

TWO REFERENDUMS REQUIRED FOR SCOTTISH INDEPENDENCE SAYS THE CONSTITUTION UNIT

A single referendum initiated by the SNP government and authorised by the Scottish Parliament could not achieve independence for Scotland. The terms of any independence deal negotiated with the UK government would require a second referendum authorised by Westminster, says the Constitution Unit. A first referendum could only be held on the principle of independence, and authorise the SNP government to enter into negotiation with the UK government about the details.

The Constitution Unit is responding to the apparent U turn on a referendum by Wendy Alexander leader of Scottish Labour, after her call on Alex Salmond's SNP minority government to "bring it on."

"We have long argued that Scottish independence requires two referendums, for reasons of law and practical politics" said Constitution Unit director Prof Robert Hazell. "Under the Scotland Act only Westminster can authorise a referendum that would grant Scotland independence. I would be surprised if Gordon Brown has also done a U turn and wants Westminster to hold such a referendum any time soon".

"But there are also reasons of principle why there should be two referendums. People in Scotland might support independence in principle, but think again when confronted with the terms of independence. The terms will include not just issues like North Sea oil, but division of the national debt, ending all financial transfers from the UK government, and Scotland's continued membership of the EU. The Scots are entitled to know the detailed terms of independence before making such a big decision".

The Constitution Unit addressed the referendum issue (among others) in Jo Murkens' book *Scottish Independence – A Practical Guide* (Edinburgh University Press, 2002) and made two observations. ***First, the referendum question would need to be carefully worded to be about commencing negotiations rather than about independence itself, in order to stay within the confines of the powers of the Scottish Executive and Scottish Parliament defined in the Scotland Act 1998. The question would be on the principle (rather than the details) of independence. Secondly, the terms and conditions of Scottish independence (including that Scotland would separate from the United Kingdom) would be the subject-matter of a second referendum.***

Jo Murkens (now law lecturer at the LSE) added: "Wendy Alexander's rallying call to 'bring it on' may be of political significance in Scotland. But in constitutional terms it is little more than an acknowledgment that the Scottish Executive (having obtained legislative authority from the Scottish Parliament) has the power to hold a consultative referendum on negotiations with Westminster. That acknowledgement in no way anticipates the eventual outcome of the negotiation process."

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