



# Referendum on independence for Scotland

Advice of the Electoral Commission on the proposed  
referendum question

January 2013

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# Summary of our advice

We have responded to the Scottish Government's request to provide advice and assistance by considering the wording and intelligibility of the proposed question for the referendum on independence for Scotland, which is:

'Do you agree that Scotland should be an independent country? Yes/  
No'

To inform our assessment we carried out research with members of the public to see how well the proposed question meets our guidelines for intelligible questions, and whether it is easy for voters to use and understand.<sup>1</sup> We also wrote to people and organisations including the main political parties represented in the Scottish Parliament and would-be campaigners, to seek their views on the proposed question. We took account of views expressed by other individuals and groups who contacted us, and by members and committees of the UK and Scottish Parliaments.

Our guidelines say that a question should be clear and simple, that is, easy to understand; to the point; and not ambiguous. It should also be neutral, which means it should not encourage voters to consider one response more favourably than another or mislead voters.

In the research we looked at whether or not the question is clear, simple and neutral. We found that the question is written in plain language and is easy for people to understand and answer. It is clear to people what they are being asked to vote on. However, based on our research and taking into account what we heard from people and organisations who submitted their views on the question, we consider that the proposed question is not neutral because the phrase 'Do you agree ...?' could lead people towards voting 'yes'.

## Our recommendation

The referendum result should be one that all voters and referendum campaigners can accept and have confidence in. For that reason, we recommend changing the way the question is asked, so that it is more neutral. Instead of asking 'Do you agree..?' we recommend the following wording:

'Should Scotland be an independent country? Yes/No'

### Information about independence

A common theme that arose during our research was that people wanted more information about the pros and cons of independence before polling day, to be able to make an informed choice on how to vote.

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<sup>1</sup> Our guidelines are reproduced in full in Appendix 3.

# 1 Background

## Request from the Scottish Government

1.1 On 8 November 2012, Nicola Sturgeon MSP, Deputy First Minister, asked the Electoral Commission to provide advice and assistance to the Scottish Government by considering the wording and intelligibility of the proposed question for the referendum on independence for Scotland.

1.2 The proposed question is: “Do you agree that Scotland should be an independent country?” The question was provided to us by the Scottish Government in the format proposed to be used on the ballot paper, as shown at Appendix 1 to this report.

1.3 This report contains our advice on the wording and intelligibility of the referendum question.

## Our role

1.4 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate party and election finance and set standards for well-run elections and referendums. We put voters first by working to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

1.5 We are responsible for publishing reports on the administration of elections and referendums. Specifically in relation to council elections in Scotland we undertake a number of roles relating to the administration of the elections for which we report directly to the Scottish Parliament.

1.6 On 15 October 2012, the UK Government and the Scottish Government reached an Agreement<sup>2</sup> to work together to ensure that a referendum on independence for Scotland could take place. Part of their agreement was that the Electoral Commission should have responsibility for:

- Advising on the referendum question
- Registering campaigners who want to spend significant amounts in the referendum
- Where appropriate, appointing lead campaign organisations for each outcome

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<sup>2</sup> UK Government and The Scottish Government *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland* (Edinburgh, 15 October 2012)

- Promoting public awareness of the referendum
- Reporting on the referendum process.

We will report to the Scottish Parliament on this work.

## Legal framework

1.7 Following the Edinburgh Agreement, an Order was introduced to and approved by both the UK and Scottish Parliaments.<sup>3</sup> Once it has received approval from the Privy Council, this Order will enable the Scottish Parliament to enact a Referendum Bill with one question on the independence of Scotland from the rest of the United Kingdom. The wording of the question is for the Scottish Government to introduce in its Referendum Bill and for the Scottish Parliament to decide, taking into account the Electoral Commission's report and recommendations.<sup>4</sup> The referendum is planned for autumn 2014.

1.8 Following the Agreement, the Scottish Government asked the Commission to provide advice and assistance on the wording and intelligibility of the proposed question to be included on the referendum ballot paper.<sup>5</sup> We accepted the request.

1.9 We understand that the Referendum (Scotland) Bill will provide for the Commission to be funded by the Scottish Parliament for our functions in relation to the referendum. However, as the Bill is not expected to become law until the end of 2013, alternative arrangements are necessary to fund our expenditure before that time. The Scottish Government will, for practical convenience, meet our charges for assessing the question. The funding arrangement does not jeopardise our independent approach or have any practical impact on our conduct of the question assessment.

## Publication of our advice

1.10 As the independent body charged with giving advice on the referendum question, we want to ensure that our approach is open and transparent. We are therefore publishing this report on our website, along with a report of the findings of our voter research.

1.11 Our report will be put before the Scottish Parliament and will inform its consideration of the Referendum (Scotland) Bill. We are ready to provide further advice and assistance needed during consideration of the Bill by the Scottish Parliament, and we will continue to brief Parliamentarians and others on this and other matters as the Bill passes through the Scottish Parliament.

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<sup>3</sup> The Scotland Act 1978 (Modification of Schedule 5) Order 2013

<sup>4</sup> Ibid.

<sup>5</sup> Under the terms of section 10 of the Political Parties, Elections and Referendums Act 2000 (PPERA).

## Question assessment process

1.12 Our responsibility is to consider the intelligibility of the referendum question. We want to make sure that the question is one that voters can understand, so that they know what they are voting on.

1.13 When referring to 'referendum question' in this report, we mean the question and the choice of responses on the ballot paper. Where we have comments particular to the question or the responses, we make this clear.

1.14 We published our preferred approach to assessing referendum questions and our revised question assessment guidelines in November 2009. These are at Appendices 2 and 3 to this report. We developed our preferred approach and question assessment guidelines for referendums held under the legal framework of PPERA, which requires us to assess referendum questions. We have followed the same approach and assessment guidelines in responding to the request for our advice and assistance from the Scottish Government.

1.15 We developed our guidelines to:

- Help us assess how intelligible a proposed question is
- Help people draft intelligible referendum questions

1.16 We have followed our published preferred approach to assessing referendum questions by:

- Carrying out public opinion research with people from different backgrounds and different areas of Scotland, through focus groups and one-to-one in-depth interviews
- Asking for advice from experts on accessibility and plain language
- Writing to people including the political parties represented in the Scottish Parliament and would-be campaigners, to seek their views and to offer meetings to hear from them
- Receiving views and comments from individual people or organisations who contacted us, having seen from our website or otherwise heard that we were undertaking the question assessment

1.17 A report of the findings of our public opinion research, including the methodology adopted, is available on our website.<sup>6</sup>

1.18 A list of respondents who gave us their views through correspondence or in meetings held for the purpose is attached as Appendix 4. The views we

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<sup>6</sup> <http://www.electoralcommission.org.uk/elections/upcoming-elections-and-referendums/scotland/referendum-on-independence-for-scotland>

have received from these respondents are addressed where relevant in this report. We much appreciate the time taken by individuals and organisations in giving their views to us.

## Timescales

1.19 Our preferred approach to assessing referendum questions normally takes 10 weeks to complete, excluding public holidays. The majority of this time is spent on carrying out our research fieldwork and analysing the findings. We have taken 12 weeks from receiving the request from the Scottish Government to complete our assessment. This is slightly longer than usual because the Christmas and New Year period fell part-way through the exercise.

## Scope of our advice on ‘intelligibility’

1.20 We interpret the scope of our responsibility to give advice on ‘intelligibility’ as going further than simply looking at whether people understand the language used in the referendum question. Where we have a statutory duty to give views on referendums in the UK<sup>7</sup>, we have powers to suggest alternative drafting or to offer suggestions as to how a particular question might be reframed. We have advised on the wording and intelligibility of the independence referendum question in the same way.

1.21 We have confined our suggestions to changes in the language or structure and framing of the question, again reflecting our statutory duty in other referendums. This does not extend to suggesting alterations that would change the substance of the question or introduce new factors which might alter the nature of the debate.

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<sup>7</sup> Section 104 PPERA

## 2 The referendum question in context

2.1 Before reporting the findings from our research and on the views we received from other individuals and groups on the referendum question, in this chapter we review the context for our assessment.

### The referendum: an expression of views

2.2 The Agreement between the UK and Scottish Governments says that the referendum should: “deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect”.<sup>8</sup> The Agreement commits the two Governments to continue to work together constructively in the light of the outcome, whatever that is, in the best interests of the people of Scotland and of the rest of the UK.

2.3 At the time of undertaking our question assessment, it is not yet clear how a vote in favour of independence would be implemented. The steps that would follow the referendum, whatever the outcome, would be for the UK and Scottish Governments and Parliaments to decide.

2.4 In other recent referendums in the UK, such as that on the voting system for the UK Parliament held in May 2011 and on the law-making powers of the National Assembly for Wales held in March 2011, the referendums were linked to legislation made by the UK Parliament that was ready to be implemented in the event of a ‘Yes’ vote. In this referendum, independence would not be an immediate consequence of a ‘Yes’ vote but the end result, after a process of deliberation by the two Governments and after Parliamentary legislation has been enacted.

