Singh Ghaleigh (University of Edinburgh):** My reading of what the House of Lords had to say on the matter is that the structure of its argument is repeatedly, “Such an argument could be made but would be extremely unlikely to succeed”—it then moves on to the next argument and adopts exactly the same structure. I think that the committee’s members accepted the reality that, although an abstruse argument could be made, it would be extremely unlikely to succeed. They considered it their duty to point that out, but I do not think that they are saying more than that.

**Annabel Goldie (West Scotland) (Con):** I want to follow on from that point. Mr Ghaleigh, given that, as you have just stated, the prospect of a challenge is remote, do you agree that there are

ways of mitigating that prospect and that therefore it is important for the Parliament to ensure that it reflects the Edinburgh agreement as closely as possible in subsequent legislative processes and that the elements of transparency, fairness and respect for the outcome of the vote all need to be protected?

**Navraj Singh Ghaleigh:** I am not sure that I precisely got the question from that.

**Annabel Goldie:** The House of Lords report makes the point that, technically, there could be a challenge to the procedure, yet we heard in evidence last week that a court would be very unlikely to entertain a challenge if it thought that the Parliament had genuinely tried to reflect as best it could the intentions of the two Governments as reflected in the Edinburgh agreement. All I am asking is whether you agree that, if every effort is made to ensure that the pillars of the Edinburgh agreement are covered, a court would probably be reluctant to entertain a challenge.

**Navraj Singh Ghaleigh:** That is probably right. However, that is not the primary basis on which the House of Lords report, which was published the day before yesterday, envisages that a challenge could be made. Paragraph 25 makes the point that a challenge could be made on straightforward Padfield administrative law grounds. Even if there was fidelity between the section 30 order and the Edinburgh agreement, the Padfield criteria would remain as a basis of challenge.

**The Convener:** It would be helpful for committee members and certainly for me if you could explain what the Hatfield criteria are.

**Navraj Singh Ghaleigh:** It is Padfield criteria.

**The Convener:** Will you expand on that and say what it means?

**Navraj Singh Ghaleigh:** I will stick closely to what the House of Lords Select Committee on the Constitution had to say. The basic idea is that

“statutory powers may be used only to promote—and not to frustrate—the policy and objects of the Act”.

The question is whether an order that is made under the Scotland Act 1998 promotes or frustrates the objectives of that act and whether an independence referendum is a promotion of the objects of the act or a frustration of them. You can see how it could be argued that the referendum would be a frustration of the objects of the act. It is not about devolution; it is about a separate substantive matter, namely independence. That would be the basis of the challenge.

**The Convener:** Okay. I understand that now.

If no other members want to follow up on that particular line, we will move to other issues that members want to raise.

**James Kelly (Rutherglen) (Lab):** I welcome our witnesses to the committee. Your written submissions both refer to the wording of the referendum question and the role of the Electoral Commission, which have been matters of some debate in recent weeks. We have the referendum bill to come before the Parliament. The section 30 order recognises the Political Parties, Elections and Referendums Act 2000, which covers the role of the Electoral Commission. It is in the interests of everybody that the question is fair and balanced. How can that be achieved in the legislation that is to come and how can we give due weight to the role of the Electoral Commission?

**Dr McEwen:** The Electoral Commission now has a question that it will test. It will do that on the ground of intelligibility, which is interpreted fairly broadly. The commission has set out a number of criteria in its guidelines to consider that. In this case, I do not envy the commission its task, because we are in an unusual situation. In the past, when the Electoral Commission has judged a question, it has already had the substantive proposal or piece of legislation on which the question is based. We are in a different situation now, as the substance of the question is perhaps a little ambiguous. In other words, what does it mean for Scotland to be an independent country? I suspect that if we asked that question round this table, we would have differences of opinion, and not necessarily on party lines. It is difficult to judge the intelligibility of a question when we do not have clarity on its substance.

**James Kelly:** You said that there are some difficulties for the Electoral Commission in testing the question, particularly as the legislation is still to come before the Parliament. What weight should the Government give to the role of the Electoral Commission in examining the question?

**Dr McEwen:** The Electoral Commission sees itself as an adviser. It will make recommendations and it will advise. Nothing is set in stone to suggest that its advice should be binding on the Parliament or the Government, if that was the implication of the question. However, it will be politically difficult to ignore the advice that comes from the Electoral Commission in that respect. It has authority and legitimacy. It is really important for everyone that the referendum process is seen to be legitimate. That will be essential to secure what we term in the literature losers' consent, whereby those on the losing side consent to the outcome or the result. There is an obligation on all sides of the debate to ensure that.

**The Convener:** Willie Rennie has a question in the same area.

**Willie Rennie:** I am interested in your point about not knowing what the substance of the question is before it is set. Would you recommend to the Electoral Commission that it should wait or that the white paper should be published before the question is set? Would that be appropriate?

**Dr McEwen:** It is difficult, given the situation that we are in. That would be the ideal scenario, but we are not in that place. There is a time bar on when the referendum can be held.

The debate to date has been to try to get the process issues resolved and then to get on to the substance. My point is that, in an ideal scenario, we would have had a white paper and a substantive proposal that could allow, for example, a preamble to the question, as there has been in previous referendums, to help voters to interpret it and to help the Electoral Commission to judge the intelligibility of the proposal. Obviously, when it comes to the referendum, there will be a substantive proposal, but will it be part of the question? Probably not, given the order in which we are doing things just now.

The ideal scenario would be to have a preamble and some agreement on the kind of independence on which people are being asked to make a judgment, so that voters could be clear about the consequences of a yes vote and the consequences of a no vote, as far as is possible in this case.

**Willie Rennie:** Is there a danger that the substance will not match the question when it comes to the referendum?

**Dr McEwen:** I think that the question is inherently ambiguous anyway, given the way in which it is framed and given that, whatever constitutional settlement we arrive at in the event of a yes vote or indeed a no vote, an element of negotiation will be required.

One assumes that the Scottish Government's white paper will spell out what it envisages an independent Scotland looking like, but that will have to be negotiated with the rest of the United Kingdom—with the UK Government—and other international actors. It is not necessarily entirely within the Scottish Government's gift to state exactly what the outcome would be. However, at least we could then have a judgment on the public's view of that proposal, if you see what I mean. If there was a preamble that set out the proposals in the white paper, we would have an advisory referendum that gave a public view on people's sense of whether they agreed with and wanted that constitutional scenario.

