

STUDY GUIDE



House of Commons

12th Edition

**DARE TO
SPEAK**



Table of contents

1. Letter from the Speaker and Deputy Speaker
2. Introduction
 - a. The Westminster System
 - b. The two house system
 - c. Members of the parliament
 - i. House of Commons' composition for EAFITMUN
 - d. Speakers of the house
3. Special procedure
 - a. General debate
 - b. Adjournment debate
 - c. Emergency debates
 - d. Voting for motions
 - e. Voting on bills
 - f. Amendments
 - g. Motions
 - h. Stages of a bill
4. Scotland's right to independence and Scotland Act of 1998
 - a. Regulatory framework
 - b. Conceptual framework
5. General context
 - a. Background of the problematic
 - b. State of things
6. QARMAS (Questions All Resolution Must Answer)
7. References

1. Letter from the Speaker and Deputy Speaker

“Anybody who enjoys being in the House of Commons probably needs psychiatric help.”
(Ken Livingstone.)

Dear Members of Parliament,

It warms our hearts to welcome you to EAFITMUN’s 2022 House of Commons. A second referendum of Scotland has been a topic very debated since the 2014 referendum, however during this year the issue has reappeared in the political scene of British politics. Everyday the situation regarding a second referendum has a new update, that’s why this House requires its Members of Parliament to be deeply prepared beforehand.

We are Andrés León, Hispanic Philology student at Universidad de Antioquia and Linguistics and Phonoaudiology student at Universidad Nacional and Alejandro Ochoa, law student at EAFIT. During this committee we will be guiding you through the roles of Speaker and Deputy Speaker.

Following your decision to take part of this committee we have full confidence in the MP’s research, oratory, and diplomatic skills. It is known that the House of Commons is full of unique procedures and forms of debate, but this is what makes this committee so special for us, and we as your chair hope it will be special for you as well.

We understand the challenge it may be to take part in this committee. That’s why it’s important to let MPs know that the Speaker and Deputy Speaker are meant to help you before and during the parliamentary sessions. We will be more than happy to answer any inquiries the MPs may have.

Looking forward to meeting you,

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2. Introduction

The House of Commons (officially the Honourable the Commons of the United Kingdom and Northern Ireland) is one of the three elements from the Crown-in-parliament: House of Commons, House of Lords, and the Monarch. Being the lower house in the parliament, the House of Commons originates bills which are subsequently sent to the House of Lords for amendments and approval. After there are no amendments, the queen gives her approval (royal assent) and the bill becomes an act.

a. The Westminster System

The Westminster System (WS) is the government system ruling the United Kingdom and most of the Commonwealth of Nations' member states. It gets its name from the tradition of government at Westminster Palace, which is the British Parliament (Public Service Commission of NSW, 2013). Although the United Kingdom does not have a written constitution, the group of laws and traditions have developed the system and have set it as the structure of our government and political system.

The WS has the following characteristics in the United Kingdom

- A head of state. In the UK, until now, Her Majesty (HM) Queen Elizabeth II. As a constitutional monarch, HM the Queen holds limited political, but large ceremonial powers. In other countries with the WS the head of state might have the title of President, Governor-General, etc.
- A bicameral parliament (House of Lords and House of Commons)
- A Government formed with majority support in the Lower House. In the United Kingdom, the Prime Minister, leader of the government, is elected among MPs and whoever gets elected is the leader of the largest party/coalition in the House of Commons.
- A Ministry made up by MP sat the Prime Minister's invitation. In the United Kingdom, the Government and its Cabinet can be composed of other citizens from the House of Lords, the Public Service, the Armed Forces or even the Royal Family; the Cabinet exercises executive authority in the country on behalf of HM the Queen. The Ministry is accountable to Parliament-
- An independent Public Service in charge of the administration of the country, although it is headed by the government it serves no specific party.
- An independent judiciary that interprets and applies the law.

b. The two house system

The business of Parliament takes place in two Houses: the House of Commons and the House of Lords. Their work is similar: making laws (legislation), checking the work of the government (scrutiny), and debating current issues.