### Scottish independence

2.5 The Agreement between the UK and Scottish Governments explains that the referendum will be on ‘Scottish independence’.

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<sup>8</sup> HM Government and The Scottish Government *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland* (Edinburgh, 15 October 2012)

2.6 Currently, there are different views about what Scottish independence would mean or not mean. Different views about what would happen after a 'Yes' or 'No' vote will be promoted as part of referendum campaigns.

2.7 The Scottish Government has indicated that it will set out its views as to what independence would mean in practice by publishing proposals in a White Paper in autumn 2013, following its consultation that has already taken place.<sup>9</sup> The Secretary of State for Scotland has indicated that the UK Government will undertake a programme of work to evaluate the benefits of Scotland remaining in the UK both to Scotland and the rest of the UK.<sup>10</sup>

2.8 If there were to be a 'Yes' vote in the referendum, the final shape of independence would be a matter for discussion between the UK and Scottish Governments. It is not possible to know the outcome of those discussions in advance of the referendum or the extent to which the final shape of independence would reflect the Scottish Government's proposals in its White Paper. Therefore, the precise definition of the word 'independent' in the proposed question will not be known before the referendum takes place.

2.9 Later in this report we give more detail about what people in our public opinion research understood 'independent country' to mean and what people with an interest in the referendum thought about the issue.

## Informing people

2.10 In this referendum, referendum campaigners will promote their views about what independence would mean, what rejection of it would mean, and what they believe will happen after the referendum, depending on the result.

2.11 Referendum campaigners have a key role to play in informing people what the issues are in a referendum. The campaigns are the main source for highlighting to potential voters the implications of a 'yes' or 'no' outcome at the referendum, encouraging people to vote and influencing how they vote. In addition, others will be discussing and debating the issue and putting forward opinions including commentators, constitutional experts and the media.

2.12 Although referendum campaigners and others will promote their views and highlight the issues, this may not necessarily lead to greater clarity for potential voters ahead of the referendum. There may be claims and counter-claims, information and misinformation.

2.13 There can be a place in referendums for public information from a trusted source separate from the referendum campaigns. The significance of

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<sup>9</sup> The Scottish Government consultation paper *Your Scotland Your Referendum* (January 2012).

<sup>10</sup> Secretary of State for Scotland statement to House of Commons, 12 June 2012

public information can vary depending on the nature of the referendum and the extent to which complex issues might need to be explained. The Venice Commission Code of Practice for referendums says that ‘the authorities must provide objective information’ in advance of voting.<sup>11</sup>

2.14 For example, in the referendum on the voting system for the UK Parliament held in May 2011, factual information was available about the voting systems that people were being asked to decide on, as the rules of each voting system were set out in legislation already on the statute books. In the referendum on the law-making powers of the National Assembly for Wales held in March 2011, there was legislation which set out how these would change in the event of a ‘yes’ vote. In both cases this meant it was possible to provide voters with neutral, factual information about what would happen after each referendum, which the Commission included as part of its public awareness campaign.

2.15 People taking part in our public opinion research, as we explain in the next chapter, said that it would help if neutral, factual information about what independence would mean in practice were made available before polling day. There was also an expectation that this would happen.

2.16 We make specific recommendations about the type of public information that could usefully be provided in chapter 5 of this report, after concluding our assessment of the referendum question.

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<sup>11</sup> European Commission for Democracy Through Law (Venice Commission) ‘Code of Good Practice on Referendums’ (2006)

## 3 Voters' views

3.1 We appointed the independent research agency Ipsos MORI Scotland to carry out a qualitative research exercise to see how people reacted to and understood the proposed question. This has given us an evidence base for our conclusions and the revised question wording we are proposing.

3.2 The research helped us find out people's understanding of the proposed question and the reasons for this. The research also helped us explore whether and how the question could be made more intelligible. It focused on the question itself and how it is written, rather than on how people would vote if a referendum were to take place.

3.3 The full report from Ipsos MORI Scotland is available on our website.<sup>12</sup> The report describes who took part in the research and where. The research included participants from a wide range of backgrounds, of different ages – including 16- and 17-year olds – and who live in different parts of Scotland, including native Gaelic speakers.

### Key areas considered in our public opinion research

- **Completion:** participants were asked to answer a proposed question as if for real and identify any words or phrases they found clear, or more difficult to understand.
- **Understanding:** participants discussed what they thought the question was asking and any difficulties they had with the question, and the reasons for this.
- **Neutrality:** participants were asked to consider whether they felt the question was encouraging people to vote in a particular way, and if so, why they felt that.
- **Improvements:** participants considered what improvements they would make to the question wording and discussed their suggestions.
- **Comparing alternatives:** participants were shown alternative question wording and asked to compare it to the original, and consider whether or not the changes improved the question.

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<sup>12</sup> <http://www.electoralcommission.org.uk/elections/upcoming-elections-and-referendums/scotland/referendum-on-independence-for-scotland>

# The research methodology and approach

3.4 Full details of the research approach and methodology are contained in the research report. The testing used a combination of one-to-one in-depth interviews and focus groups to test the question among a sample of 265 participants in a range of locations across Scotland.

3.5 A qualitative approach was chosen for this research, as with our previous six question assessment exercises, because its purpose was to identify any problems with the question, explore the reasons for those problems and explore ways in which they might be solved, so that we had evidence for any changes we might want to recommend to the Scottish Government.

3.6 This was not therefore a quantitative exercise and we were not attempting to estimate the proportion of voters who may, for example, give a particular response, interpret the question a certain way or misunderstand particular wording. We were also not attempting to measure the neutrality of the question in a numerical or absolute sense. Rather, we explored people's perceptions of the neutrality of the proposed question.

3.7 A quantitative approach would not have provided the necessary depth of understanding of the key issues. It might have told us what people thought of particular issues but not why, and it would not have enabled us to find out how any problems they raised might be addressed.

## Testing alternative question wording

3.8 We have previous experience of assessing referendum questions, including carrying out research with voters. In the past we have found that research participants may find it difficult to suggest specifically how questions could be re-worded to address problems that they have identified.

3.9 We therefore carried out an initial assessment of the proposed referendum question against our question assessment guidelines to identify words or phrases that might potentially affect people's ability to understand and answer it, taking into account the findings of question assessment exercises we have undertaken for other referendums. We then developed some alternative versions of the question with revised wording.

3.10 The purpose of developing alternative wording was to allow us to test potential changes to the wording and see whether or not they improved the question, in terms of making it easier to understand and answer. This would provide an evidence base for any recommendations for change we may want to make. The main aim of this element of the research was not therefore for the research participants to choose one of the versions they were shown as 'the best' (either the Scottish Government's proposed question, or any of the

alternative versions). Instead, providing different versions that could be compared and contrasted during fieldwork was intended to help participants to identify what factors improve or worsen a question's wording and intelligibility for them.

3.11 What we found in the research was that in general, compared with previous, similar assessments we have carried out, people had unusually high levels of understanding of the question and what it was asking, and were relatively well-informed about the subject of the referendum. This meant that most of the alternative wording we tested was suggested spontaneously by participants in the groups and interviews in response to issues that they identified themselves.

3.12 In total, four versions of the question were used in testing.

The Scottish Government's proposed question:

- Do you agree that Scotland should be an independent country? Yes/No

Three alternative versions:

- Should Scotland be an independent country? Yes/No (referred to as 'version 2')
- Do you want Scotland to be an independent country? Yes/No (referred to as 'version 3')
- Should Scotland become an independent country? Yes/No (referred to as 'version 4')

3.13 In each interview or focus group, one question was used as the main 'test' question (that is, participants were given this question at the beginning of the interview and asked to mark their vote), with two other versions used as comparators to help elicit participant's views on the main version being tested. The sample size was relatively large for this type of research to enable us to undertake several rounds of fieldwork, making amendments to the question as required, and to test each version with a sufficient range of participants. The Scottish Government's proposed question was tested as a main question or comparator with all participants.

3.14 What follows is a summary of the key points that came out of our research relating to the Scottish Government's proposed question. Where relevant we compare and contrast the findings that relate specifically to the alternative versions that we tested.

## Summary of what we learnt from our research

3.15 Overall the people who took part in our research found the Scottish Government's proposed question to be clear, simple, concise and to the point. They found it easy to understand and answer. Some participants expressed surprise that the question was so simple and straightforward. The main issue that arose in the testing related to the perceived neutrality or otherwise of the

proposed question and in particular, the opening wording ‘Do you agree...’. These findings are described in more detail in this chapter.

**3.16** The question was intelligible in that people understood what it was asking and, with one or two exceptions, were able to vote in a way that matched their views on the subject of the referendum.

