



New Ireland Commission

COMMENTARY – SDLP SUBMISSION TO UNIVERSITY COLLEGE LONDON, CONSTITUTION UNIT CONSULTATION ON THE CONDUCT OF REFERENDUMS IN IRELAND NOVEMBER 2020

In its publications the Constitution Unit of University College London talks of “timely, rigorous, independent research into constitutional change and reform of our political institutions. The Unit has a substantial pedigree and output. In 2020 the Unit established a “Working Group on Unification Referendums on the Island of Ireland” exploring “how any future referendum on Northern Ireland constitutional status would best be designed and conducted.”

In the summer of 2020 the Unit conducted an open consultation around a series of key issues in order to inform its thinking. An interim report was issued by the Unit in November 2020 and a full report is due in 2021. The SDLP fully considered the issues identified in the consultation and related matters and replied with a lengthy submission. That submission is published here for the 1st time.

TWO PARTS

The SDLP submission has 2 parts – first consideration of “context and background” and second consideration of the questions and related issues posed by the consultation. Since the submission was drafted the thinking of the SDLP has evolved and in this regard the party shall be publishing further papers in due course. In addition the wider context is constantly changing and deepening in complexity and challenge. The SDLP submission to the UCL consultation should be considered through this prism.

PART ONE

The first part of the SDLP submission comments on the current context and general themes that need to be acknowledged and addressed “if the next phase of our history is to be navigated with success and stability. This is not a time for slogans.” Rather more hopefully and accurately the submission agrees that this “is a time between the times.”

A number of themes and comments should be highlighted from the submission including:

- **CIRCUMSTANCES** a series of internal and external circumstances have created an emerging context where people are raising more questions about the future of our two islands, Ireland and Britain. We have witnessed such complexity in context and issues in our history over the last 50 years. Then people stepped forward, addressed the complexity of context and issues, worked relentlessly for agreement and an end to violence. The qualities then are called for now.
- **PURPOSE AND PROCESS** Those who reduce these times to the comfort of slogans and the race to a border poll ill-serve the future. Conversely those who see more clearly must demonstrate their authority and conviction and apply themselves with timely purpose and strong process requiring great political, administrative and logistical skill, application and resources.
- **MULTIPLE LEVELS OF DIALOGUE** The forging of agreement and the ending of violence was formed through multiple levels of dialogue – public, private and secret; at party, government, faith, community, civic and individual levels and more. We should not squander this learning rather we should studiously apply it. So the SDLP ask of ourselves and of others, particularly in unionism and loyalism, to join in a renewed process of dialogue between us and consideration of the issues that affect us.

- **KEY PRECEPTS** The SDLP argue that respect and reassurance should go further so that “neither the fact of a referendum or either result would undermine or overturn key precepts of the Agreement including the affirmations in paragraphs 1 (v) and (vi) under “Constitutional Issues.” The SDLP consider this important to encouraging a respectful conversation and encouraging open-minds.
- **A SHARED ISLAND** The SDLP welcomes for the formation of the “Shared Island Unit” as part of the Office of the Taoiseach, Government of Ireland. In the negotiations for the formation of the current Irish Government the SDLP Leader submitted a paper detailing proposals about how a future unit would address its responsibilities in particular and North-South and East-West in general. (A updated version is under preparation and shall be published upon completion.)
- **ARTICLE 3** When the Good Friday Agreement was endorsed by the people of the Republic of Ireland in 1998 it was accompanied with significant changes to Bunreacht na hEireann. The new article 3 of the Irish Constitution, inter alia, states:“It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.” Noting the new articles 2 and 3 endorsed in 1998 it is timely to give expression to their content and intention. The SDLP believe that the work of the Shared Island Unit and other interventions can help give definition to this work.
- **A CONSENT REFERENDUM** The SDLP is affirmed that “there is a special place in hell reserved for those who call for a referendum on Irish Unity without a plan.” A casual review of the issues and challenges confirms this. Those who fast-forward to a border poll without a genuine, respectful dialogue with others, without the rigour that the issues demand, without reaching again and again for agreement, put in jeopardy the opportunities of and create risks in “this between times.”
- **LONDON** The process of British-Irish politics in the years preceding 1998 created a new paradigm with an agreed London-Dublin approach then pivotal to political agreement and the ending of violence. There is now strong evidence that the current London administration in Downing Street lacks insight into or commitment to this paradigm. There are people in leadership that dissent from this model of British-Irish stewardship and are “Agreement sceptics.” When it comes to the constitutional future of N. Ireland there is a requirement for “no external impediment” in the exercise of a decision. The SDLP consider it is vital that voices are raised to name this issue and to affirm processes that have been proven to work best and have helped to create confidence.
- **SCOTLAND** An Irish unity referendum is, unlike any future vote on Scottish independence and the nature of the UK’s relationship with the EU, permanently provided for in the UK statute book. It is vital that actors in the UK state recognise that their obligations in relation to votes on the island of Ireland are fundamentally different to other constitutional questions. While UK Governments might declare that they will “never be neutral” on the union with NI – i.e. they are entitled to express a ‘unionist’ preference for the status-quo – they have broader obligations in relation to the GFA/BA and the NI Act which require them to act beyond protecting their own constitutional preferences.
- **MAKING THE NORTH WORK** whatever current and future questions, the SDLP is committed to “Making the North Work.” Colum Eastwood has said: “Nationalism on this island must not be seduced or misled into the narrative that Stormont is a convenience but not a necessity. There is no hope of reconciliation and no hope of delivering integrated economic and social progress across this island and no way of fully protecting our people against the devastating consequences of Brexit without an Assembly in Stormont.” The SDLP believe that “our aspiration to share political union with the rest of the island is now inextricably linked with our ability to build a shared and successful social and economic framework in the North.