The House of Commons is also responsible for granting money to the government through approving bills that raise taxes. Generally, the decisions made in one House have to be approved by the other. In this way the two-chamber system acts as a check and balance for both Houses.

Members of the Commons (MPs) debate the big political issues of the day and proposals for new laws. It is one of the key places where government ministers, like the Prime Minister and the Chancellor, and the principal figures of the main political parties, work.

The main four functions of the House consist in (a) checking and challenging the work of the Government, (b) making and amending laws, (c) debating current affairs relevant to the country and (d) revising Government spending and funding (Parliament, 2018)

Through these functions, the House can have a close control of the Government. Nevertheless, regarding some affairs of national security, the Government is not obliged to inform or brief the House before. Making laws is a function shared with the Lords; since 1911, the upper house (Lords) lost its veto right over the Commons, and was restricted in its capacity to delay legislation. Nonetheless, while laws may originate in the Lords as well, since 1911 important laws are made by the Commons and are usually approved by the peers.

In this House of Commons we will focus on the second function of the house which consists of making and amending laws. A law is made by a bill and it has several steps that MP's will need to get through. The bills stages will be explained later, on special procedures.

A Bill is a proposal for a new law, or to change an existing law that is presented for debate before Parliament (Parliament, 2020). Bills are introduced in either the House of Commons or House of Lords for examination, discussion and amendment. When both Houses have agreed on the content of a Bill it is then presented to the reigning monarch for approval (known as Royal Assent). Once Royal Assent is given a Bill becomes an Act of Parliament.

The House of Commons can also change an Act of Parliament. Future changes to the law happen through the passing of another Act or delegated legislation. An Act can also be repealed so that its provisions no longer apply. Parliamentary committees examine UK laws and recommend the removal of out of date legislation.

c. Members of the parliament

Currently, the House of Commons has 650 members, representing the 650 constituencies (electoral districts) of the United Kingdom. Currently, most MP's are members of a political party , and since the 1920s, the two major political parties have been the Conservative Party and the Labour Party. After each general election HM the Queen invites the party with a majority of 326 in the Commons to form a government; if no party reaches that majority, multiple parties can form a coalition government or other parties can declare themselves in “confidence and supply” of another party and help them reach a majority. For this, after every general election, a new government is formed, no matter if it is from the same party or has the same person as Prime Minister.

As noted before, all bills presented in the House of Commons will eventually make it into the House of Lords with its necessary amendments. That's why MPs should be open to dialogue in order to find the fittest proposals despite their differences. The House of Commons' currentstate is as follows:

Party	Seats
Conservative	357
Labour	200
Scottish National Party (SNP)	44
Liberal Democrat	14
Independent	10
Democratic Unionist Party	8
Sin Féinn	7
Plaid Cymru	3

Party	Seats
Alba Party	2
Social Democratic and Labour Party	2
Alliance Party	1
Green Party	1
Speaker	1

<https://members.parliament.uk/parties/Commons>

i. House of Commons' composition for EAFITMUN

As to EAFITMUN's 2022 House of Commons, the composition is as follows:

Party	Seats
Conservative	12
Labour	6
Scottish National Party (SNP)	5
Alba Party	1
Plaid Cymru	1

- Conservative:

- Boris Johnson - To be decided Prime Minister, First Lord of the Treasury, Minister for the Union and Minister for the Civil Service. MP for Uxbridge and South Ruislip (England).
- Dominic Raab - Deputy Prime Minister Lord High Chancellor of Great Britain Secretary of State for Justice. MP for Esher and Walton (England).
- Nadhim Zahawi - Chancellor of the Exchequer. MP for Statford-on-Avon (England).
- Priti Patel - Secretary of state for the Home Department. MP for Witham (England)
- Alister Jack - Secretary of State for Scotland - MP for Dumfries and Galloway (Scotland).