09:45

**Navraj Singh Ghaleigh:** I agree with a great deal of what has just been said. In my submission, which I appreciate not all members will have had the chance to read, I set out at paragraphs 8 to 10 what I see as the different dimensions of the concept of intelligibility. The institutional question, which has been touched on, is what position the word “intelligibility” puts the Electoral Commission in. The statute is clear on that: section 104 of the Political Parties, Elections and Referendums Act 2000 says that the Electoral Commission

“shall consider the wording of the referendum question, and shall publish a statement of any views”.

In paragraphs 7 and 8 of the agreement between them, the Scottish and UK Governments say that they will take that approach.

However, it is clear from press releases in the past week or so that there is a divergence of opinion between the Scottish Government and the Electoral Commission on the interpretation of intelligibility. The Scottish Government has a fairly straightforward interpretation, which is that

“The question will be tested to check that it is easy to understand, to the point and unambiguous.”

That is more or less a dictionary definition of intelligibility. The Electoral Commission takes a slightly broader view, as it has done since 2009. It says:

“We will assess the referendum question to see whether voters find it clear, simple and neutral.”

Clarity, simplicity and neutrality are laudable goals, but the statute does not use those words.

That situation creates a space in which there is potentially a gap between legality and legitimacy. Ideally, both are wanted, but the Scottish Government would be well within its rights to say, “Well, that’s just not what section 104 says, and that’s not what we’ve signed up to. You’re not entitled to pass judgment on the question’s neutrality and, if you do, we’re entitled to ignore that.” That would not surprise me at all. As Nicola McEwen suggested, whether that would be the most legitimate approach and would garner the support of the nation—and therefore of those who ended up as losers—is a different question that perhaps should not be ignored.

The second aspect of intelligibility is what I call the sequencing issue. Should the question and its consideration come first, before the white paper, or should things be done in a different order? I agree entirely with Nicola McEwen that the concept of an independent country and the question whether Scotland is one are open to manifold interpretations. The Scottish Government will tell us its interpretation in November 2013, but it is odd that the Electoral Commission and those

of us who have been invited to comment on the question are being asked to consider it in the absence of any firm view from the Scottish Government on what the term means. That is a sequencing problem.

The third issue is that the practice in referendums in the United Kingdom has normally—but not always—been to ask a relatively substantive question that refers to an official publication that establishes what is at stake. For example, the 1979 referendum questions referred to the Wales Act 1978 and to the Scotland Act 1978, the question in the referendum on the Good Friday agreement referred to that agreement, and so on. All the past referendum questions have referred to a document that settles many of the substantive questions and enables citizens to answer the referendum questions on that informed basis. That precedent is useful.

The independence referendum question as we have it certainly has the virtue of pithiness, but that is not the only virtue to be considered.

**Linda Fabiani (East Kilbride) (SNP):** I am quite interested in some of Dr McEwen’s evidence, particularly, in view of the previous discussion, the reference to the need for a

“sufficient explanation of what it means for Scotland to be ‘independent’”.

In that respect, we have mentioned the white paper, which will lay that out. The same sentence then talks about

“what it means for Scots to reject the independence option”.

Do Dr McEwen and Mr Ghaleigh have any views on how that information should be set out to allow people to make an informed choice?

**Dr McEwen:** In writing that, I was considering in particular the decision to have only one question and two options, which, as we know, leaves out a substantial proportion of people who had indicated that they favoured something in between the two options. It will be important to that section of the electorate to know what rejecting the independence option would mean for the future of devolution. I know that those on the pro-union side of the debate have suggested that we must resolve the independence issue first and then have a debate on the future of devolution, but my point is that if we want to ensure that the referendum is informed, there should be greater clarity in advance about the consequences of not just the yes vote, but the no vote. It would be preferable for and fairer on those being asked to make the judgment if there were greater clarity before the referendum rather than after.

**Navraj Singh Ghaleigh:** I do not want to add much to that, except to say that I think that it would be slightly onerous on the Scottish Government to



have to discuss at great length in its document the consequences of the failure of its own policy. That does not strike me as particularly fair.

Nevertheless, the question raises the issue of the provision of impartial information. The PPERA scheme contains some provision for the Electoral Commission to provide impartial information. However, as one might imagine, the Electoral Commission is not terribly keen on providing particularly substantive impartial information, given that every comma and sentence will be fiercely argued over by one side or the other—or, most likely, both. As a result, I am very keen to hear from the Scottish Government a robust explanation of what an independent country is and leave it for the debate to explore the implications of one result or the other.

**Linda Fabiani:** Did you say at the beginning of your response that you thought that it should be up to the Scottish Government to lay out the consequences of a no vote as well as the consequences of a yes vote?

**Navraj Singh Ghaleigh:** I said exactly the opposite.

**Linda Fabiani:** Excuse me for getting confused about what you said. In that case, who do you think should lay out the implications of a no vote?

**Navraj Singh Ghaleigh:** Other participants in the debate.

**Linda Fabiani:** There will be a white paper on independence, but you do not think that there should be something a bit more formal to lay out the consequences of a no vote.

**Navraj Singh Ghaleigh:** My primary concern is that this is essentially a political question, not particularly a legal one, and it strikes me as onerous to impose on a Government making a policy proposal the form and substance of how that proposal should be presented. That is a matter for the Government. If it thinks it appropriate to say nothing about the no vote, so be it, but it should not be compelled to lay out the implications of the failure of its own policy.

**Linda Fabiani:** Are you talking about the UK Government?

**Navraj Singh Ghaleigh:** No, the Scottish Government.

**The Convener:** I think that we should move on now.

**Linda Fabiani:** Okay. I will mull over what has been said.

**The Convener:** I do not think that this is necessarily relevant to the discussion about the section 30 order. If I have sensed it right, we might have found a natural place for Patrick Harvie to

ask his questions. After that, I will come to Patricia Ferguson.

**Patrick Harvie (Glasgow) (Green):** I was tempted to follow on from that earlier discussion, but if you would rather that we moved on, I will do that.

**The Convener:** I have no objection to you asking a follow-on question, but we were getting into a debate there, rather than asking questions. If you want to probe into that area, please keep it brief.

**Patrick Harvie:** I will be brief. I can see why the case is being made that it would be preferable for the consequences of a yes vote and a no vote to be clear, but is it not the reality that the consequences would depend on the 2015 United Kingdom election, the 2016 Scottish election, or the resolution of uncertainties that cannot happen until there is a mandate from the people, expressed in the referendum? The consequences—on both sides—will continue to contain uncertainty until there is a mandate.