**3.17** These views were consistent across the research, including among participants who may have been more likely to encounter difficulties with the question, such as those aged 16 and 17 who are unfamiliar with voting, those with low levels of literacy or learning difficulties, and those who do not use English as their first language.

**3.18** The relatively high and consistent levels of understanding are unusual in our experience of testing referendum questions and are likely to be explained by both the subject and concept of the referendum being relatively familiar to people as a result of the very high prominence of these issues in the media recently, and the fact that the issue of independence in general is not novel in Scotland, but is a long-standing subject of discussion and debate. Levels of understanding of the issue of independence varied, however, and participants had lots of questions about the potential outcome of the referendum that they wanted answers to before being asked to vote for real in the referendum. In particular, people wanted more information about what independence would mean in practice in the event of a ‘yes’ outcome at the referendum.

**3.19** Beyond that, the detailed findings from the testing largely reflect participants’ preferences for specific wording, often influenced by their views on independence, rather than any fundamental difficulties they experienced when answering the question. In the main, people were not suggesting adding words to the question in order that it provided more information or explanation about the referendum and its possible outcomes.

## Understanding of the question

**3.20** We found that the proposed question was easy for people to understand. It is short, written in plain language using everyday words, and presents what people felt to be a simple choice between ‘yes’ or ‘no’. People were pleasantly surprised that the question was so concise and to the point. None of the words presented difficulties in themselves for the research participants in terms of understanding what the question was asking, or how to answer it.

**3.21** Most of the research participants had at least some understanding of the subject of the referendum and although awareness and understanding of the different aspects of the debate around independence and its implications varied, they were familiar with the concept of the referendum and what it was about. In our experience of testing referendum questions this is fairly unusual,

particularly given that the research was carried out so far in advance of when the poll is expected to take place.<sup>13</sup> This is not unexpected, however, given that the referendum and the issue of independence are prominent issues in Scotland and have received extensive media coverage. Even those participants who had not yet decided how they would vote or who were open to persuasion from the campaigning were able to answer the question and engage in discussion about its meaning without any difficulty.

### **Understanding of ‘country’**

3.22 The use of the word ‘country’ (as opposed to, for example, ‘nation’ or ‘state’) did not present problems in terms of people’s ability to understand what the question was asking – none of the participants found it confusing. A few participants described the question as being about whether Scotland should be an ‘independent state’, but they nonetheless felt that ‘country’ was the most appropriate term to use in the question as it is more commonplace and easily-understood language.

## **The language of the question**

3.23 While the language used in the question was considered to be clear, simple and easy to understand, there were some aspects of the wording that people felt were potentially ambiguous or affected their perceptions of the neutrality of the question.

### **‘Do you agree...’**

3.24 One of the key issues that arose in our research was the formulation of the proposed question, which asks ‘Do you agree that Scotland should be an independent country?’ The formulation ‘Do you agree...’ was commonly felt by research participants to be biased towards a ‘yes’ outcome and potentially leading people towards a ‘yes’ vote. These issues were identified by some participants spontaneously in their discussion of the question, and by others when prompted to consider the neutrality of the question or when comparing this wording with the alternative versions, none of which use ‘Do you agree...’

3.25 There were several reasons people gave for why they felt that ‘Do you agree...’ was potentially leading or biased. People said that asking the question in that way implies that Scotland being independent is a ‘good thing’ because voters are being invited to agree with this view. It can sound like it is seeking agreement by effectively asking ‘Do you agree with me?’ rather than allowing voters to form and express their own view.

3.26 Research participants also felt that asking ‘Do you agree...’ suggests that the decision has in fact already been made, or that ‘Scotland should be an independent country’ represents popular opinion and that the referendum is simply about rubber-stamping that decision. They thought that this wording

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<sup>13</sup> Our testing took place just under two years before the referendum is expected to take place, in Autumn 2014.

implies that the outcome (independence) is inevitable and that they are not being asked to make the decision themselves.

3.27 People also felt that that ‘Do you agree’ was biased towards a ‘yes’ vote because it is easier to agree with something than to disagree. A few participants felt that there is an expectation that if you disagree, you need to justify or explain why you have done so. Some participants, who were undecided about how they would vote, felt that this formulation could give the impression that ‘yes’ is the ‘correct’ answer. One person said:

‘You’re free to say no, but it goes against the grain with that word [agree], you don’t feel comfortable putting no’.

3.28 Overall, people’s concern was less that this wording would cause errors in how people marked their vote, but that it would be more likely to influence those who were undecided, unsure or ‘easily led’ and were concerned about this, despite feeling that the potential bias would not affect the overall outcome.

3.29 Although people who voted ‘no’ in the research were more inclined to say that the proposed question was leading, the use of ‘Do you agree...’ was criticised by ‘yes’ voters as well. There was a general consensus that this wording should be replaced with something more neutral or removed entirely.

#### **Alternative formulations to ‘Do you agree...’**

3.30 Alternative ways in which the question could be asked that were suggested by research participants included ‘Do you think...’ ‘Do you want...’ and ‘Would you like...’ Another suggestion was to simply remove the opening words ‘Do you agree that...’ from the proposed question and instead ask ‘Should Scotland be an independent country?’

3.31 We tested two alternative formulations of the question in our research: **version 2 ‘Should Scotland be...’** and **version 3 ‘Do you want Scotland to be...’**

3.32 Changing the formulation of the question did not affect people’s ability to understand and answer it. Versions 2 and 3 were both felt to be clear, simple and to the point.

3.33 Removing the opening ‘Do you agree...’ from the question, as in **version 2**, addressed the issues around potential bias that had been identified with the proposed question. People felt that asking ‘Should’ was a more neutral formulation because it encouraged and allowed them to give their own view rather than agree or disagree with someone else’s.

3.34 A few participants, including some for whom English was not their first language, felt that asking ‘Do you want’ was preferable to ‘Should’ because they thought it was more polite. ‘Should’ was also associated by some with language that people use in relation to something that they want to happen (as in ‘Scotland should be independent’).

3.35 Some people preferred the wording of version 3 because they felt the word 'you' made it more personal and that they were being asked directly for their view.

3.36 However, the dominant view on the use of the word 'want' in **version 3** was that it was inappropriate in the context of a referendum question. People associated 'want' with an emotional rather than a rational response and felt that it was not the right language to use to ask a serious question about an important issue.

3.37 On the whole, participants felt that the drawbacks of the word 'want' meant that 'should' was a more appropriate word to use in the question, and that it was sufficiently implicit in version 2 that they were being asked for their own view.

### Understanding of 'independent country'

3.38 During the research interviews and focus groups, participants were asked to describe in their own words what the referendum was about and in particular, what the term 'independent country' meant. Almost everyone had a clear understanding that 'independent country' meant Scotland being separate from the rest of the UK. This was the case even among those who had very little knowledge about the potential implications of a majority 'Yes'/'No' vote.

3.39 The descriptions people initially gave when asked what this term meant included:

- being separate from the rest of the UK
- "separate from England"
- "separate from England, Wales and Northern Ireland"
- "separate from Westminster"
- "running our own affairs"
- Scotland "managing on its own"

3.40 While people initially articulated their understanding in different ways, it was clear from further discussion in the interviews and groups that, with one or two exceptions, participants had a clear understanding – without seeing or asking for any explanatory information – that 'independent country' referred to Scotland being separate from the rest of the UK.

3.41 A few participants, who were in the main well-informed about the constitutional debate, felt that other people's understanding of the question would be improved by the addition of '...from the UK', '...separate from the UK', or something similar. These people had concerns that the question assumes that all voters will know as much as them. While *they* understood clearly that 'independent country' implied 'separate from the UK', they felt that the addition of this phrase would remove any potential ambiguity, including about whether the referendum related to membership of the European Union.

3.42 However, these concerns about other people's understanding of the question were not borne out by the testing. There was very little evidence that

the lack of a reference to the UK in the question affected people's ability to understand what the question was asking and to answer it according to their intentions, and none thought the question related to independence from the European Union.

3.43 As explained earlier in this chapter, people recognised what the question was about based on their existing familiarity with the concept of the referendum and the issue of independence. There were, however, some issues that related to understanding of what 'independent country' would actually mean in practice for Scotland, and these are covered in more detail in the section below.

### Perceptions of bias

3.44 In addition to the concerns discussed above relating to the wording 'Do you agree...', a few people in our research felt that the question could lead people to consider a 'Yes' vote for other reasons. These were either because it does not explicitly mention the status quo (that Scotland is currently part of the UK) within the question or answer options, or because of the absence of a phrase such as 'separate from the UK'.

3.45 A very few participants expressed the view that the word 'independent' in itself could be considered as being 'loaded', that is, not neutral, as it has inherently positive connotations and the opposite – being dependent – could be seen as having negative connotations. They felt that in this context, the word is positively associated with "freedom" and images of "Braveheart" and therefore encourages an emotional and less considered response

3.46 A more commonly-held view, however, was that 'independent' **should** be included in the question as it is widely-recognised and encapsulates what the referendum is about.