• **SAFE AND FAIR** The SDLP share the concerns about the conduct of safe and fair referendums particularly with the Brexit experience, “foreign impediment” and the need to regulate online campaigning. The SDLP submits that the British and Irish Governments take forward advice from a range of authorities on how in statute, policy and resources these issues can be remedied.

PART TWO

Part Two of the SDLP submission responds to the questions and related matters raised through the UCL consultation. These were technical, demanding and in their own ways political questions and considerable time was taken in drafting comprehensive answers and details. It ill-serves the importance of these matters for a precis to be now produced. The SDLP therefore records here the questions and for answers refers to the full submission attached.

- 1. How would any referendum process be triggered?**
- 2. What issues would need to be addressed in the processes leading up to and following any referendum?**
- 3. How would referendums North and South be structured?**
- 4. What processes of discussion should surround any referendum(s), including before a referendum is called and before and after any referendum is held?**
- 5. Design features of the votes themselves**

PRIVATE and CONFIDENTIAL – SDLP UCL Consultation Response

PART ONE – CONTEXT AND BACKGROUND

The SDLP welcomes the consultation by the Constitution Unit of UCL further to the mandate of Working Group on Unification Referendums on the Island of Ireland. The SDLP believes that the output of the working group and a number of ongoing studies and initiatives can help scope and sharpen thinking on multiple issues relevant to the future of Northern Ireland, and the whole island of Ireland, including “how any future referendum on the constitutional status of Northern Ireland....would best be designed and conducted.”

Before responding to questions and issues raised in the consultation the SDLP wishes to make a number of observations on the current context and general themes. The SDLP submits that the context needs to be acknowledged and themes by addressed governments, parties and people if the next phase of our history is to be navigated with success and stability. This is not a time for slogans.

“A TIME BETWEEN TIMES”

The Church of Ireland Archbishop of Armagh and Primate of All Ireland, John McDowell, has recently observed that “Ireland is in a time between times.” The SDLP concurs. It is self-evident that a series of internal and external circumstances have created an emerging context where people are raising more questions about the future of our two islands, Ireland and Britain.

The many dimensions to this emerging context in Ireland and Britain include but are not limited to the evolution in the character of the Irish state and in Bunreacht na hEireann; the experience of devolution in the 3 regions and the particular challenges and disappointments faced in Northern Ireland; the dynamics within the constituent parts of Britain notably in parts of England and the campaign for a 2nd Scottish Independence Referendum; the fresh perspective and experience that new generations bring; the economic well-being of citizens across these island now and looking ahead and, of course, Brexit with its impacts in every area of every part of these islands. An immensely difficult, complex context.

A PATHWAY

Borrowing from our recent history, the SDLP submits that there is a pathway through these times. First the complexity of wider context is mirrored in the complexity of issues - political, social, cultural, economic and more. We have witnessed such complexity in context and issues in our history over the last 50 years. Then people stepped forward, addressed the complexity of context and issues, saw clearly and worked relentlessly for agreement and an end to violence. The qualities then are called for now.

Those who reduce these times to the comfort of slogans and the race to a border poll ill-serve the future. Conversely those who see more clearly must demonstrate their authority and conviction and apply themselves with timely purpose and strong process requiring great political, administrative and logistical skill, application and resources.

Second the forging of agreement and the ending of violence was formed through multiple levels of dialogue – public, private and secret; at party, government, faith, community, civic and individual levels and more. We should not squander this learning rather we should studiously apply it. There is an urgent obligation particularly on those in leadership roles to embrace and write the next chapters in the story of all our people. These themes inform this commentary. Opting out is not an option.

