

NATIONAL ASSEMBLY

SUNDAY 24TH JANUARY 2021

THE ROAD TO A REFERENDUM THAT IS BEYOND LEGAL CHALLENGE

The SNP Scottish Government's plan.

- 1 The Scottish Parliament has already passed two bills that lay the groundwork for a referendum on independence. The first was the Referendums (Scotland) Bill which became law on the 29th of January 2020. The Scottish Elections (Franchise & Representation) Bill was then passed in February and gained Royal Assent on the 1st of April.
2. These two bills set out the general rules for any referendum and the franchise that would apply to all referendums held in Scotland.
3. This approach, which is different from that taken in 2013/4, requires details of any particular referendum - question, timescale and some specific regulations - to be passed by the Parliament and accordingly only a further short bill is required to complete the legislative preparations for a second independence referendum.
4. Work on that bill and on other independence related tasks was suspended on 16th March 2020 as a result of the need to deploy as many civil servants as possible to work on Scotland's response to the pandemic.
5. The SNP Scottish Government announced in the Programme for Government in September 2020 that a draft bill for an independence referendum, to give people in Scotland the right to choose their own future, would be published before the Holyrood election in May 2021 and would be enacted if an SNP Scottish Government is re-elected with a majority to do so (either as a result of gaining an overall majority or if it had such a majority as a result of support from another pro-independence party).
6. The draft bill will be published as planned and the SNP Scottish Government will include the promise to enact the bill in its manifesto.
7. The SNP Scottish Government continues to maintain that a referendum must be beyond legal challenge to ensure legitimacy and acceptance at home and abroad. This is the surest way by far of becoming an independent country. It should be held after the pandemic, at a time to be decided by the democratically elected Scottish Parliament. The SNP believes that should be in the early part of the new term.
8. If the SNP takes office the Scottish Government will again request a Section 30 order from the UK Government believing and publicly contending that in such circumstances there could be no moral or democratic justification for denying that request. If the UK Government were to adopt such a position its position would be unsustainable both at home and abroad.
9. However, in the election, the SNP's proposition, for which we will be seeking the express authority of the Scottish people, will be clear and unambiguous - if there is a parliamentary majority so to do, we

will introduce and pass a Bill so that the necessary arrangements for the referendum can be made and implemented thereafter once the pandemic is over.

10. In these circumstances, in which there has been an unambiguously expressed democratic decision by the people of Scotland and their Parliament to have a legal referendum the choice of the U.K. government will be clear; to either (1) agree that the Scottish Parliament already has the power to legislate for a referendum or (2) in line with precedent, agree the section 30 order to put that question beyond any doubt; or (3) take legal action to dispute the legal basis of the referendum and seek to block the will of the Scottish people in the courts. Such a legal challenge would be vigorously opposed by an SNP Scottish Government.

11. The issue of whether there should be such a referendum is different from the issue of whether Scotland should be independent. A national campaign of information and education on independence, hopefully within the context of a renewed and widely based “**YES**” campaign, will take place in parallel with the work being done to organise the referendum during and after the bill’s passage.

Michael Russell MSP