## Understanding of what a 'yes' or 'no' outcome would mean

3.47 Although the question itself was clear and easy for people to understand, many of the people who took part in our research felt that there were, as yet, many unanswered questions on the issue. People commonly had questions about issues such as the economy, currency, monarchy, defence, immigration and citizenship. They wanted more information before polling day and while they expected that campaign groups and the media would provide information in the run-up to the referendum, some also wanted objective information from an independent, neutral source. In particular they wanted unbiased information about what the pros and cons of each outcome were and what independence would mean in practice for Scotland. While few people raised questions about what would happen (in terms of process) after the referendum in the event of a 'yes' or 'no' outcome, some of the questions these people asked included:

- Will the result of the referendum be decisive? (Or will it just be "taken into account" with the final decision being made by government?)
- In the event of a 'Yes' vote, could the government still decide not to go ahead?

- Would a particular threshold of 'Yes' votes need to be reached?
- What would happen if the next government was not in favour of independence? Could they overturn the result?
- Who would be Prime Minister (or equivalent) the day after the referendum?
- Would there be an election for the Scottish Parliament immediately after the referendum?

3.48 The research found, however, that in the main people did not want more information provided on the ballot paper itself. The dominant view was this was not the best time or place to provide information and that it was important that people had the information they needed **before** they were asked to vote.

#### **'Be' or 'become'**

3.49 The other alternative version of the question that we tested was **Version 4: 'Should Scotland become an independent country?'** This version followed participants' preferred format for asking the question (avoiding 'Do you agree...') but replaced the word 'be' with the word 'become'. This version was developed in response to findings from the first stage of the fieldwork in which some people suggested that 'become' was a more appropriate or accurate word to use.

3.50 Among those people that were shown version 4 as an alternative, there were mixed views about the use of 'become'. Some felt that it made more clear that there would be a process of change in the event of a majority 'yes' vote and that this more accurately reflected what would happen in practice, rather than independence being something that could happen 'at the flick of a switch'.

3.51 Others, however, thought that 'become' made the change aspect sound more, rather than less vague – that it made the question more ambiguous in that change was something that may or may not happen at some future point in time. They preferred 'be' as it indicated that independence would definitely happen in the event of a 'yes' outcome.

3.52 There were very mixed views about the potential effect of changing 'be' to 'become' on the neutrality of the question and how people might answer it. Those inclined to vote 'no' tended to say that emphasising the aspect of change involved would be likely to make voters think more carefully about the pros and cons of independence and consider what would be involved in reaching a settlement on the many different issues to be resolved – and make them more like to vote 'no' as a result. Some thought that 'become' could be associated with positive images such as 'growth' and encourage a 'yes' vote; others thought that in emphasising the aspect of change this might encourage people to vote either 'yes' or 'no', depending on their reaction to change per se, rather than the particular change on offer.

3.53 There was no evidence from the research that people did not understand the word 'be' in the proposed question or recognise that the question was asking about a potential change. And while some people preferred the word

'become', the word 'be' was found to be less ambiguous as it clearly implied that something would happen in the event of a 'yes' vote, even if the details of *what* would happen were yet to be decided or made known.

## The 'yes' and 'no' answer options

3.54 There were no issues identified in our research relating to the answer options available. Participants were clear that the 'yes' and 'no' answers were easy to understand, straightforward and unambiguous. The ordering of the answers was discussed and while a few people suggested there could be a potential bias towards 'yes' as it comes before 'no', they also recognised that the same could be true if the answers were reversed. On the whole people did not have strong feelings about the ordering of the answers and noted that the 'yes'/'no' ordering follows the normal convention for answering a question.

## 4 Respondents' views

4.1 We wrote to people, including the main political parties represented in the Scottish Parliament and would-be campaigners, to seek their views and to offer meetings to hear from them.

4.2 In addition, we received views and comments from individuals and groups who contacted us, having seen from our website or otherwise heard that we were undertaking the question assessment. We have also been aware of points raised by members and committees of the UK and Scottish Parliaments, and by commentators.

4.3 A list of people who responded after we sought their views is at Appendix 4. In total, we received 457 responses.

4.4 In this chapter, unless otherwise specified, we use the term 'respondents' (or similar terms such as 'people who responded'; 'response') generally to refer both to those people or organisations whose views we sought, and other people or organisations who chose to contact us to give us their views on the question.

4.5 We have been concerned less with the number of responses on any particular point than the significance of the issues raised by respondents in the context of our question assessment guidelines. Some responses contained points raised by few others, but reflected important perspectives of those who submitted them, such as organisations representing people with disabilities or minority ethnic groups.

4.6 Below we summarise the key themes raised by respondents.

### 'Do you agree ..?'

4.7 The majority of people who responded commented on how the question was formulated. In particular, they told us whether they thought that the formulation 'Do you agree ..?' encouraged voters to consider one response more favourably than another.

4.8 Most of those who told us they thought asking 'Do you agree ..?' was a fair way to pose the question did so on the grounds that it was clear and the meaning was easy to understand. For example, one email, typical of a number of others we received, commented:

The referendum question is completely clear, fair and understandable by all.

4.9 Some people felt it was insulting to suggest that voters could be led to vote a particular way by how the question was formulated. For example, one response said:

To assert otherwise would be demeaning and insulting to the people of Scotland and underestimates the understanding and astuteness inherent within and throughout all levels of Scottish society

4.10 In terms of campaigners and political parties, Blair Jenkins gave the view from the campaign group 'Yes Scotland' that the question was fair and designed to give a straightforward 'Yes' or 'No' response. Responses on behalf of the SNP in Scotland and from Angus Robertson MP for the SNP's UK Parliamentary group supported the proposed question on the grounds that it was clear, simple and fair.

4.11 Several academic respondents commented on whether the question posed was neutral. Professor Stephen Tierney of the University of Edinburgh School of Law referred to the advice in the Venice Commission's Code of Good Practice on Referendums that a question 'must not suggest an answer' but noted that the Venice Commission had not criticised a question which begins with the term 'do you agree'. Professor Tierney cited the following example given by the Venice Commission of how a referendum question might legitimately be framed: 'Are you in favour [of amending the Constitution to introduce a presidential system of government?]',<sup>14</sup>

4.12 A summary of research submitted by Dr Matt Qvortrop, Cranfield University, quoting statistical analysis of 74 referendums on independence or self-government between 1980-2011, concluded that there was no firm evidence that the voting consequences of the use of 'emotive' words might create bias. Further focus on referendums in 35 democratic countries in the same period showed no evidence of correlation between the presence of emotive words and a 'yes' vote.

4.13 Rt Hon Alistair Darling MP of 'Better Together' said that he did not accept the argument that having wording such as 'do you agree' made only a marginal difference to the reaction of respondents. 'Better Together' commented that the point of having a ballot paper that is above any accusation of bias is to plan for a situation where the difference between the two sides in the referendum is marginal. It was important to ensure that both sides were prepared to consent to the eventual result and that turmoil did not arise out of a sense of grievance over the process by which the vote was undertaken.

4.14 Dr Nicola McEwen, Director of Public Policy at the Academy of Government, University of Edinburgh, was also concerned about the legitimacy of the process, commenting that:

By inviting agreement, the question as currently drafted may not entirely satisfy the criterion of neutrality. There is no evidence to

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<sup>14</sup> European Commission for Democracy Through Law (Venice Commission) 'Code of Good Practice on Referendums' Study No 371/2006 (2009)

suggest that it has been framed so as to deliberately lead voters to provide a positive answer, but that it may be construed as such can cast doubt on the legitimacy of the process.

4.15 The Scottish Labour Party felt that the question encouraged a positive response and that the words agree/disagree were better placed in the response section than within the question itself.

4.16 Several respondents preferred the referendum question proposed by Lord Sutherland, Dr Matt Qvortrup and Ron Gould, which gave a choice of 'I agree/I do not agree' as possible responses to the single statement 'Scotland should become an independent state'.

4.17 The campaign group 'No to AV' considered 'Do you agree ..?' introduced bias and prompted a 'Yes' answer.

4.18 A number of individuals who contacted us were of the view that the question was leading. Several of these, who were lawyers, told us that in their view, the question would be ruled as a leading question in court. Some respondents thought that the formulation 'Do you agree?' was designed to be a patriotic appeal, such as the person who said:

I feel that the way the question is structured makes you feel unpatriotic if you do not agree with the government.

4.19 The charity 'Outside the Box' told us that they had talked to people with learning disabilities as part of a wider discussion about planning consultations and other forms of participation. Their discussions identified several issues with asking 'Do you agree?' Firstly, it was associated with satisfaction surveys that people receive on a regular basis and was therefore felt to be just another routine survey. Secondly, people associate 'do you agree' questions with the people asking it having already made up their mind. Finally, some people felt that 'do you agree' questions elicit an emotional response, whether intended or not.