ASK OF ALL

So the SDLP ask of ourselves and ask of others, particularly in unionism and loyalism, to join in a renewed process of dialogue between us and consideration of the issues that affect us knowing that

“it will take real leadership to begin to bring our two communities together.”

In the dialogue that the SDLP is undertaking and which is detailed below, the balance of views though not universal is that political unionism will not engage in a process of dialogue as to do so would legitimise the talk of a United Ireland and that in any case the “facts of life” lean heavily with the Union. The SDLP is told dialogue, if at all, would follow a unity vote though as noted below a “tentative civic space between pro-Union and pro-Unity is developing.”

It is vital that processes of dialogue and assessment of issues is as inclusive as possible as early as possible. We ask of all to make that commitment.

RESPECT and REASSURANCE

In the next phases of our politics it should be acknowledged that the showing of respect and the giving of reassurance is not one dimensional. Each citizen and each community require both. The SDLP fully accept that those of the unionist tradition must be provided with both. On that there can be no compromise.

On respect and reassurance there must be parity. Those of the nationalist tradition also must be provided with both. This should be the basis on which all including governments conduct themselves. As detailed later in this submission the SDLP argues that respect and reassurance should go further so that “neither the fact of a referendum or either result would undermine or overturn key precepts of the Agreement including the affirmations in paragraphs 1 (v) and (vi) under “Constitutional Issues”.” The SDLP consider this important to encouraging a respectful conversation and encouraging open-minds.

It should also be noted there is evidence and research demonstrating the presence of a cohort in Northern Ireland which does not identify primarily as either unionist or nationalist though they may well have a distinct national identity and even a constitutional preference.. Their voice, and legitimate perspective, needs to be reflected in these debates.

NEW IRELAND COMMISSION

In recognition of the context and the complexity and to craft a pathway into the future the SDLP Leader Colum Eastwood has established a “New Ireland Commission.” It has two pillars. First through “multiple levels of dialogue” (conducted locally, regionally and nationally) to develop and deepen respectful relations, listen and understand the full diversity of views, to help best shape “this time between times.”

Second to address the range of issues and to guide our work, the creation of three panels. “A New Generation Panel” to hear and capture the views of our children, youth and younger adults. Second “An Experts Panel” to interrogate the political, economic, social and cultural issues that are faced, to identify answers and remedies. Third “A Reference/Elders Panel” to gather people of authority from different backgrounds, identities and opinion including and importantly beyond the SDLP organisation to inform the work and direction of the Commission.

The SDLP believes that “a New Ireland can only be reached if definition and detail is provided.” That is a major element in the work of the SDLP Commission.

SHARED ISLAND UNIT

The SDLP repeats its welcome for the formation of the “Shared Island Unit” as part of the Office of the Taoiseach, Government of Ireland. In the negotiations for the formation of the current Irish Government the SDLP Leader submitted a paper detailing proposals about how the Unit would

address its responsibilities in particular and North-South and East-West in general.

The work of the Unit should be progressed with due diligence, timeliness, with comprehensive work programmes, purpose and at all times respect. The Shared Island Unit has a substantial contribution to make in this “time between times.”

Moreover, when the Good Friday Agreement was endorsed by the people of the Republic of Ireland in 1998 it was accompanied with significant changes to Bunreacht na hEireann. The new article 3 of the Irish Constitution, inter alia, states:

“It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.”

Noting the new articles 2 and 3 endorsed in 1998 it is now a time to give expression to their content and intention. The SDLP believe that the work of the Shared Island Unit can help give definition to this work. Further, as noted below, with the highly questionable approach of the London Government on a range of issues that impact on N. Ireland and Ireland and the risk of a partisan approach on the Union and Unity, the responsibility on Dublin, already great, is made greater again.

A BORDER POLL

In the preparation of this submission for example and in conducting its programme of multiple levels of dialogue, the SDLP is affirmed that “there is a special place in hell reserved for those who call for a referendum on Irish Unity without a plan.” A casual review of the issues and challenges confirms this. A rigorous review much more so.

Those who fast-forward to a border poll without a genuine, respectful dialogue with others, without the rigour that the issues demands, without reaching again and again for agreement, put in jeopardy the opportunities of and create risks in “this between times.” It appears that some are only interested in a numbers game and in demoralisation of the other to achieve an objective. This was the false politics of more than one interest in the past. It should remain in the past.