- Robert Buckland QC - Secretary of State for Wales MP for South Swindon (England).
- Richi Sunak - MP for Richmond (Yorks) (England).
- Elizabeth Truss - Foreign Secretary (secretary of state for foreign, Commonwealth and development affairs) and minister for women and equalities. MP for South West Norfolk (England).
- Anne-Marie Trevelyan - Secretary of State for International Trade President of the Board of Trade - MP for Berwick-upon-Tweed (England).
- Graham Stuart - Minister of State for Europe. MP for Beverley and Holderness (England).
- David Duguid - MP for Banff and Buchan (Scotland).
- Douglas Ross - MP for Moray (Scotland).

- Labour:

- Keir Starmer - Leader of the opposition - MP for Holborn and St Pancras (England).
- Angela Rayner - Deputy Leader of the Labour Party, Deputy Leader of the Opposition, Shadow First Secretary of State, Shadow Chancellor of the Duchy of Lancaster, Shadow Minister for the Cabinet Office Shadow and Secretary of State for the Future of Work. MP for Ashton-under-Lyne (England).
- Ian Murray - Shadow Secretary of State for Scotland - MP for Edinburgh South (Scotland).
- Jo Stevens - Shadow secretary of State for Wales - MP for Cardiff central (Wales).
- David Lammy - Shadow secretary of state for Foreign and Commonwealth Affairs - MP for Tottenham (England).
- Nick Thomas-Symmonds - Shadow Secretary of State for International Trade - MP for Torfaen (Wales).

- Scottish National Party (SNP):

- Ian Blackford - SNP Westminster leader - MP for Ross, Skye and Lochaber. (Scotland)
- Kirsten Oswald - SNP Deputy Westminster Leader, Shadow SNP Spokesperson (Equalities), and Shadow SNP Spokesperson (Women). MP for East Renfrewshire (Scotland).
- Mhairi Black - Shadow SNP Spokesperson (Scotland). MP for Paisley and Renfrewshire South. (Scotland).
- Hannah Bardell - Shadow SNP Spokesperson (Foreign Affairs Team Member), and Shadow SNP Spokesperson (International Development Team Member). MP for Livingston (Scotland).

- Alyn Smith - Shadow SNP Spokesperson (Foreign and Commonwealth Office). MP for Stirling (Scotland).

- Plaid Cymru:

- Hywel Williams - Shadow PC Spokesperson (Work and Pensions), Shadow PC Spokesperson (Cabinet Office), Shadow PC Spokesperson (International Trade), Shadow PC Spokesperson (Defence), Shadow PC Spokesperson (International Development), Shadow PC Spokesperson (Foreign Affairs), and Shadow PC Chief Whip. MP for Arfon (Wales).

- Alba Party:

- Kenny MacAskill (Alba) - MP For East Lothian.

MPs must be aware some of them also have other positions in the government (for example, a MP can also be the levelling up secretary). We highly suggest MPs to have a look at their voting record as it can provide deeper information regarding their views.

MPs are expected to act according to the Rules of behaviour and courtesies in the House of Commons (House of Commons, 2021) which can be found in [Rules of behaviour and courtesies in the House of Commons](#).

d. Speakers of the house

The Speaker of the House has the duty of chairing sessions of the House of Commons. He or she is an elected Member of Parliament who other MPs elect as Speaker. Although the Speaker is a member of a political party, he must remain impartial at all times, as he is the highest authority in the House. One of his roles is to represent the Commons to the Monarch, the Lords and other officials, at home and overseas. According to Parliament (2010), by chairing debates, the Speaker has full authority to make sure MPs follow the rules of the House during debates. This can include: a. "Directing an MP to withdraw remarks if, for example, they use abusive language b. Suspending the sitting of the House due to serious disorder c. Suspending MPs who are deliberately disobedient - known as naming d. Asking MPs to be quiet so Members can be heard" (Parliament, 2010),

As of EAFITMUN 2022 House Of Commons, the role of speakers of the house will be held by the Chair, who will moderate the debate and give the floor to Members of Parliament.