4.20 Other charities, like Age Scotland and Dyslexia Scotland, also sought input from people they represent. Their responses stressed that relatively small groups of people were involved but they felt these would add to the picture of potential voters' views. For example, Dyslexia Scotland told us: "We surveyed approximately six literacy groups. The feedback was mixed, however, the majority were not happy with the question, giving the following responses:

'it wants you to vote yes'; 'leading you down that line'; 'It's asking your opinion'; 'the word 'agree' makes you think that a decision has already been made; 'making the decision and asking you to agree with it'.

4.21 In reaching our assessment of the question, concluded in the next chapter, we have drawn on the range of evidence available to us. In our view, while there is no evidence to suggest that 'Do you agree ..?' is intended deliberately to encourage voters to consider one answer more favourably than

another, the responses we have received demonstrate that ‘Do you agree..?’ can be seen by people as encouraging such a response.

## The meaning of ‘independent’

4.22 A key theme raised by respondents related to the meaning of ‘independent’. People recognised that although ‘independent’ is a word people understand, what it would mean in practice for Scotland is not yet clear. However, views diverged as to whether or not the referendum question was clear and unambiguous in its current form and, if not, what should be done about it.

4.23 Several academic respondents commented that the question is inherently ambiguous because of the lack of a defined meaning of ‘independent’. For example, Professor Adam Tomkins, John Millar Professor of Public Law, University of Glasgow (responding in a personal capacity) submitted that the question was ‘both unclear and ambiguous as to the implications of Scottish independence.’ He suggested an alternative wording, seeking to specify that Scotland would leave the UK (we address this approach further below).

4.24 Dr McEwen suggested introducing a preamble to the question to give clarity to the independence prospectus that voters are being asked to decide upon, commenting that:

I do not believe it is possible within this referendum to have a question which is unambiguous; there will be inherent ambiguity in the question which adjustments to question wording cannot resolve.

4.25 Others thought or hoped that, although not clear now, the meaning of ‘independent’ would be clarified in advance of the referendum. For example, Dr James Gilmour, Edinburgh, said:

I take it as given that none of the possible constitutional options has yet been described other than in broad outline. It is to be hoped that, well before the referendum, those promoting different constitutional options will have set out as clearly and as accurately as possible what the options are and what they consider the consequences of those options would be. Of course, there will be debate and disagreement about the content of those descriptions, but the options should be clear.

4.26 Similarly, Professor Tierney, noting that this was a matter for the Commission to assess using voter research, was of the view that:

the question is not unintelligible given the extent to which, in broad terms at least, the nature of ‘independence’ is understood, but it is important that this term be fully elaborated upon in due course and in any event well in advance of the referendum itself.

4.27 In terms of understanding 'independent', a charity concerned with minority ethnic issues pointed out that the term 'independent' has cultural context. They felt that it was important for voters from minority ethnic communities to understand what 'independent' meant for Scotland, since people's cultural experience and understanding of independence can be quite different: "It can be lost in translation." It was for them, therefore, important to explain the context and what policy would follow in the event of voting for or against independence.

4.28 The campaign group 'Yes Scotland' were of the view that the question states the proposed constitutional change in clear terms and people would be able to vote Yes or No with a firm understanding of the decision they are making.

4.29 A number of respondents were of a similar view, with comments such as:

'Not difficult to understand, not difficult to choose'; 'I am left in no doubt what I am being asked to consider'; 'It is, after all, the Scottish Government's proposal that Scotland should be an independent country, so how else would the question be framed?'

4.30 Other respondents told us of their belief that the campaigns would clarify the issues. Examples of emails we received are:

'The question proposed by the Scottish Government is perfectly intelligible and Scots voting in the autumn of 2014 will be very well aware of what the two options mean given the political campaign which will take place in advance of the referendum. I have no doubt about the ability of the Scottish electorate to consider the issues, debate the matter carefully and come to a thoughtful conclusion individually and collectively. The wording of the question will make no difference to that ability, there will be clarity in the minds of electors at the vote no matter how the question is worded but the question as proposed, "Do you agree that Scotland should be an independent country?", is clear, concise and to the point.'

'..if members of the voting public were to fail to understand this simple question it would represent a huge failure of both sides to articulate their arguments. However even at this early stage of the campaign the basic propositions have already been articulated and I think it very unlikely that the proposed question will be misunderstood.'

'We have two years to debate the answer to the question, it could be written in Mandarin and people should know the answer, yes or no.'

4.31 However, other people were concerned about the use of 'independent'. Examples are:

‘Independence requires both political separation and fiscal separation and that is not necessarily clear from the proposed question, which is therefore morally biased and unfair.’

‘What does independence mean in this context? Clarification is important.’

4.32 Some people thought that the use of ‘independent’ was intended to convey positive connotations, for example:

..airbrushing the implications for Scotland as bright, sunny, simple ‘independence’.

4.33 The group ‘No to AV’ said that ‘independent’ was not a neutral term but had emotional connotations, which implied that presently Scottish people are in some sense not ‘free’. They commented on the ambiguity of independence as a concept and submitted that it was only meaningful as independent ‘from’ something.

4.34 Other campaigners and political parties who believed the question should change offered alternative suggestions that would, they believed, offer further definition, such as using ‘independent state’; independent ‘from the UK’ or offering voters a choice of two options, one of which would be for Scotland to become an independent state and the other of which would be for Scotland to remain part of the UK. We explain these points further below.

## Independent - from what?

4.35 Following the theme that the term ‘independent’ was ambiguous, some respondents put forward suggestions as to how it should be clarified.

4.36 A theme was that the use of the term ‘independent’ begged the question ‘independent from what?’ Some respondents thought that the question should specify that independence would mean leaving the UK.

4.37 For example, Professor Tomkins said:

..there is one facet of independence which is clear at this stage, which could and should be reflected in the question, and about which there is considerable and wholly unnecessary confusion in Scotland at the moment. This is the fact that a vote for independence will mean that Scotland leaves the United Kingdom.

4.38 Nigel Smith, who chaired the cross-party ‘Yes’ campaign in the Scottish Devolution referendum in 1997, commented:

Children become independent of their parents, politicians independent of their parties but Scotland is to be independent in the abstract. The sentence begs completion ... failing to mention leaving the UK is to fail to capture the principal feature of the change to be decided in the referendum.

4.39 The group ‘No to AV’ commented that it was not obvious from the draft question that the final terms of independence will not have been settled by the time that the referendum is held, and said:

The only certain and undeniable consequence of a majority Yes vote in the referendum is that Scotland would cease to be part of the United Kingdom – but this consequence is not made explicit in the question. This makes it harder to understand the implications of a vote.

4.40 Some respondents also felt that the question did not make explicit that independence meant leaving the UK. A number of people felt that this meant that the question was misleading and wanted a reference to leaving the UK to be included.

4.41 Some respondents believed the question should refer to ‘separation’ from the UK. For example, one person felt that a more direct and honest question was:

Do you want Scotland to separate from the United Kingdom?

4.42 The Scottish Labour Party approached the point from a different angle, suggesting that voters be asked us to choose one of two options by ticking the appropriate box: option 1 would be ‘Scotland should become an independent state’ and option 2 would be ‘Scotland should remain part of the United Kingdom’.

4.43 The issue has also been notably identified by the Scottish Affairs Select Committee.<sup>15</sup> Recently the House of Lords Constitution Committee<sup>16</sup> reported that one of four concerns with the referendum question was that it did not specify that the consequence of independence would be that Scotland would leave the UK.

4.44 Although some respondents considered that adding ‘from the UK’ or asking if Scotland should ‘separate from the UK’ would be a means of resolving ambiguity in the term ‘independent’, the range of responses we received shows that there would not be consensus for such an approach. As with several of the issues raised by respondents in relation to the question wording, views diverged about whether and how the question should be amended to clarify the meaning of ‘independent country’. We have, therefore, given particular weight to the findings of our public opinion research on this point to reach our overall assessment.

4.45 Our concluding assessment of the referendum question, contained in the following chapter, takes account of all the evidence we have received and

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<sup>15</sup> Scottish Affairs Committee Inquiry The Referendum on separation for Scotland Reports 1-5, (from October 2011, ongoing)

<sup>16</sup> House of Lords 7<sup>th</sup> Report (November 2012)

includes a recommendation to address concerns about the definition of 'independent'.

## 'Country', 'state' or 'nation'?

4.46 Some responses we received were about whether 'country' was the right word to use or whether 'state' or 'nation' should be used instead. Some campaigners, political parties and academics raised this on the grounds that Scotland could already be described as a 'country' and, therefore, that the referendum question did not sufficiently convey that a change of status was being proposed.