LONDON

The process of British-Irish politics in the years preceding 1998 created a new paradigm with an agreed London-Dublin approach then pivotal to political agreement and the ending of violence. Its strength was again evident in the work of Simon Coveney and Julian Smith to bring about restoration of NI devolution in January 2020.

There is now strong evidence that the current London administration in Downing Street lacks insight into or commitment to this paradigm. There are people in leadership that dissent from this model of British-Irish stewardship, are “Agreement sceptics” and promote Cabinet Office “Union Units” with significant staffing. Approaches to Brexit profoundly corroborated concerns as did understandings with the DUP. The NIO 18th March statement went on legacy went deeper again abandoning a multi-lateral approach to the past and renege on British-Irish Treaty obligations.

There is a danger that London may go on further solo-runs. Some in unionism urge London to call the bluff on a border poll, do it early before the “facts of life” have been rigorously interrogated and then park unity for a generation. Some may even think do Ireland first to go to derail Scotland later. When it comes to the constitutional future of N. Ireland as is detailed later in this submission there is a requirement for “no external impediment” in the exercise of a decision. It is entirely feasible that, as legacy has recently demonstrated, this too could be abandoned by London around a border poll with

others left to pick up the pieces.

The SDLP consider it is vital that voices are raised to name this issue and to affirm processes that have been proven to work best and have helped to create confidence.

SCOTLAND

An Irish unity referendum is, unlike any future vote on Scottish independence and the nature of the UK's relationship with the EU, permanently provided for in the UK statute book. This is a reflection of the fundamentally different category of question that this is: unlike Scottish independence or indeed relations with the EU, the UK is bound to honour the right to a referendum, and to uphold certain obligations even after a vote for a sovereign united Ireland.

While it is right that lessons are learned from the Scottish and EU referenda when considering the mechanics for votes on the island of Ireland, and it is inevitable that the political debates will be linked – as they already are – it is vital that actors in the UK state, from the Prime Minister down, recognise that their obligations in relation to votes on the island of Ireland are fundamentally different to other constitutional questions.

From this follows the clear precept that while UK Governments might declare that they will “never be neutral” on the union with NI – i.e. they are entitled to express a ‘unionist’ preference for the status-quo – they have broader obligations in relation to the GFA/BA and the NI Act which require them to act beyond protecting their own constitutional preferences.

It is therefore important that a referendum on the constitutional future of Scotland is assessed in the context and on the criteria relevant to Scotland and likewise and separately in the context and on the criteria relevant for the island of Ireland.

“MAKING THE NORTH WORK”

Whatever current and future questions, the SDLP is committed to “Making the North Work.” As the SDLP Leader, Colum Eastwood, has said: “Nationalism on this island must not be seduced or misled into the narrative that Stormont is a convenience but not a necessity. There is no hope of reconciliation and no hope of delivering integrated economic and social progress across this island and no way of fully protecting our people against the devastating consequences of Brexit without an Assembly in Stormont.”

We measure ourselves on how we deliver on the needs of all the people of N.Ireland. The SDLP believe that “our aspiration to share political union with the rest of the island is now inextricably linked with our ability to build a shared and successful social and economic framework in the North. That should be the responsibility of all in leadership and all should measure up.

REFERENDUMS

The SDLP share the concerns about the conduct of safe and fair referendums particularly with the Brexit experience, “foreign interference” and the need to regulate online campaigning. The SDLP submits that the British and Irish Governments take forward advice from a range of authorities on how in statute, policy and resources these issues can be remedied. The SDLP further believe that the Electoral Commission should be tasked or task itself to make ready whether or not a referendum in any jurisdiction is called and to address the experience and the fault-lines of the Brexit referendum including within its own mandate.

PART TWO

In response to the questions and related matters raised through the consultation the SDLP submits as follows.

1. How would any referendum process be triggered?

THE EXERCISE OF THE STATUTORY DUTY: It is important that the duty on the Secretary of State to call a referendum if it “appears likely to him that a majority...would...wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland is understood clearly and interpreted properly.”

Like the Constitution Unit, the SDLP recognise that the terms specified for the Secretary of State duty are not the only circumstances in which such a referendum could be held. That duty should be read as a part of the wider terms of the Good Friday Agreement around the principle of consent and the two different but equally legitimate preferences for Northern Ireland’s status to either remain as part of the UK or to form part of a united Ireland. The SDLP read the terms of that duty as an one application of the “without external impediment” language of the Agreement meaning that a Secretary of State could not refuse a referendum in such circumstances on the grounds of their personal or party preferences or other British Government priorities.