**Dr McEwen:** I agree. However, I think that there can at least be greater clarity and honesty about the uncertainties surrounding the process. Perhaps that is a role for the academic community as much as for anyone else in the debate.

**The Convener:** Patricia Ferguson has a question on this subject, so I will let her ask it before allowing Patrick Harvie to ask a question that takes us on to another subject.

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** This is an interesting element of the debate. It is not one that we have discussed previously in the committee, so it is slightly new to all of us.

Given that the Edinburgh agreement is an agreement between the two Governments that there will be a referendum and that that referendum will be on one question, based on the proposition that Scotland should be an independent country, and given that the Scottish Government will publish its white paper outlining what it believes an independent Scotland should look like, and, therefore, its contention of the proposal for the referendum, are you saying that, if you were asked for your advice, your advice to the Electoral Commission would be—to go back to what Dr McEwen was hinting earlier—that it would be better to have a preamble that reflected that proposal? If so, would it be better to wait until an outline of that is available for consideration before the final question is agreed?

**Dr McEwen:** In an ideal world, perhaps. However, there are political realities and timetabling issues, and I certainly would not want to prolong the process debates if that meant that

the more substantive debates were delayed. I am not sure that I would necessarily recommend waiting and returning to the issues. However, I think that it is unfortunate that that is the situation that we are in.

**Patricia Ferguson:** So, to use Mr Ghaleigh's phrase, the sequencing is not as good as it might be.

**Dr McEwen:** Yes, I agree.

**Patricia Ferguson:** But, given that we are going to have to wait for that debate to open up when we get the white paper—none of us is clear about what that position is going to be—do you think that that should influence what any preamble might be?

**Dr McEwen:** In anticipation of the fact that there will be a white paper, it would be possible to draft a preamble that makes reference to the white paper, even though we do not yet know what the details of the white paper will be. I am not sure what the legal position on that would be, in terms of passing legislation, but it is certainly feasible. That might be one way around it.

**Navraj Singh Ghaleigh:** I am not exactly—

**The Convener:** I am sorry, Mr Ghaleigh, but I will ask Annabel Goldie to ask a question, and you can wrap up the point that you were about to make in the answer to that one. We need to move on to other areas if we are going to cover everything.

**Annabel Goldie:** I seek a point of clarification about the intelligibility element that was discussed earlier. If I remember correctly, Mr Ghaleigh, you said that the Deputy First Minister's definition was pretty much a dictionary definition, whereas the version of the electoral commissioner for Scotland, Mr McCormick, was more expansive. Did you refer to a statutory definition?

**Navraj Singh Ghaleigh:** No, there is no statutory definition. There is the statute, though. Section 104 of PPERA says:

"The Commission shall consider the wording of the referendum question, and shall publish a statement of any views of the Commission as to the intelligibility of that question".

That is where we get the word intelligibility from, but it is not further expanded or clarified in the statute.

What we have is a degree of practice on the understanding of the interpretation of intelligibility. In all the referendums that have happened post-PPERA—the north-east referendum and the two referendums of last year—intelligibility only really arose in the Welsh referendum of last year, in which the Electoral Commission rewrote what was a fairly unintelligible question. It is not obvious that that improved the question, but the commission

certainly engaged in the issue of intelligibility. It did not engage in intelligibility understood as neutrality—that was not the basis of its interpretation. It was intelligibility in the narrower sense of cognition.

10:00

**Dr McEwen:** I do not quite agree with that. There have been previous occasions—the Welsh case was one and the north-east another—when the Electoral Commission's report has taken issue with "Do you agree?" questions, for example on the ground of their perceived partiality, and has recommended that the wording be altered to a "Should" question. That did not quite work in the Welsh language version of that question, but it was rephrased on that basis.

**Patrick Harvie:** At some point we will begin debating a bill that in theory will contain specific wording and timing and so on. At the moment, we are looking at an order that is intended to give effect to an agreement between the two Governments. That agreement does not place many constraints. For example, it does not say that there should be a yes or no question as opposed to two balanced statements. It does not specify the timing, other than an end point after which the order would no longer have effect. However, the agreement was signed in a context in which the Scottish Government had already published a consultation on a draft bill that makes it clear that there will be a date in primary legislation and that a ballot form will be included as a schedule to the bill.

Let us suppose that the Government was to include in the bill the power to set a date by secondary legislation, or that it did not want to include a final ballot form but wanted further consultation on whether to include a preamble on the ballot form. If the Government could not resolve those issues in the way in which it has indicated in the consultation draft that it would, where would that leave the agreement? Would there be doubt about whether the agreement was properly being given effect?

**Dr McEwen:** I will let Navraj Singh Ghaleigh take most of that question because it is essentially a legal issue.

I do not think that there is anything in the section 30 order or the agreement that imposes time limits on the different stages of the process. The only time limit as far as I can see is the cut-off date at the end. Again, I am not a lawyer, but I do not necessarily see an impediment to doing it in that way.

**Navraj Singh Ghaleigh:** The agreement says a little bit more about timing issues than just the end date. For example, in paragraph 27 it refers to the

regulated period being 16 weeks, so it is not completely silent on those issues.

There are certainly practical issues that would arise from not including the ballot paper in the bill. The 2007 elections to this place were characterised by rather unfortunate issues in the run-up to the election, including around the availability of the ballot paper in good time in advance of the poll. In the aftermath of that and the Gould report, it was agreed by all parties that such a process should be avoided, so there are certainly sound prudential grounds for not going down that avenue.

I am not sure that, on a first reading, I can see whether bumping the ballot paper into secondary legislation would be in violation of the text or spirit of the agreement, but I would like to reserve my position on that. I have not thought specifically about the question, so I would not want to pin myself down on it.

**Patrick Harvie:** Perhaps the Deputy First Minister will be able to clarify the intention on that.

**Dr McEwen:** I will briefly ask you about your written evidence on the now non-existent and impermissible second question. When the Secretary of State for Scotland gave evidence, he argued that there was no legitimate way of including a second question and that that was why the United Kingdom Government had insisted on the precondition in the negotiation between the two Governments. He rejected the formulation suggested by John Curtice, in which the second question would be predicated on the outcome of the first, the second question being, "If Scotland votes no to independence, would you support some formulation of further devolution?"