4.47 Rt Hon Alistair Darling MP of 'Better Together' and other respondents drew our attention to the work carried out by Professor Stewart Sutherland, Dr Matt Qvortrop and Ron Gould, at the invitation of the leaders of the Scottish Conservative and Unionist Party, Scottish Labour and the Scottish Liberal Democrats. Their proposed question would ask voters to tick 'I agree' or 'I do not agree' to the statement:

'Scotland should become an independent state'

4.48 William Rennie MSP submitted that the use of 'state' in this formulation was to accommodate those who would say Scotland was already a 'country'.

4.49 Professor Tomkins was of the view that 'independent country' fudged the issue and did not get to the heart of the what the referendum was about. He was opposed to the idea that Scotland should become independent of the rest of the UK, but told us he could vote 'Yes' to the referendum question proposed, because he could accept that Scotland is already an independent country in all sorts of ways.

I consider that the question must refer to statehood – "should Scotland become an independent state?" – and not to Scotland's identity as a 'country'. ..Scotland may already be an independent country but it is not (yet) an independent state.

4.50 Nigel Smith made similar points, adding that 'independent country' carries emotional impact:

Many Scots would feel at ease indeed already recognise Scotland as an 'independent country', a historic entity in Europe with its own identity and traditions that area sufficiently distinctive to be recognised at international cultural, sporting and political events. An 'independent state' is far more specific as well as legally correct and certainly doesn't carry the same emotional impact.

4.51 'No to AV' thought that the term 'country' in the question was misleading to voters, because Scotland already has its own legal system and judiciary, is represented in international sport and has a parliament.

4.52 Dr Qvortrop told us of his view that the word ‘country’ is less satisfactory than the word ‘nation’:

I believe that to most Scots, Scotland is already a country, what is being proposed is that it should become a new subject in international law with a separate constitution, etc. The word nation is a political one, and is hence preferable. ..The argument that some voters would not understand the distinction between ‘country’ and ‘nation’ is unlikely and is, perhaps, a wee bit offensive to the mostly politically informed Scots. Moreover after two years of campaigning, it would be difficult not to understand the distinction.

4.53 Several lawyers submitting views to us commented that the term ‘state’ was more legally correct, particularly in terms of international relations. The House of Lords Constitution Committee noted that there were real concerns about the correct terminology.<sup>17</sup>

4.54 However, a number of people commented that, although technically more correct, using the term ‘state’ would not necessarily help voter understanding. For example, Dr Nicola McEwen said:

Doubts have been raised about the use of the word ‘country’ because it lacks formal legal standing. Some proposals have suggested therefore replacing ‘independent country’ with ‘independent state’. I disagree. While the concept of ‘state’ has more meaning in law and international relations, it has little public resonance and may make the question difficult to understand for voters.

4.55 Dr McEwen commented that there was an alternative approach, which was omitting the word ‘country’ and simply asking: ‘Do you agree or disagree that Scotland should be independent?’ However, she saw a drawback in the omission, that is, to put more emphasis on questioning ‘independent of what?’

4.56 Professor Tierney anticipated our voter research:

‘State’ carries a particular meaning for a lawyer and is therefore preferred when we teach constitutional and international law, but it would be for [the Electoral Commission] to assess if voters understand the term ‘country’ more readily than state, and if in the vernacular the two terms carry the same meaning for most people, which I suspect is the case.

4.57 Our assessment of the use of the term ‘country’ in the proposed question, concluded in the following chapter, does indeed give particular weight to the findings of our public opinion research.

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<sup>17</sup> Ibid

## ‘Be’ or ‘become’?

4.58 A theme of some responses was that the use of ‘be’ was incorrect and potentially misleading, because the whole meaning of the question could be understood as applying to the present, in effect: ‘Do you agree that Scotland should *continue to be* an independent country?’ Respondents were of the view that using ‘become’ instead would avoid that interpretation and convey more effectively that a change was being proposed. Often this point was made alongside others, such as using ‘state’ instead of ‘country’.

4.59 For example, as already noted, ‘Better Together’ and other respondents drew our attention to the work carried out by Professor Stewart Sutherland, Dr Matt Qvortrop and Ron Gould, whose proposal was to ask voters to tick ‘I agree’ or ‘I do not agree’ to the statement:

‘Scotland should become an independent state’

4.60 Professor Tomkins noted that this issue was one of four points recorded by the House of Lords Constitution Committee, in that the question asked about what Scotland is rather than what it should become. In calling for the use of ‘independent state’, he also commented:

Note also the verb: the question must make clear that what is at stake is a change. ..the verb used in the question must make this clear: hence ‘should become’ rather than ‘should be’.

4.61 Nigel Smith commented:

Become says – *change* – *development* – *transformation* which seems a more accurate description of the consequences of a YES vote. Be – is a continuous state

4.62 The theme was raised by a small number of other respondents, such as those who simply said:

Replace ‘be’ with ‘become’

4.63 None of our respondents who advocated the use of ‘become’ anticipated the issue that emerged in our public opinion research, however. The Plain Language Commission did anticipate the findings of our research, commenting in the expert advice we sought from them that the use of ‘become’ makes independence sound less imminent if people vote ‘Yes’.

4.64 As we explain in Chapter 3, although it conveys a sense of change, the use of ‘become’ is not unambiguous in itself and creates another issue for voters, that is, increased uncertainty about if and when change would take place. Our assessment of the issue is concluded in the following chapter.

# 5 Our assessment

5.1 We have considered the question proposed by the Scottish Government against our guidelines for assessing referendum questions that we published in November 2009.

5.2 Our guidelines say that a referendum question should present the options clearly, simply and neutrally. So it should:

- Be easy to understand
- Be to the point
- Be unambiguous
- Avoid encouraging voters to consider one response more favourably than another
- Avoid misleading voters

5.3 In arriving at our assessment, we have taken account of the context for the referendum question and all the evidence we have received.

## Our conclusions

### Is the question easy to understand?

5.4 The question is easy to understand. Our research showed conclusively that the language used was easily understood by people and seen as concise, clear and simple. That was the case for people across all age groups, including 16 and 17 year olds, from different backgrounds and in different parts of Scotland. In general people were relatively well-informed about the subject of the referendum compared with other, similar assessments we have carried out, and they understood clearly what decision they were being asked to make.

### Is the question to the point?

5.5 The question goes to the point at issue in the referendum, which is on independence for Scotland. People taking part in our research were asked to complete the ballot paper as if voting in the referendum. They found the question to be straightforward to answer, whether voting 'Yes' or 'No', because they understood what the question was asking them.

### Is the question unambiguous?

#### **The term 'independent country'**

5.6 The question contains the term 'independent country'. Even though our research shows that this is a straightforward term for most people to understand, and that people understand 'independent country' as a concept, the term is not unambiguous. People taking part in our research felt that there

was a lack of clarity and a number of unanswered questions about what the practical implications of an 'independent country' would be. In the same way, a key theme of views that respondents submitted to us by was that although 'independent' is a word that people understand, what it would mean in practice for Scotland is not yet clear.

**5.7** If the majority of voters vote 'Yes', then what 'independent country' means will be decided through a process of negotiation between the UK and Scottish Governments, and decisions by Parliaments after the referendum. The Scottish Government has said it will publish its proposals for independence before the referendum and referendum campaigners – and others – will give voters their views on what independence will mean or not mean. Nevertheless, although people understand the concept of independence, ambiguity in terms of what 'independent country' means is inevitable.

**5.8** Some people submitting views to us suggested different ways in which the question could be amended, such as by adding 'independent from the UK'; 'separate from the UK'; or by using 'state' or 'nation' instead of 'country'. People's views diverged sharply, however, being eloquently advocated from different perspectives. The divergence of views means that however the referendum question is drafted, it is unlikely to attract universal support from all the main political parties in Scotland or from would-be referendum campaigners.

**5.9** We give greater weight in our assessment, therefore, to our research evidence. People taking part in our research understood the concept of 'independent country' and, specifically, had a clear understanding that it meant being separate from the rest of the UK. They recognised what the question was about based on their existing familiarity with the concept of the referendum and the issue of independence. They did, however, want more information about the pros and cons of independence, which they assumed would be available in the lead up to the referendum. People also felt that any information about the outcome of the referendum should be provided in advance.

**5.10** We conclude that, although the term 'independent country' in the question is not unambiguous, amending the question by adding more words after 'independent country' or changing 'country' to 'state' or 'nation' would not resolve the ambiguity or aid people's understanding of the question.

**5.11** At the end of our assessment, we make a recommendation about what information we believe it would be helpful to provide for voters in advance of the referendum.

### **Use of 'be'**

**5.12** Some of those who submitted views to us felt that the question was somewhat ambiguous because the whole meaning of the question could be understood as applying not only to the future but also to the present, in effect: 'Do you agree that Scotland should *continue to be* an independent country?' The same issue emerged for some participants in our research.