EVIDENCE: The fact of the duty as expressed invites questions about relevant yardsticks or thresholds. Opinion polling – noting that the quality and reliability of infrequent NI opinion polls suggest that they are not the truest guide to public opinion - and actual election results will be canvassed as relevant indicators. Similarly some may try to extrapolate from census results to project a demographic shift in the balance of democratic preference for a united Ireland. It could be argued valid for a Secretary of State to interpret electoral outcomes, significant survey evidence, census and other qualitative research as grounds for triggering the legal requirement to direct the holding of a poll.

EVERY POLL (NOT) A BORDER POLL: this scenario highlights why we need to remember that there is merit in framing other circumstances for a referendum than relying on manifesting a tipping point for the Secretary of State’s obligation. It would in particular not be healthy for the quality and scope of democratic politics if multi-party elections which need to be addressing climate action, post-Brexit challenges, post-Covid renewal, balanced regional economic wellbeing, modernising the fabric of public services and fostering reconciliation are merely reduced to being primaries or pseudo-tests for a referendum.

Part of the motivating rationale for the Agreement’s shared institutions alongside the consent precept on constitutional status was to emancipate more holistic democratic debate on social, economic, environmental and cultural prospects rather than all elections being reduced to proxy-polls on preferred constitutional status.

BREXIT: There also needs to be respect for the reality that the fact and manner of Brexit imposed against the wishes of people here has given added currency to debate on the optimal constitutional status for this region. This debate has tributaries beyond predictable party sources and is already engaging sectoral appraisal where interests and not just identities are being posited.

This point deserves further exploration. If the fact and manner of Brexit is encouraging more to consider where their best interests lie, then the medium and longer term economic and societal impacts may accelerate that thinking. So how economies and societies prosper (or suffer) as Brexit does its worst and as Covid endures should also be in the mix in future assessments.

DIALOGUE: There is moreover a tentative civic space where pro-Union and pro-Unity voices are both cognisant that the rights platform promised in the Agreement is not just unfulfilled but at risk of erosion post-Brexit and possible loss of ECHR/HRA. They may be addressing this rights deficit differently given their respective equally legitimate constitutional preferences but both show worthy efforts towards pre-assuring others on how they want to protect rights and respect diversity in their preferred dispensation.

GOVERNMENTS TOGETHER: This is, perhaps, a small quiet pointer to the possibility of healthy and respectful debate on the differing ambitions on the region's status. Both the British and Irish Governments should recognise that legitimate debate is afoot; each should be affirming the equal legitimacy of respective aspirations; neither should be disdainful of legitimate arguments towards having a referendum as posited in the Agreement; and both should be applying forethought to how the construct and conduct of such a referendum might be optimised in terms that protect all other promises of the Agreement from injury under the demands and dynamics around a referendum campaign or following its result.

As Part One of this submission noted The Irish Government have the right and responsibility to ensure that Article 3 of the Irish Constitution is curated with purpose, respect and diligent care. That work cannot await a British Secretary of State exercising the power to direct the holding of a poll. Commencing that work need not be seen as an attempt to predetermine such a move by a Secretary of State but to ensure that due preparation, forethought and fully respectful consideration is undertaken in the interests of all on the island, having regard to all rights pledged in the Agreement and the Constitution.

It should not be forgotten that David Trimble in 2002 called for a "border poll" to coincide with the Assembly election scheduled for May 2003. The possibility of such a tactical call being repeated in the future cannot be ruled out when current Unionist leaders have mused about being tempted to say "bring it on". In the context of pushes towards another Independence Referendum in Scotland, we should not rule out a tactical decision by this British Government to "bet on the Union" in Northern Ireland first. Responsible preparedness commissioned by the Irish Government, inviting shared understandings across and beyond parties, would be a sounder course than respectful unpreparedness.

The clear spirit of the GFA, and subsequent drafting of the NIA, argue against calling a quick Border Poll on the basis of UK Government's own narrow preferences, e.g. trying to 'nip in the bud' new Ireland debates or call the bluff of those arguing for unity. Nor, given the unique and free-standing nature of the UK's obligations in relation to NI, should it be permissible for UKG to call a fast border poll to shore up the union in the short term.

ROLE OF THE BIIGC: The SDLP submit that there should be consideration of the appointment of an independent advisory panel to advise the NIO on a basket of indicators for testing constitutional opinion, with appointment agreed by BIIG and advice given on a 'no prejudice' basis and once agreed, published on the NIO website. Moreover as with the Edinburgh Agreement on a referendum on independence for Scotland between the London and Scottish Governments, there should be a London/Dublin Agreement at the appropriate time on referendums in Ireland on Unity or Union in order to create certainty, honour the provisions of the Good Friday Agreement and to best shape processes and politics.