Your written evidence says that there is ambiguity in the idea of a single question because a substantial proportion of the supporters of either option would be likely to vote for what would be their second preference if they were asked a wider question. I ask you to respond to the secretary of state's objections to the Curtice formulation, if I can call it that. Is there another way in which the second question could have been framed fairly?

**Dr McEwen:** Yes. In the responses that my colleagues and I submitted to the Scotland Office consultation and the Scottish Government's consultation, we proposed an alternative to the Curtice formulation and to some of the other formulations, which was a two-question referendum with a gateway question.

The gateway question—the first question—would be on the principle of change. Anyone could answer the two questions regardless of their answer to the first, and both should be counted. However, the second question, assuming a majority voted for change in the first question,

would spell out two options for change: the Scottish Government's programme for independence and another.

Such gateway questions have been used in other cases. They were used successfully in New Zealand's referendums on electoral reform and more recently in Puerto Rico. The advantage of that in the Scottish case would have been that, assuming a majority voted for change, one of the two options in the second question would have secured majority support.

I saw that approach as a way to overcome some of the difficulties that Mr Rennie pointed out with other formulations of a multi-option or two-question referendum but still get more than 50 per cent—majority consent—for whichever was the preferred option for change.

**Patrick Harvie:** Thank you. I will perhaps explore that later with the Deputy First Minister.

**Willie Rennie:** All that stuff is partly irrelevant, because it has been decided what we will do. However, it should be noted that New Zealand had two referenda with three questions, not simply two questions over one referendum.

**Dr McEwen:** Well, they had different stages of referendums.

**Willie Rennie:** A conclusion would have been reached after a second referendum.

**Dr McEwen:** Yes, but there are different ways to do that. We could have a question on the principle of change and then a question on the kind of change that we want. We could have them on the same day or different days. There are different ways of doing it and different practices.

**The Convener:** Before we move on, I will just say that I had a quick look at the memorandum of agreement between the two Governments, which states:

"The wording of the question will be for the Scottish Parliament to determine and will be set out in the Referendum Bill".

That probably answers Patrick Harvie's question whether any secondary legislation would be involved.

We have time for one more question.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** I will return to the Edinburgh agreement and the section 30 order, which is what I thought we were supposed to be scrutinising this morning.

My question concerns the last sentence of paragraph 30 of the Edinburgh agreement, which I will read out again for the record:

"The two governments are committed to continue to work together constructively in the light of the outcome, whatever

it is, in the best interests of the people of Scotland and of the rest of the United Kingdom.”

What do you take that to mean?

**Navraj Singh Ghaleigh:** I take it to mean very little. It is a statement of good faith, one would assume, between the constituent parts of the same nation or two neighbours. I take very little of substance from it at all. I am glad that it is there, but I do not think that the agreement would lose a great deal if it were absent.

**Dr McEwen:** I largely agree. I noted that the secretary of state was reluctant to go further than the statement in his evidence last week. It would be useful, at a later stage, to probe what that means substantively, but I do not see it as being much more than a principle of good faith.

**Annabelle Ewing:** I presume that, in this context, the principle of good faith is crucial from a political and moral perspective, although I understand that it perhaps does not have the same weight from a legal perspective. Looking at it in the round, I would have thought that it was a pivotal statement of good will in the context of the process that we are now embarked upon.

**Dr McEwen:** I agree, provided that there is a common understanding of what the referendum is about and what it means to be an independent country. I refer to the earlier discussion on some of the problems and ambiguities around that.

**The Convener:** We have time for one quick question from Stuart McMillan.

**Stuart McMillan (West Scotland) (SNP):** I asked this question last week and thought that it would be useful to ask it again today. Is the section 30 order fit for the Parliament to pass, bearing in mind that we cannot amend it?

**Dr McEwen:** Yes.

**Stuart McMillan:** Mr Ghaleigh?

**Navraj Singh Ghaleigh:** I am taking some time to think about that—I do not work quite as quickly as Dr McEwen.

**The Convener:** Do not think about it for too long.

**Navraj Singh Ghaleigh:** There is no technical impediment, but that is not what you are asking. You are asking whether it is appropriate for this Parliament—

**Stuart McMillan:** Not appropriate, but fit.

**Navraj Singh Ghaleigh:** Is it fit? Well, it is the procedure that you have got.

**The Convener:** That is a legal answer.

**Linda Fabiani:** Is that a yes?

**The Convener:** We will take that as a yes in the circumstances. I thank you both for coming to give evidence. We are very grateful, as that was very helpful.

10:13

*Meeting suspended.*

10:16

*On resuming—*

**The Convener:** I welcome the committee back to our final evidence session on the section 30 order. I warmly welcome the Deputy First Minister, Nicola Sturgeon, whose brief includes Government strategy and the constitution. I also welcome Graham Fisher, from the legal directorate, and Stephen Sadler, who is head of the elections team.

We have 45 minutes in which to discuss the issue—if we require that amount of time—before the motion is moved. Deputy First Minister, do you have an opening statement, or do you want to crack on with questions?

**The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon):** I am happy to make a brief opening statement, convener. I thank the committee for giving me the opportunity to be here today to answer any questions that you have.

As I have said previously, I am—and the Scottish Government is—very pleased with the outcome of our negotiations with the UK Government, and I place on record my thanks and appreciation to Michael Moore. We had a very constructive dialogue that led to an agreement incorporating a draft order, which, subject to the agreement of both Parliaments, will allow the Scottish Parliament to legislate for a referendum that is made in Scotland and is beyond effective legal challenge.

The Edinburgh agreement was a watershed moment in Scotland's home-rule journey and paves the way for what I think we all accept and agree is the most important decision that we will take in more than 300 years. It will ensure that the rules and regulations that relate to the referendum are very much decided in this Parliament.

The only regret that I have—again, I am on record on this issue—is that the decision on whether there should or should not be a third option on the ballot paper was not left for this Parliament to take. However, that aside, I am nevertheless pleased that the UK Government conceded all the other conditions that it had originally proposed.

As we set out in our consultation paper back in January, the Scottish Government intends to have a referendum on independence in autumn 2014, and it will be for this Parliament to make the final decision on how the referendum will be run and to ensure that it meets the highest international standards.

