

## ***Response from Nigel Smith to the Electoral Commission on the proposed wording of the question to be used in the 2014 Independence referendum***

### ***“DO YOU AGREE THAT SCOTLAND SHOULD BE AN INDEPENDENT COUNTRY?”***

#### **The question fails to capture the issue at stake.**

In some referendums, two issues have been combined into one question with the deliberate intention that the more popular issue will carry the less popular one. ( The referendum General De Gaulle held in France in 1969 is one example ). The ploy is outlawed in more developed referendum democracies by single subject rules. In the above form, the Scottish Government has unwittingly arrived at a variation of the practice where only half the issue is present in the question. The other less popular half is omitted.

And the other half is pretty important. By not mentioning that becoming independent means leaving the UK, the wording fails to capture the essential unavoidable consequence of a positive vote. It is a fundamental weakness of the question that could easily be rectified.

The Scottish Government is probably attracted to this wording as a simple statement of its aim carrying the same bold ring as the acclaimed opening statement of the Scotland Act – *There shall be a Scottish Parliament* – (though used in a different context). So the wording is not meaningless or deliberately misleading but it is vaguer and more abstract when shorn of its other half. The wording is certainly less intelligible than it could be. Why should voters have to decode the question by adding its other half?

In referendums elsewhere, the issue is sometimes more fully captured in a preamble on the ballot paper, in others by a short title mailed to voters beforehand and included on the ballot paper. Neither option is being offered here.

There is another important aspect. Prior to voting day, the ballot paper has a huge information role. Besides the publicity the Commission will give it, the question will be reproduced in millions of leaflets from both campaigns and used as a graphic in most newspapers and television broadcasts for several weeks before the vote. It will be nearly impossible to avoid the wording. It is therefore an important element of the information flowing to the voter yet this question will squander the opportunity to make clear the complete proposition. The Electoral Commission will spend public money knowing the wording to be of limited value.

#### **A rousing contest mitigates the weakness of the question**

The Scottish Government is broadly right to say that by polling day everyone will know what the issue at stake is. Experience elsewhere shows that provided the referendum is well contested decoding the question will become less of an issue as the campaign progresses. Scottish voters will prove no less adept in making sense of a half issue question.

But it is only broadly true. We know from research after other referendums that not every voter gets it right on the day. And I am chastened by experience of 1997 devolution referendum when late in the campaign I met voters who were still confused by the question indeed once having to correct a BBC presenter *on air* who thought the Scottish Parliament on the ballot paper was independent not devolved. Peter Hain recounts identical misunderstandings in the Welsh Assembly referendum held

the following week. The wording of the question should put the matter beyond doubt. In its present form, it doesn't.

Nor should the interpretation of the question depend on the vigour of the campaign, the flow of information or the skill of the voter when it can be easily avoided. As much of the bias, lack of clarity and potential misunderstanding should be removed before the campaign starts by the Electoral Commission and the Scottish Government taking a second look at the question.

I wish the Commission to test how well this question captures the issue for the voter specifically that 'independent' means leaving the UK.

In addition, I make the following comments on specific elements of the question.

- **I agree is suggestive**  
The desire to please is a strong human characteristic so being asked to agree is easier than disagreeing.
- **Be or Become**  
Become says - *change - development - transformation* which seems a more accurate description of the consequences of a YES vote. Be - is a continuous state
- **Independent country or Independent state?**  
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 are 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.
- **Independent of what?**  
Children become independent of their parents, politicians independent of their parties but Scotland is to be independent in the abstract. The sentence begs completion and as I have already pointed out failing to mention leaving the UK is to fail to capture the principal feature of the change to be decided in the referendum.

### **Relevant examples from other referendums**

The argument over the question used in the 1975 British referendum was over the verbs '*stay in or leave*'. Nobody proposed omitting the 'European Community' from the question indeed to avoid doubt added (The Common market) to arrive at the following question.

*Do you think the United Kingdom should stay in the European Community (The Common Market)?*

It is equally difficult to believe a future British referendum on Europe will not mention either withdrawal or staying in the European Union. It certainly won't baldly ask that '*the UK becomes an independent country*'.

**Submitted by Nigel Smith 29/11/2012**