THE NEW GENERATIONS: as detailed later the SDLP believes the voting age for a future referendums should be reduced to 16 years. This particular measure serves to highlight the wider issue of the general participation of new generations in the work of shaping the future island. Inclusion in the discussion and input on referendum issues should be a further factor in decision-making.

The SDLP therefore submit that a suite of different measures is necessary to inform how a referendum process might be triggered which would be quantitative, qualitative, deliberative and inclusive in character. The SDLP strongly emphasises, given the approach of Downing Street on a range of issues noted above, that decision-making cannot be reduced to the unilateral action of a Secretary of State for NI.

2. What issues would need to be addressed in the processes leading up to and following any referendum?

(1) We have seen how divisive some referendums can turn out to be especially if they are on general propositions with widely different vistas being canvassed wildly by respective campaigns and other political actors. A “Project Fear versus Project Fantasy” campaign would be unedifying for the public and prone to discolour political discourse and engagement subsequently. It would be recklessly naive to spring a referendum where those on either side are free to make unsubstantiated claims, issue vague and variable promises or conjure consequential risks rather than ensure more reliable definition around the alternative options being voted on.

(2) Work towards framing a referendum on the North’s constitutional status must fully respect the weight of the mandate for the Good Friday Agreement under whose terms that referendum will take place. There needs to be deep assurance that neither the fact of a referendum or either result would undermine or overturn key precepts of the Agreement including the affirmations in paragraphs 1 (v) and (vi) under “Constitutional Issues”. Commitments of understanding by and between both governments would be signals for reassurance that people can vote for their truly preferred prejudice without risk to the standing of the Agreement or their rights promised therein.

(3) The spirit of those promises in paragraphs 1 (v) and (vi) are not just to endure beyond a change to constitutional status. These should also inform the construct and conduct of a referendum on that status. It should not take place as a “Yes/No” vote on one proposition which can simply be opposed negatively. Rather it should be choice between two equally legitimate aspirations as vouched by the Agreement. Respective campaigns should offer their proposition positively alongside any credible critique of the alternative which they validly might make.

(4) Making it clear that either outcome to a referendum under the Agreement will mean that the governance of Northern Ireland will still be rooted in that Agreement would obviate a possible sense of predicament that might worry those who voted for, or have since supported and valued, it - North and South. This would also help to ground understanding about the implementation process and principles following either result.

(5) As a party who want to secure a democratic choice for a united Ireland under the Good Friday Agreement, the SDLP are mindful that all of us who do so should approach such a referendum without presumption, prejudice or predicament. For ourselves and for all citizens, we will want confidence that there are understood pathways for proceeding on the basis of a vote for a united Ireland consistent with any terms and promises attached to that option in an official campaign. That will require detailed groundwork, across and beyond parties, to prepare a clear, positive and credible prospectus for unity that would sustain the previously agreed protections in the Agreement.

(6) On the basis that a referendum will be best conducted as a respectful debate on an equal choice between legitimate options presented positively, we also see the case for a prospectus that might be presented in support and clarification of the option to remain as part of the United Kingdom. It would be for those who champion that option to decide whether to address questions of future adherence to provisions of the Belfast Agreement given the dereliction on delivering a Bill of Rights, question marks over the ECHR/HRA and the impact and consequences of Brexit.

(7) Other experience shows that the public’s decision-making is not well-respected or assisted if the

choice offered is not between well-considered options whose implications have been duly deliberated, pertinent questions anticipated and relevant evidence marshalled. The sort and phrasing of processes to ensure such due deliberation and negotiation are addressed in other answers.

(8) These processes will need to address a range of significant policy issues which voters will want to weigh in terms of both short-term and long-term prospects or assurances. Those questions will range from personal finance to public finances and sustainability, public service models, social support, economic planning, environmental responsibility and the relevance of the EU to varying degrees to these and other issues. They will also need to properly consider all dimensions of citizenship, identity and allegiance in the full spirit of the Agreement's promise of respect, esteem, equality and rights. The SDLP also believe that they should scope what new balances and standing should be given to structures founded on the Agreement including those in Strand Three.

3. How would referendums North and South be structured?

(1) As with the dual referendum on the Agreement, and consistent with the Agreement's terms, voting will be concurrent. The GFA's description of 'self-determination on the basis of consent, freely and concurrently given, North and South' can only reasonably be interpreted to mean referendums on the same day, as per the 1998 vote. Synchronising campaign periods and rules of engagement and transparency will need dedicated thought to ensure due delineations and alignment given the special dimensions of this plebiscite and campaign(s).