Our detailed proposals will be set out in a bill that will be introduced early next year. The proposals will be informed by the results of our consultation. As members will be aware, that analysis showed broad support for the Scottish Government's proposals, including the wording of the referendum question. However, the committee will also be aware that I wrote last week to the Electoral Commission to ask it to begin the process of testing the intelligibility of that question.

The Electoral Commission will publish its report in due course. The Government will fully consider that report, and the Parliament will have the opportunity to make the final assessment of the question and all the other proposals that are associated with running the referendum.

That is where we are, convener. I am happy to answer questions on any of those matters, or any other matter that the committee wishes to ask me about.

**The Convener:** Thank you, Deputy First Minister. A question arose with the previous panel about whether there should be a preamble to the question that the Government has put to the Electoral Commission. It was suggested that a preamble might make clearer what the Government is proposing. It is a bit early to ask what your thoughts are in that regard, but might there be such a preamble?

**Nicola Sturgeon:** I will be interested to hear the views of the Electoral Commission. We will pay close attention to views that the Electoral Commission expresses on that matter and any other aspect of the question.

We have not suggested a preamble to the question; we submitted the question that was set out in our consultation, which was broadly supported by 64 per cent of those who responded to the consultation.

Our position is clear: our obligation as a Government is to set out in the white paper what we mean by Scotland becoming an independent country. It is that process that will ensure that people who vote in the referendum understand exactly what the question means and what a yes vote will result in. At this stage, we do not think that a preamble is required, but we will of course pay close attention to views that the Electoral Commission puts forward on the matter.

**Willie Rennie:** We heard earlier that it is unusual for the Electoral Commission to be asked to judge on a question when it does not have the substance of what is proposed. It is usually the other way round: the substance is in place and people know what they are posing the question about. It was suggested that the order in which you are doing things should perhaps change. Will you consider bringing forward the white paper or delaying the question setting?

**Nicola Sturgeon:** No. I think that the order in which we have chosen to do things is the right one, which gives the Parliament its proper place in the process. We have said for some time that the white paper will be published round about this time next year and we continue to work to that timeline.

It is absolutely appropriate—I will go further and say that it is essential—that the testing of the question is done in good time for the introduction of the referendum bill. You will be aware, as I am, of the time requirements for putting the bill through the Parliament. I want—and I imagine that the Electoral Commission wants—the Parliament to know the commission's views on the question before we get to the stage of considering the bill and the Electoral Commission is now engaged in a process that will take up to 12 weeks. I think that the order in which we are doing things is appropriate and that the timeline is appropriate. As I said to the convener, we will pay close attention to comments, observations and suggestions that the Electoral Commission makes, because we take its role in the process very seriously indeed.

**James Kelly:** You said that you will pay close attention to feedback that you get from the Electoral Commission. If, after the commission has tested the question and considered evidence, it proposes different wording, will you accept that?

**Nicola Sturgeon:** Let me be clear about the role of the Electoral Commission. In doing so, let me be clear that the role that we envisage and the role that we have asked the commission to perform, in testing the question and in giving us advice about campaign finance, is exactly the role that the Electoral Commission would have if the referendum was being governed by the UK Parliament. It is clear to us that the role of Government is to propose, the role of the Electoral Commission is to advise and the role of the Parliament is to decide. I have seen comments from Andy O'Neill, the head of the Electoral Commission in Scotland, that make it clear that that is the commission's understanding of its role. It is not the decision maker but the adviser.

That said, I have great respect for the authority and expertise of the Electoral Commission, which has been built up over a number of years. Any Government anywhere in the UK would not depart from Electoral Commission advice unless there

was a very strong reason for doing so, and any Government that did so would have to justify itself before the Parliament. That is not a position that I want or expect to be in, but nor will I sit here and attempt to give away the proper roles of Government and the Parliament in the process, because it is right that we continue to respect the process.

**Annabel Goldie:** The Edinburgh agreement is set against the backdrop of the need for fairness, a result that everyone will respect and standards of fairness, transparency and propriety, and I am reassured by what you say about the Electoral Commission in the context of all that.

In evidence to the committee last week, Alan Trench said:

"The commission falls into the category of a body that gives advice rather than provides a direction, but its advice is sufficiently authoritative that it should normally be followed, and one would expect it to be followed. ... If we got to the point where Parliament did not follow the advice, that would raise serious problems for the referendum's conduct and for respect for the outcome."—[*Official Report, Finance Committee*, 8 November 2012; c 30.]

If the very commendable criteria surrounding the Edinburgh agreement are to be satisfied, and seen to be so by not just the Government or the Parliament but the people, who are expressly referred to in the agreement, is it not the case that the Electoral Commission's advice becomes very strongly persuasive to Governments and Parliaments?

**Nicola Sturgeon:** I refer Annabel Goldie to my answer to James Kelly, in which I made clear my respect for the role of the Electoral Commission in this process and the weight to be given to any advice that the Electoral Commission gives any Government on matters to do with elections or referendums; that must be taken very seriously.

In many aspects the Edinburgh agreement seeks to follow the process laid down in PPERA. For example, the process that we envisage on campaign finance is precisely identical to the process that would be followed by the UK Government if it was legislating for the referendum. As I said earlier, that is very clearly a process in which Governments propose, the Electoral Commission advises and Parliaments decide. It is not for me to hand away the role of the Parliament to be the decision maker.

I have made very clear my views on the weight of Electoral Commission advice. Any Government that seeks to depart from Electoral Commission advice—as the UK Government did over the Localism Bill in terms of referendums on council tax rates in England—would have to give a very clear explanation of the basis on which it was doing that, and the Parliament would have to come to a judgment on whether those reasons

were sound. I am very clear on the importance of the Electoral Commission part of the process, but I also think that it is very important that the processes that we have in this Parliament are on the same basis as the processes would be for any referendum that the UK Government was legislating for.

**Annabel Goldie:** I have a tiny follow-up question. I understand totally what you are saying about the role of the Parliament but, if we are all honest, the only independent presence in this process is not a Parliament in which your party has a majority, but the Electoral Commission.

**Nicola Sturgeon:** I have made it very clear that I think that the Electoral Commission's role is very important, but I do not think that it is for me to sit here and give away the role of the Parliament. I do not think that parliamentary democracy should be dismissed just because one party happens to have won a majority. There have been majorities in the House of Commons down the ages—sometimes, under your party, very large majorities—but I do not think that anybody would suggest that that somehow invalidated the principle of parliamentary democracy. Parliamentary democracy is very important. That is my first point, which I have made repeatedly.