5.13 Some participants in our research preferred ‘become’, because they felt that it better reflected the process of change that would take place. However, another issue also emerged in our research: using the word ‘become’ increased people’s uncertainty about when change would take place. People found ‘become’ to be too ambiguous and that it made change sound less imminent. The Plain Language Commission also advised us that ‘become’ makes independence sound less imminent if the majority of people voted ‘Yes’.

5.14 We conclude that amending the question to use ‘become’ instead of ‘be’, for the purpose of conveying better the process by which change would take place, has the potential to **increase** uncertainty about change. Both Governments committed in the Edinburgh Agreement to continue to work together constructively in the light of the outcome, whatever that is. The expectation should therefore be that independence would follow as a consequence of a ‘Yes’ vote.

5.15 Despite the potential ambiguity, there was no evidence from the research that people did not understand that the question was asking about a potential change. We recommend therefore that the use of ‘be’ in the question should remain as it more clearly communicates that something would happen in the event of a ‘yes’ vote, even if the precise details of what that would be are as yet unknown.

## Does the question avoid encouraging voters to consider one response more favourably than another?

5.16 In our research, people saw the use of ‘Do you agree..?’ in the question as encouraging voters to consider a ‘Yes’ vote more favourably than a ‘No’ vote.

5.17 People gave a variety of reasons for this, including:

- it is easier to agree with something than to disagree
- it suggests that Scotland being an independent country is a ‘good thing’ because people are being invited to agree to it
- the tone is quite forceful and encourages agreement with someone else’s view – ‘are you with us?’
- it implies that a decision has already been made and that independence is inevitable

5.18 People who voted ‘No’ in our research were more inclined to criticise the question for being leading, although many people who voted ‘Yes’ also thought it was leading towards ‘Yes’. Some people who were undecided about how they would vote felt that ‘Do you agree ..?’ suggests that ‘Yes’ is the ‘correct’ answer.

5.19 On the other hand, people taking part in our research also thought that a leading question would not have a major impact on the referendum result, because they thought it would only affect those who were undecided or unsure (although we note that in practice the votes of a small number of people could have a major impact on the outcome if the result is very close).

5.20 All of these issues also emerged in views submitted to us by respondents. The majority of people who gave us their views commented on the formulation of the question, with views ranging from those who were strongly of the view that the question was fair and unbiased; those who said that even if the question was leading it would not have much impact on the result; to those who were strongly of the view that it was a leading question and should be changed.

5.21 A less common view that emerged in our research was that the question was biased towards a 'yes' vote because it does not present the alternative to Scotland being independent, that is, that it should remain part of the UK. This was also put by some respondents submitting their views to us. However, as we noted in considering whether the question was unambiguous, research participants understood 'independent country' as meaning independent of the rest of the UK. There was no evidence from our research that people felt they were being encouraged to vote 'yes' because the question did not specifically mention the status quo.

5.22 Another less common view was that the meaning of 'independent' is loaded. There were different views about this. Some people saw it as having positive associations with freedom, thereby encouraging people to consider a 'Yes' vote. On the other hand, some people saw it as having negative connotations because independent meant lacking support from the rest of the UK, thereby leading people to consider a 'No' vote.

5.23 In conclusion, the main issue in terms of neutrality was the way the question is introduced. The referendum result should be one that all voters and referendum campaigners can accept and have confidence in. For that reason, we recommend that 'Do you agree..?' should be replaced by a more neutral formulation. Our recommended formulation is at the end of our assessment below.

## Does the question avoid misleading voters?

5.24 As explained above, some concerns were raised both in our research and by people or organisations who submitted their views to us about the potential ambiguity of the words 'be' and 'independent', and that if the meaning of those words was not entirely clear, then voters may be misled as to what the question was about. However, in our research, we found that people understood both the meaning of those words in particular, and the question as a whole.

# Our recommendations

5.25 We recommend that the question is redrafted to ensure that it is asked in a more neutral way that avoids encouraging voters to consider one response more favourably than another.

5.26 In all aspects of our question testing, one version we tested was clearly preferred by most participants. We recommend this version because it is:

- a more neutral formulation than ‘Do you agree ..?’
- it does not ask for a judgement of someone else’s view or decision
- direct
- short and simple

5.27 Our recommended redraft of the question, in ballot paper format, is:

<b>[Title]</b>  Vote (X) once only
Should Scotland be an independent country?
<b>Yes</b> <input type="checkbox"/>
<b>No</b> <input type="checkbox"/>

## Layout and design of the ballot paper

5.28 Voters should be confident that they have voted the way they intended and that their vote will be counted. Our published guidance<sup>18</sup> for government policy makers on designing voter materials advises that the ballot paper should be designed in a way that makes it easy for the voter to:

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<sup>18</sup> The Electoral Commission *Making your mark* (2009)

- understand what the ballot paper is for
- mark their choice in such a way that their vote is valid and reflects their intention

5.29 It should also be designed in a way that means the voter's choice can be clearly identified when votes are counted.

5.30 No significant issues were raised by our research participants about the layout of the question on the ballot paper as such and people were able to complete the ballot paper in the way that reflected their voting intentions.

5.31 Charities representing people with disabilities who responded to us pointed out the importance of information for voters being provided in easy to read, alternative formats as well as in plain English. We agree, and our specific recommendations about how the ballot paper should be designed follow.

5.32 The design of the ballot paper should be improved to make it more accessible, and our recommended redraft of the question in ballot paper format reflects this, in line with our published best practice guidance.<sup>19</sup> Specifically, we recommend that:

- The ballot paper should contain a title at the top. The title identifies the ballot paper and links it to other materials for voters at the referendum, such as polling station notices.
- The font should be: clear, readable, 14 point size and 'sans-serif', that is, without the small features at the end of strokes.
- The title, voting instruction and referendum question should be left-aligned, so that each line starts at the left hand edge and is all lined up.
- The 'Yes/No' answers should be directly next to the response boxes, right-aligned.

5.33 Further work will be needed, however, to test the design of the ballot paper once the wording of the question has been decided. We did not specifically test the design and layout of the ballot paper as part of our research, which was focussed on the wording and intelligibility of the referendum question in accordance with the request we received from the Scottish Government.

5.34 The ballot paper should be designed to be fully accessible and usable for voters. In its consultation paper '*Your Scotland, Your Referendum*' the Scottish Government said:

The design of the referendum ballot paper will be subject to testing using a sample of voters. The Scottish Government will also seek

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<sup>19</sup> Ibid.

advice on this and other aspects of the referendum from electoral professionals (returning officers and registration officers) through the Electoral Management Board for Scotland, from the Electoral Commission and from a panel of independent expert advisers.

We would be willing to assist in this process.

5.35 The layout and content of the ballot paper is expected to be prescribed in the Referendum (Scotland) Bill. However, it is important that sufficient time is allowed for designing and testing the ballot paper before it is finalised in legislation. It would be possible for the precise form of the ballot paper to be specified via a separate piece of legislation, such as an affirmative statutory instrument, once the wording of the question has been agreed by the Scottish Parliament. This would allow the testing process to be independent of the timetable for the passage of the Bill through Parliament.

5.36 A draft statutory instrument containing the proposed ballot paper for testing could be published alongside the Referendum (Scotland) Bill which would ensure that Parliament was able to consider this alongside their consideration of the question wording, but would enable the process for finalising the design of the ballot paper to follow a longer timescale that allowed for testing and any necessary re-design or re-testing.

## The use of Gaelic

5.37 Participants in our focus groups and in-depth interviews, who spoke Gaelic as a first language, could understand the question easily and experienced no difficulties in completing the ballot paper and voting the way they intended.

5.38 Some participants did call for the ballot paper to be in Gaelic, as did some people who submitted views to us. The Scottish Government did not ask us to test a bilingual ballot paper or a version with a Gaelic option. We were concerned to ensure in our research that this would not present a barrier to people completing the ballot paper and voting as they intended; it did not.

## Public information: our recommendation to Governments

5.39 People taking part in our public opinion research wanted factual information to be available in advance of the referendum.

5.40 As part of the Edinburgh agreement the UK and Scottish Governments have agreed to work together whatever the outcome of the referendum. In its consultation paper on the referendum, the Scottish Government set out its plans for the steps it would take after the referendum following a 'Yes' vote and a date when it intends independence would take effect, although no detailed timetable is included in the consultation paper. The Edinburgh Agreement does not include steps to be taken following the poll.

5.41 In the event of a 'Yes' vote, there would be a range of issues to be resolved within the UK and internationally about the terms of independence. Although we would not expect the terms of independence to be agreed between the two governments before the vote, clarity about **how** the terms of independence will be decided would help voters understand how the competing claims made by referendum campaigners before the referendum will be resolved.