(2) There has to be a common germane core to the two options for the North's future constitutional status which will both be on the ballot papers North and South. It may be that, as in the GFA referendum, the paper in the South could include amendments to the Constitution consistent with the terms or form of a united Ireland being offered and/or to facilitate the transition to these.

(3) There should be no ambiguity about this referendum being merely consultative to inform future planning and negotiations (which will still be necessary). It will be a decision-making vote if respective majorities North and South endorse a united Ireland or if a majority in the North endorse remaining part of the UK. Such a serious decision-making dual plebiscite will need to be based on well-defined propositions and publicly accessible and credible evidence to assist citizens' appraisal of them. These should be the credible product of careful deliberations, political negotiations, expert consideration and citizens' engagement.

(4) The importance of first ensuring prior sufficient consensus among parties and others favouring a united Ireland, or agreeing that the option might be put, should not be confused with expecting or requiring agreement by Unionists for this before a referendum might be held. That would be an impossible precondition and contrary to the Agreement's terms on the application of the principle of consent.

4. What processes of discussion should surround any referendum(s), including before a referendum is called and before and after any referendum is held?

(1) As indicated above, there will need to be serious deliberations and detailed negotiations to ensure that the referendum is presenting people with a choice between well-proofed options. The SDLP has previously called for the Forum for Peace and Reconciliation to be re-convened to enable parties to take forward shared understanding on how a united Ireland by consent might be shaped. When it met previously, the Forum was unable to produce a paper subscribing to unity by consent as Sinn Fein would not agree it then. Their position changed with the GFA.

(2) The SDLP have long commended the case for parties to be brought back together to explore how we envisage a united Ireland in light of the GFA and how we would sustain the Agreement's precepts and principles in a united Ireland. Such cross-party consideration may not have to bear the title of

either the New Ireland Forum or the Forum for Peace and Reconciliation or adhere only to their format. It should be shaped to achieve optimum participation with the honest purpose of articulating shared understanding of the form of united Ireland parties might commend for people's consent. This work to elaborate the import of Articles 2 and 3 of the Irish Constitution would also fully respect that an alternative legitimate choice would be put for consent as well which parties attending would also be free to address.

(3) Some parties may not take part in such a forum or structured channel or might only engage on limited or qualified terms. Any such non-participation would not invalidate the dialogue. To make all-party participation in such deliberations or all-party agreement in negotiations an actual precondition for preparedness for a referendum would grant an unequal veto on the responsible development of a legitimate aspiration.

(4) Whether parties who believe in Northern Ireland remaining in the UK participate in such a channel or not, it may be the case that they would see merit in a similar initiative to develop a prospectus to support that proposition. Such a development would not negate the value of the forum/channel above deliberating on the possible form of a united Ireland and issues that would be salient in seeking consent for this. Depending on its terms some parties might engage to variable degrees in both exercises on their own stated grounds just as they would be involved in other circles of debate and consultation.

(5) Maximising the aggregate of dialogue about both choices of constitutional status (and the promises attached to them) could yield clearer understanding of all of the issues, ideas and principals involved for everyone. This could enhance mutual understanding and help to condition the mood and temper of the actual referendum campaign, increasing the chances of it being rooted in well sounded propositions rather than idle or capricious promises and impulsive provocation.

(6) Further qualitative contributions to improving definition and understanding for the course of referendum campaigns can come from using citizens' assemblies to surface questions that will arise for voters, to appraise the ambitions and apprehensions people might hold in relation to the options in a referendum and inform the terms in which the prospectus for each proposition is drawn. The SDLP believe that a suite of civic, citizen and community engagement measures should be deployed, to gather insight, encourage collaboration and co-design. The approach should be inclusion max. reaching the full diversity of opinion and region on the island. The SDLP further believes that measures for the participation of non-resident Irish citizens in particular and people with Irish heritage or otherwise a commitment to the island and its people generally should be provided for.

(7) The questions and demands of each prospectus will touch on fundamental public policy priorities; the quality of public services and access to them; fiscal burdens and public finances; the strength and shape of the economy; challenges and opportunities across different sectors; infrastructure priorities and pressures; what governance changes might they see, when and will these affect individual rights or communal relations; a stronger platform for climate action; will structures and protections of GFA endure and how can they be adjusted in the context of a new constitutional status; what is the pathway beyond the referendum in terms of both change and stability. The SDLP would raise in particular the benefits or drawbacks of returning to all-Ireland membership of the EU on a new basis, an assessment of how the EU authorities would assist in this regard and the trading and other relationships with Britain.