Secondly, I am not going to sit here and somehow pre-empt what the Electoral Commission will say. I deprecate some of the comments that we heard last week from leading politicians on the other side of the argument who, before the Electoral Commission had even received the question, dismissed the question as unfair and biased. I think that that shows contempt for the process. Let us have this process. Let us allow the Electoral Commission to do its job and then let the Parliament, in the fullness of time and under tried and tested procedures that mirror the PPERA procedures, come to its view. I will be happy to sit before this committee or any committee and stand up in the Parliament to defend the position that the Government ultimately takes, as is the Government's right on all these matters.

**Patrick Harvie:** Good morning. I have a couple of very straightforward questions. The agreement and the section 30 order do not specify certain things that I might have expected they would. For example, will the date of the referendum be explicitly on the face of the bill, or are you leaving open the option to set that at a later time through secondary legislation?

**Nicola Sturgeon:** No, we will have the date on the face of the bill.

**Patrick Harvie:** Thank you, that is very clear.

As with the consultation draft of the bill, will the bill as introduced include the ballot paper as a schedule?

**Nicola Sturgeon:** Yes.

10:30

**Patrick Harvie:** So any questions about a preamble would be subject to scrutiny through the same process.

**Nicola Sturgeon:** By the time we introduce the bill, we will know the Electoral Commission's conclusions on the testing of the question and will have the opportunity to reflect those conclusions in our bill.

**Patrick Harvie:** That is helpful.

I also want to explore the way in which the issue of the second question was debated during the negotiations—

**The Convener:** I do not think that Annabelle Ewing wants to cover that area. Have we moved on to a new area?

**Annabelle Ewing:** I still have some questions on the previous area but given that Patrick Harvie has gone ahead, convener, I will just come in whenever.

**Patrick Harvie:** Deputy First Minister, you expressed in your opening comments some regret that the UK Government ruled out the option of a second question and that you were not able to leave the decision on it to Parliament. We have heard objections, not just from the Secretary of State for Scotland last week but from others, to the idea of having various formulations of a second question. We also heard objections today from our previous witnesses, one of whom said that a simple yes or no question will leave some people having to vote for what is in effect their second preference and will not give the kind of clarity with regard to people's wishes that could be achieved. How much discussion were you able to have on that issue in the negotiations leading up to the agreement and the terms of the section 30 order, or was it simply an absolute precondition that there would be no section 30 order and no agreement if the Scottish Government did not give way on the matter?

**Nicola Sturgeon:** I will come on to Mr Harvie's question in a minute but, on the issue of the second question, I want to be very clear: as someone who will vote yes—I do not think that I have given away any secrets there—and as someone who believes that the outcome of the referendum should be a yes vote, I am perfectly happy with a yes or no question. That said, I and the Government always believed that the decision on whether there should be a yes or no question

or whether there should be a third option on the ballot paper was for Parliament to take. We can speculate on what the ultimate decision would have been—of course, we will never know that—but, as I have said, the issue should have been decided by the Parliament.

I am not going to go into detail about all my different discussions with Michael Moore, but the UK Government made it very clear that this was its red line. We operated on the basis that nothing was agreed until everything was agreed and until we had a package that the secretary of state and I felt we could put to the Prime Minister and the First Minister respectively, but the UK Government was very clear that it would not agree to a section 30 order unless there was a single question. I had to make a judgment about whether the package that we were able to agree was satisfactory, and given that we got concessions on every other condition that, if we think back to January, the UK Government had been saying should be attached to the referendum—for example, it wanted to control the timing, the question, the franchise and so on—my judgment was that I felt able to recommend the package to the First Minister for signature. I still wish that this had not been the UK Government's red line; however, it was, and we now have a section 30 order that puts the referendum beyond any effective legal challenge. That is a decent and good place for us to be as we approach the debate on the substance of the matter.

**Patrick Harvie:** So the UK Government was not willing to consider the pros and cons of different formulations of a wider range of options, for example. In other words, it was not a technical objection but a principled one.

**Nicola Sturgeon:** I am reluctant to put words into the mouth of Michael Moore or anyone on the other side but my very firm understanding was that this was a red line for the UK Government in principle, not just a red line on what the particular wording of a second question might look like.

**Annabelle Ewing:** Before I ask my substantive question, I want to return to an issue that was raised a wee while ago. I was pleased to hear the Deputy First Minister reaffirm that this Parliament's role will be to decide on the Referendum (Scotland) Bill and its contents. That is only right and proper; after all, the Parliament's composition was determined by the democratic vote of the people of Scotland in the May 2011 elections.

In relation to the Localism Act 2011 in England, I note that in a letter of 18 January 2012 to the chairman of the Electoral Commission in London, the Rt Hon Eric Pickles MP, the Secretary of State for Communities and Local Government, stated that the legal position is that

"there is no duty on Government to accept the recommendations of the Electoral Commission, in part or in full."

That is what a UK secretary of state has said about a different referendum.

I have a question for the Deputy First Minister on paragraph 30 of the Edinburgh agreement. The last sentence thereof states:

"The two governments are committed to continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom."

I ask the Deputy First Minister what she takes that to mean.

**Nicola Sturgeon:** I take it to mean very much what it says, which is a recognition on both sides that we will respect the outcome of the referendum and that, regardless of our positions in the referendum campaign and regardless of the things that are said and the stances that are taken on any particular issue—which will happen in the heat of any campaign—once the people of Scotland have made their decision, we will respect that and we will work together constructively to implement the decision in a way that is in the best interests of the people of Scotland and the people of the rest of the UK. That is an important democratic statement, but it is also the kind of statement that the people of Scotland would expect from the Scottish Government and the UK Government.

The referendum is not owned by the Scottish Government or the UK Government, or by the yes side or the no side; it is a referendum to allow the people of Scotland to express their democratic views about the future of their country. We all have a duty to accept what they say. That does not mean that any of us will have to give up on long-held views on how we want things to be, but we have a duty to accept the democratic will of the Scottish people.

**James Kelly:** The section 30 order is important in that it confers legal powers on the Parliament to pass legislation to hold an independence referendum. I believe that the Government has 16 workstreams on the issue. When did that work commence and what was the trigger for it?