**5.42 We recommend that the UK and Scottish Governments should clarify what process will follow the referendum in sufficient detail to inform people what will happen if most voters vote 'Yes' and what will happen if most voters vote 'No'.**

5.43 We recommend that both Governments should agree a joint position, if possible, so that voters have access to agreed information about what would follow the referendum. The alternative - two different explanations - could cause confusion for voters rather than make things clearer.

5.44 This information would help voters understand what would happen after the referendum, whatever the outcome, and how any competing claims made about independence during the campaigns would be resolved.

## Public information: what we will do

5.45 By autumn 2013, we intend to review the state of preparations for the delivery of the referendum and make a public statement to inform the Scottish Parliament. We will use this as an opportunity to report on whether or not the two Governments have been able to agree a joint position on what would follow the referendum.

5.46 If they have been able to agree a joint position, we will consider whether that information is appropriate to include in a leaflet about the referendum that we would expect to send to all households in Scotland, as part of our public awareness campaign. We have undertaken successful public information campaigns previously at several elections, including for elections in Scotland and at the UK and Wales referendums in 2011.

5.47 The leaflet would also contain information about how to register to vote and how to vote. Our 'how to vote' information will include how to vote by post or in person, including how to complete the ballot paper; and polling station opening hours.

5.48 We will ensure that the content of our leaflet is subject to rigorous testing, including with potential voters. The leaflet will be part of our wider public awareness campaign, including television, press and radio advertising, all of which would also be subject to user testing.

## What happens next?

5.49 It is for the Scottish Government to formulate the referendum question that will be included in the Referendum (Scotland) Bill and ultimately for the Scottish Parliament to make the final decision. Our report will inform the Scottish Parliament's consideration of the Referendum (Scotland) Bill.

5.50 Our recommendations are based on the evidence now available and we hope that this is helpful when decisions are made. We are ready to provide further advice and assistance during consideration of the Bill by the Scottish Parliament.

## Appendix 1: Question proposed by the Scottish Government

BALLOT PAPER	
Vote (X) ONLY ONCE	
Do you agree that Scotland should be an independent country?	
YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

# Appendix 2: The Electoral Commission's approach to assessing the intelligibility of referendum questions

November 2009

The  
Electoral  
Commission

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## Our approach to assessing the intelligibility of referendum questions

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### Our responsibilities

A referendum gives the public the opportunity to vote on a proposal put forward by government.<sup>1</sup> If a referendum is going to take place, a piece of legislation is written containing the proposed question. The law requires us to publish our views on the intelligibility of proposed questions for UK-wide, national or regional referendums.<sup>2</sup> The UK Government must also consult us on the intelligibility of proposed questions for local referendums in England and Wales on the way local authorities are run.<sup>3</sup>

This statement sets out the approach we will take to assess the intelligibility of referendum questions, including the timetable for this work.

### Our aim and approach

Our aim is to look at a proposed question from the perspective of voters,<sup>4</sup> to see if it is written in a way that means they are likely to understand it. This includes whether or not they can understand how to answer it. It is important that voters can mark their ballot papers easily, and that they are confident that they

have voted the way they intended to. Governments may make important decisions based on the outcome of a referendum, and so that outcome needs to be an accurate reflection of what voters want. This means that the question should present the options to voters clearly, simply and neutrally.

We have produced some referendum question guidelines that set out the criteria we will use to assess how intelligible a question is (see our referendum question guidelines).<sup>5</sup> As well as looking at the question ourselves, we will gather evidence to help us with our assessment. This will include:

- carrying out research with the public (see next section for more details)
- asking for advice from experts on accessibility and plain language
- talking to other people, for example political parties and campaign groups associated with the referendum, and other key groups or individuals who have an interest in the referendum and its outcome

We will publish the research reports and a summary of the other evidence we have gathered and used in our assessment.

### Research with the public

Because we want to look at whether or not voters can understand a proposed referendum question, we would need to get evidence of this from voters themselves. The best way for us to get this evidence is by carrying out research to see how people react to and understand the question, and we would want to do this for any referendum question we are asked to assess.

The research would usually be done through focus groups and one-to-one interviews. This type of research will help us to find out people's understanding of a proposed referendum question, their attitudes towards it, and the reasons why they think or feel the way they do about it. It also helps to explain why people may find a question easy or difficult to understand, and to

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explore how the question could be made more intelligible. The research would focus on the question itself and how it is written, rather than on how people would vote.

We would include a wide range of people in the research, so that we can get the views of people with different backgrounds (e.g. people of different ages, gender, and levels of education), or people who live in different places.

### Timetable

We should be able to publish our views on the intelligibility of a proposed referendum question around 10 weeks after finding out what the question is. This includes eight weeks to carry out public opinion research, based on getting at least two weeks' notice of the date when we will be given the exact wording of the question. We will do as much advance preparation as we can for the research – which is the part of our evidence-gathering that will take the longest – so that we can make sure it is completed as quickly as possible.

- 1 This statement only covers referendums on proposals put forward by governments, although referendums can be held on other issues. By 'government' we mean the UK Government, the Scottish Government, the Welsh Assembly Government or the Northern Ireland Executive.
- 2 The requirement is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). Our responsibility relates to referendums held under the framework of PERA.
- 3 Under Section 45 (8A)–(8D) of the Local Government Act 2000, inserted by Schedule 21 of PERA.
- 4 By 'voters' we mean people who would be eligible to vote in that referendum.
- 5 We produced our original guidelines in 2002 and have recently reviewed and updated them. The guidelines are available at [www.electoralcommission.org.uk/elections/referendums](http://www.electoralcommission.org.uk/elections/referendums)

### Feedback

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We are an independent body that was set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well run elections. For more information see [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)

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# Appendix 3: The Electoral Commission's referendum question assessment guidelines

November 2009

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Commission

## Referendum question assessment guidelines

By law, the Electoral Commission must comment on the intelligibility of UK, national and regional referendum questions, and some local government referendum questions.<sup>1</sup> In this context, we mean referendums where voters are asked to vote on a proposal put forward by government. At this type of referendum, voters are given a ballot paper that contains the question and at least two possible responses to choose from.<sup>2</sup>

We have developed these guidelines to:

- help us assess how intelligible a proposed question is
- help people draft intelligible referendum questions

In this context, 'question' includes the question, the responses, and any statement that comes immediately before the question.

### Guidelines for assessing referendum questions

A referendum question should present the options clearly, simply and neutrally. So it should:

- be easy to understand
- be to the point

### Putting voters first

- be unambiguous
- avoid encouraging voters to consider one response more favourably than another
- avoid misleading voters

### Checklist

We will use the following checklist to help us assess how intelligible a question is.

- Is the question written in plain language? That is, language that:
  - uses short sentences (around 15–20 words)
  - is simple, direct, and concise
  - uses familiar words, and avoids jargon or technical terms that would not be easily understood by most people
- Is the question written in neutral language, avoiding words that suggest a judgement or opinion, either explicitly or implicitly?
- Is the information contained in the question factual, describing the question and the options clearly and accurately?
- Does the question avoid assuming anything about voters' views?

<sup>1</sup> Under the Political Parties, Elections and Referendums Act 2000.

<sup>2</sup> How many responses voters can vote for depends on the voting system used at that referendum.

### Feedback

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## Appendix 4: People who responded

People who responded after we sought their views are listed below.

We also received views and comments from individual people and organisations who contacted us, having seen from our website or otherwise heard that we were undertaking the question assessment.

In total, we received 457 responses, which are referred to where relevant in this report. We much appreciate the time taken by individuals and organisations in giving their views to us.

<b>Name</b>	<b>Organisation</b>
Susanne Cameron-Nielson	Age Scotland
William Pollock	Association of Electoral Administrators
Blair McDougall	Better Together
Dana O'Dwyer	Capability Scotland
Colin Lee	CEMVO Council of Ethnic Minority Voluntary Sector Organisations (Scotland)
Matt Qvortrup	Cranfield University
Cathy Magee	Dyslexia Scotland
Lord Sutherland	House of Lords
Anne Connor	Outside the Box
Dr Donald Boyd	Scottish Christian Party "Proclaiming Christ's Lordship"
Ruth Davidson MSP	Scottish Conservative Party
Lillian Lawson	Scottish Council on Deafness
Brian Roy	Scottish Labour Party
Willie Rennie MSP	Scottish Liberal Democrats
Peter Murrell	Scottish National Party
Angus Robertson MP	Scottish National Party
Stephen McCabe MP	Labour Party
Dr Nicola McEwen	University of Edinburgh
Professor Stephen Tierney	University of Edinburgh
Professor Adam Tomkins	University of Glasgow
Blair Jenkins	Yes Scotland
Dr James Gilmour	
Jack Hamilton	

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For council elections in Scotland we undertake a number of roles relating to the administration of the elections for which we report directly to the Scottish Parliament. We report directly to the Scottish Parliament for our roles in the independence referendum.

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