(8) All these questions - and many more - will probably have been concentrating parties' minds already. Expert opinion will need to be commissioned to address such questions and identify others, evaluate all relevant challenges and opportunities and scope options and models that would be relevant and credible. Some of this expert engagement can be shared in the context of mixed formats of public discourse such as used in the All-Island Civic Dialogue on Brexit (which the SDLP first advocated).

(9) We would envisage structured cross-party dialogue commencing after Government(s) have advance due diligence advice on the logical, logistical and political step challenges in framing such a referendum; mapping out all the gateway choices that would have to be navigated or stopped at on the responsible, respectful journey to such a referendum. Form suggests that the current British Government is unlikely to commission such a diligent course appraisal. That should not preclude the Irish Government from giving a hardly premature lead in duly curating the significance of Article 3 of the Constitution as changed by the GFA 22 years ago. They can take this step without presumption, prejudice or predicament. Such diligent constitutional consideration would not be in tension with efforts to renew and develop the institutional capacity and purpose of the Agreement's Strands.

(10) The SDLP would raise a further concern. Brexit, for example has demonstrated how Westminster, particularly the House of Commons, can take a referendum result and pull in any number of directions. Noting the commitments under the Good Friday Agreement to legislate for unity if that is endorsed, it can be anticipated how there would be elements who would deploy all manner of parliamentary manoeuvres to derail, rework or slow down the necessary actions and legislation following a unity vote. In this regard provision and renewal of commitments could be entered into through a BIIGC Declaration as discussed above.

5. Design features of the votes themselves

(1) SDLP support lowering the voting age to 16 and would certainly press for this extension of the franchise for this referendum (as in the Scottish referendum). The franchise should also include all registered electors and certainly not exclude non-Irish EU citizens. Neither should EU or British citizens be excluded from voting in the South.

(2) As noted previously there are significant roles for an authority with the Electoral Commission's mandate but we do have doubts about its mission strength going back to the Brexit referendum.

We are also conscious that a Referendum Commission in the South (with a different mandate from the Electoral Commission) is not a standing body but appointed ad-hoc for a given referendum. A different approach should apply in the South for this referendum. There would need to be strong collaboration between the referendum and campaign overseers in both jurisdictions and ideally special purpose joint oversight.

(3) The questions hanging over from the Brexit referendum, including on campaign finance, source transparency and uses, and added concerns about external interference and other manipulations using social media should be addressed to protect the integrity of its conduct and outcome. The process and import of designating an official campaign while also allowing others on the field on a more ambiguous capacity might also need to be thought about in our context. The logic of having a clear prospectus for each option with interpretative value in relation to the outcome could necessitate change in the limits of the Electoral Commission role to include some of the role played by the Referendum Commission.

(4) The longer end of standard campaign periods could be sufficient if there has been a lot of advance dialogue (as suggested above) and the choice is between propositions accompanied by a clear prospectus. Questions about long and short campaigning rules will need to be considered with an eye to transparent finances, other resources and materials.

(5) A valid question arises as to whether active intervention by the British Government would strain or breach the "without external impediment" promise in the GFA. Indeed a further question in that vein attaches to the weight that might be reliably attached to the GFA commitment, in relation to a vote to form part of a united Ireland, that "the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between HMG in the UK and the Government of Ireland." Given the parliamentary machinations on Brexit terms and this British Government's form, there must

be some further doubt about the GFA affirmation that if “the people of the island of Ireland exercise their right of self-determination...to bring about a united Ireland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments to give effect to that wish;”

(6) There may be such issues stemming from the process of ordaining a given campaign. It would be our hope that the due deliberation and cooperation across and beyond party lines to develop the prospectus for each proposition could also serve to avoid the contention around campaign designation and named leadership that comes with a scrambled referendum.

(8) There are many such issues, some mentioned above, which will be complicated by the fact of two different jurisdictions with some different rules on electoral administration and campaigning.

The polling day rules in the South for a sterile zone around polling stations should be applied in the North and this should apply to flags as well as posters and personnel.

(9) The clear language of the GFA is “a majority of the people of Northern Ireland”. If there are two “equally legitimate political aspirations” and the Agreement guarantees equality of treatment, there should not be a higher threshold needed to endorse one aspiration than the other. Those who advocate unity by consent on GFA terms have accepted the possibility that a majority in the South may not see their democratic wish fulfilled. They should not be asked to accept that majorities North and South might be nullified.

There has been some argument that “parallel consent” should be needed for a united Ireland. This cannot be the threshold for one legitimate aspiration but not the other. Parallel consent is a sometimes applicable test in Assembly decisions based on counting MLA votes with reference to their registered designations. To truly extend those terms and conditions to the electorate would be pregnant with profoundly negative implications and a nightmare of complications.