**Nicola Sturgeon:** The Government has had workstreams for some time. I am happy to provide the committee with the dates when each of them started. We are in the process of preparing a white paper. Members would probably be rather surprised if the process of producing that white paper did not involve considerable preparation and work on its content. The UK Government has, by its admission, 13 or 16 workstreams—I cannot remember the exact number—on making its case for Scotland remaining within the UK. It is right and proper that, as we approach the biggest decision

that our country will take in 300 years, there is good-quality, accurate and robust information from both sides as we try to persuade the people of Scotland to vote yes or—for those who take a different view—to vote another way. It would be more remarkable if that work was not happening.

**James Kelly:** I understand that position, but is there not an inconsistency between that and what you explained to the Parliament on 23 October, when you said that you could not take legal advice on the issue of European Union membership post an independence referendum until the Edinburgh agreement was in place?

**Nicola Sturgeon:** No, I do not think that there is any inconsistency at all. I have a small correction—I did not say that we could not take that advice; I said that it was our judgment that it was better to take legal advice on Scotland's membership of the European Union when we had a clear and agreed process for how independence would be achieved.

Any member who has been paying any attention to the debate—I am sure that all members of this committee have been paying close attention to it—will have seen from comments made by the European Commission that the basis on which independence is achieved is a highly relevant factor in the issue of Scotland's continuing membership of the European Union. Before we had the Edinburgh agreement, it was certainly possible—although members can say that it was an unlikely state of affairs, which it might or might not have been—that the Scottish Government might have legislated for a referendum without a section 30 order. The UK Government could have decided that that was illegitimate and outwith the competence of the Scottish Parliament, so there might have been a legal challenge to our right to do so. The process then would have been very messy and unclear, and the UK Government might have said that it did not recognise the result of that referendum.

That changed with the Edinburgh agreement and we now have an agreed, clear, democratic process that—going back to Annabelle Ewing's point about paragraph 30 of the agreement—makes it clear that both sides will respect the outcome. That means that legal advice taken post the Edinburgh agreement on the issue of continuing EU membership is much more meaningful than legal advice taken before that agreement would have been, as we now know the precise context and basis on which independence will be achieved.

**James Kelly:** I have one final question, convener. If all these workstreams have been going on for some time—I accept the logic about the work being done post the 2011 election—why does the issue of EU legal advice sit separately? I



do not understand that. Is there an inconsistency there?

**Nicola Sturgeon:** I think that it is fairly clear and obvious. It is a legal issue in respect of which the European Commission has made clear that the basis on which independence is agreed is a relevant factor. A country making a unilateral declaration of independence, for example, would perhaps be in a different position from a country that has gone through a democratic process involving a referendum the outcome of which both sides say in advance they will respect. That is a very different scenario from planning how we can establish a welfare system in an independent Scotland, which is not as dependent on that process. That is a piece of work that looks at the mechanics of the welfare system and how we can ensure that, following the transition—regardless of how we become independent—the system will work properly in an independent Scotland. The distinction between such issues is very clear to me.

**Stuart McMillan:** Good morning. I have posed this question to everyone else who has appeared before the committee. It relates to the section 30 order. We cannot amend the order, so there are two options: to pass it or to reject it. Is the section 30 order fit for the Parliament to pass?

**Nicola Sturgeon:** Yes, I believe that it is. I am about to move the motion asking the committee to recommend it and, as the responsible minister, I would not do that if I did not think that it was.

The circumstances, and the reasons for which the section 30 order has been proposed, are historical in nature; however, the process is set down and it is the same process that would be used for any transfer of competence in either direction between the UK Parliament and the Scottish Parliament. The process is not unusual, albeit that the reasons for our using the process are.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** The House of Lords report “The Agreement on a referendum on independence for Scotland” says that the UK Parliament

“is to be invited to approve the draft section 30 Order with few guarantees that the PPERA scheme governing the fairness of referendum campaigns will be made to apply in Scotland.”

Do you have a view on that?

**Nicola Sturgeon:** I do not agree with that, nor will anybody who has read the Edinburgh agreement. The section 30 order will transfer the legal competence, but I consider the Scottish Government to be honour-bound politically and morally by the Edinburgh agreement, which makes it clear that, where appropriate, the rules and certainly the spirit of PPERA will govern the

referendum. I would want that to be the case, and it is clear to me that that will be the case. One of the things that give me greatest satisfaction about the Edinburgh agreement is that it means that the regulation of the referendum will be for this democratically elected Parliament, not for the unelected House of Lords.

**Rob Gibson:** Do you think that the terms of the Edinburgh agreement ensure that the section 30 order will be beyond successful legal challenge?

**Nicola Sturgeon:** I believe that the section 30 order puts the referendum beyond effective legal challenge. No Government can say that any piece of primary or secondary legislation is beyond challenge—anything is challengeable in the courts—but I believe that the section 30 order puts the referendum beyond effective legal challenge. That is the view of the UK Government as well.

**Stewart Maxwell (West Scotland) (SNP):** The House of Lords report also states that

“the section 30 route significantly curtails the opportunity of the UK Parliament to have an effective input into the process.”

A number of individual politicians both in the House of Commons and in the House of Lords have seemed to express the view that the matter should have been decided by the UK Parliament and that the Scottish Parliament has no role. Do you think that there is any risk that, even if we pass the section 30 order, the UK Parliament will refuse to pass it? What would be the consequences of such action?

10:45

**Nicola Sturgeon:** I guess that some of the politicians to whom you refer are the same politicians who have still not got over the fact that the Scottish Parliament exists at all and who would like to turn the clock back to the days when it did not. I am afraid that those are just some of the attitudes that we have to deal with.

As I said to Stuart McMillan, the section 30 process was not created for the purpose of allowing the Parliament to have a referendum; it is a process that was laid down in the Scotland Act 1998. It is one that has been used before, and I am sure that it will be used again. I hope that we get to the stage, after the referendum, when it will not need to be used, because the Parliament will have competence over all matters. It is a perfectly legitimate, tried and tested, robust process.

In principle, I disagree strongly that it is for the UK Parliament to determine the arrangements for Scotland’s referendum—I think that it is for Scotland’s Parliament to do that, and that is what the Edinburgh agreement ensures will happen. I hope and expect that the UK Parliament will pass

the section 30 order, as I hope that the Scottish Parliament will do. It is probably not helpful of me to speculate on another scenario, but I guess that the secretary of state would have to explain the situation if the UK Parliament were to do anything other than pass the order. However, I do not expect or anticipate that that will be the case.

**The Convener:** That might have been a short question, but it was certainly not a small one, given what it could open up.

We are probably ready to move on to agenda item 4, which is the formal debate on the motion lodged by the Deputy First Minister, which invites the committee to recommend that the draft order be approved. At its meeting on 1 November, the committee agreed to limit the debate to 30 minutes; it might not take that long.

I invite the Deputy First Minister to speak to and move the motion.

**Nicola Sturgeon:** I think that I have already laid out why I think that the committee should recommend that the order be approved. It transfers to this Parliament the power to determine the arrangements for Scotland's independence referendum. In my view, that is the way things should be, and I hope that the committee will feel able to support the motion.

I move,

That the Referendum (Scotland) Bill Committee recommends that the Scotland Act 1998 (Modification of Schedule 5) Order 2013 [draft] be approved.

**James Kelly:** I have a couple of brief comments. I support the motion, as I think that the section 30 order is important. As we heard from Alan Trench last week, the Parliament currently does not have the legislative competence to run an independence referendum. The order begins the process of conferring the necessary powers on the Parliament, which is important.

Regardless of which side of the argument we are on, we all agree that it is important that there is clarity on the legality of the referendum so that there is no spillover into the courts when the issue is resolved. It is also worth while pointing out that the order is important in conferring legal standing, which the Edinburgh agreement on its own does not have.

The process of approving the order begins to move us on to the next stage. There has been a lot of discussion about process over the summer, and I think that the Scottish people now want a real debate on the issues. I look forward to taking part in that debate, along with colleagues around the table. It will be an exciting campaign, in which I am sure that everyone will play a full part.

**Annabel Goldie:** I, too, put on record that I support the motion. The order represents a constructive conclusion to a process of negotiation between the two Governments that I think has been carried out in a mature and sensible way.

My only observation would be that, in a sense, approving the section 30 order is like putting fuel in the tank, but it is clear from the evidence that we have heard that the way in which the car is now driven is extremely important.

The spirit of the Edinburgh agreement remains of paramount importance in determining how matters progress. If matters become so contentious and disputatious that the elements of fairness and respect—and people's confidence in the process—are dispelled, all the criteria in the agreement will achieve nothing. That would mean that, whatever the outcome of the referendum, there would be a whiff above it. None of us around this table wants that.

We are all agreed about the process, and we agree on the criteria in the agreement. There is now a very important obligation on us all to ensure that the spirit of the agreement is manifest in subsequent activity and discussions.

**Willie Rennie:** I commend the Deputy First Minister for the manner in which she conducted negotiations with Mike Moore. There was quite a lot of heat in the early days but when the Deputy First Minister took over she approached negotiations in a mature way. I am sure that her predecessor was equally effective, too. *[Laughter.]*

At the centre of this, it is the people—not the courts—who should decide the referendum, and the Edinburgh agreement effectively achieves that. The framework allows the consent of everybody about the process to be secured, and it is important to give everybody comfort that the process is effective, fair and reasonable. The Edinburgh agreement is therefore a big step forward, and I will be supporting the section 30 order.

**Patrick Harvie:** Like others, given the range of views about the legitimacy of a referendum without a section 30 order, I am happy that we are not in the position of having to decide on that as a committee and that we have the section 30 order. I am sure that it will pass without opposition.

I am also glad that the order does not include preconditions on the age of the franchise or some other matters. Although members probably know that I will disagree with the Scottish Government on many aspects of the substance of independence, I want to put on record that I share the Deputy First Minister's regret that there is such a clear precondition on the issue of a second question. It should be left to this Parliament to make that decision. Even though, like the Deputy

First Minister, I would not have been campaigning in favour of any other option, I believe that that option should have been available for those who wished to vote for it. Having put that on the record, I will, like others, be supporting the order.

**Linda Fabiani:** I think that I can speak for all my colleagues in saying that we will support this order. It is historic as far as we are concerned because it moves us forward in a way that we believe will best serve our country.

In the discussion at the start of the year—I think that the Deputy First Minister mentioned it—there were a lot of arguments about who had the responsibility and the legal power to move forward. I am glad that we have now reached the point of having the Edinburgh agreement, which, as others have said, makes it plain that there is mutual respect. I hope that, as we move forward through this process in our Parliament, that mutual respect will be reflected among all the parties because we are moving towards a very big decision and we owe it to the people of Scotland to act with mutual respect. I am happy to support the order.

**The Convener:** I think that we are heading towards a situation that I am pleased about—members are suggesting that it should be a unanimous decision that the committee supports the section 30 order. The words used around the table include “maturity”, “mutual respect” and “responsibility”. That is a good sign of where we are starting the process from—or, actually, of where we are beginning to end the section 30 process.

I was involved at the beginning of the process. We are now near the end of it, and it has been an interesting journey. Like James Kelly, I am looking forward to having an exciting debate about the future of Scotland.

Does the Deputy First Minister wish to make any comments to wind up?

**Nicola Sturgeon:** I have some brief comments.

I would like to take the opportunity to thank my predecessor in the negotiations, Bruce Crawford. Obviously, he is more mature than I am in more ways than one. *[Laughter.]* Bruce did a fantastic amount of work and the agreement that we reached would not have been possible without the foundation work that he did with Michael Moore, so I thank him for that.

My second point is that, as a signatory to the Edinburgh agreement, I am as committed to the spirit of it as I am to the letter of the order that the committee is about to approve. In spite of scepticism on the part of many people, through constructive discussion and dialogue we reached an agreement that some people thought we would

not be able to reach. If we can take that spirit into the next phase of this process, that will serve us well.

I take seriously the responsibility that comes with being the minister who will be responsible for steering the referendum bill through Parliament, including my responsibility to explain clearly to the Parliament the decisions that we take in relation to that referendum bill. I look forward to those discussions but, more than anything, I look forward to the substantive discussion. I believe passionately that Scotland should be an independent, equal nation, and I look forward to making that case with at least some of my colleagues around the table as we approach the referendum in 2014.

**The Convener:** Thank you, Deputy First Minister.

*Motion agreed to,*

That the Referendum (Scotland) Bill Committee recommends that the Scotland Act 1998 (Modification of Schedule 5) Order 2013 [draft] be approved.

**The Convener:** That is unanimously agreed—I am grateful. Thank you, Deputy First Minister; I am grateful for your time.

The next meeting will be on Thursday 22 November, when the committee will consider in private a draft report on the section 30 order.

*Meeting closed at 10:55.*



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