3. Special procedure

As it could be expected, the House of Commons will have a procedure closer to the House of Commons than to a United Nations committee.

As the MPs are representing themselves and not countries, the use of the first person in singular (I) is accepted. The parliamentary language can be more relaxed than in other committees but we urge the MPs to make use of it as much as possible.

Unlike United Nations committees, the House of Commons has three different types of debates (Parliament, 2021). Which are:

a. General debate

A general debate in Government time begins with a minister moving the motion. When the minister has finished, the Speaker will propose the question “That the House has considered...(subject)”. At that point, the debate begins. (Parliament, 2021). The topic is presented by the government.

b. Adjournment debate

You can apply to hold a half-hour adjournment debate at the end of any day the House is meeting. Applications are submitted via the Table Office and a ballot is held by the Speaker’s Office. The debate can be on any subject for which the Government is responsible, as long as your main aim is not to call for legislation. After your speech, a minister will respond. Adjournment debates are held on the motion “that the House do now adjourn.” In other words, once the question is put and agreed to, the House will stop for the day. (Parliament, 2021).

c. Emergency debates

Any MP can apply to the Speaker for an emergency debate in the Chamber. Emergency debates are held on a neutrally phrased general motion, which usually starts, “That this House has considered the matter of”. The MP asking for an emergency debate must apply to the Speaker to make a speech of three minutes explaining why the topic should be debated. Afterwards, the Speaker decides whether to ask the House to grant the emergency debate. (Parliament, 2021)

d. Voting for motions

Quorum for votings in the House of Commons are normally 40 MPs (around 6%). For this

committee, the quorum will be 40% of the present MPs. In case of a tie, the speaker may cast a vote.

e. Voting on bills

After a motion to vote a bill is passed, the speaker will ask the MPs to state their position on the bill. Each MP can be in favour, against or abstain. If in favour, they shall shout “aye”, if against, no. If there’s not a clear majority, the speaker will call each MP to state their vote. The voting quorum for a bill will be 50% + 1.

f. Amendments

Amendments on a bill are proposed by the House of Commons and are sent to the House of Lords, which can accept, refuse or propose new amendments. The House of Lords will send the bill back to the House of Commons and so on until both reach an agreement on how the bill is worded. As there is no House of Lords, the House of Commons will make amendments to the bill until there are no further amendments to make. (U.K Parliament, n.d).

g. Motions

Motions also work differently. Things like suggesting a debate which are considered motions in UN committees aren’t in the House of Commons. If a MP wants to propose a debate, they simply stand and propose it. However, for a fructiferous debate and to avoid confusions, we will include them in the motions (U.K Parliament, n.d).

- **Motion for a debate:** a MP stands and asks the Speaker to consider a certain type of debate. (U.K Parliament, n.d)
- **Motion to take note:** a procedure used in the House of Lords to debate a subject without needing to take a specific decision. Motions to take note always begin “That this House takes note of ...” The debate may be on any subject, but the motion must be phrased in neutral terms. (U.K Parliament, n.d)
- **Allocation of time motion:** this motion will be used similarly as a motion to limit the time in UN committees. (U.K Parliament, n.d)
- **Adjournment motion:** an adjournment motion is literally a motion: ‘That this House (or sitting) do now adjourn’. In the Commons, however, debates on adjournment motions have covered almost every imaginable topic. This is because they have conventionally been used as a device to enable the House to discuss a particular issue in general terms and without needing to make a specific decision at the end. (UK Parliament, n.d.)

- **Business motion:** a business motion is a proposal to change the order or timing of events in either House. (U.K Parliament, n.d)
- **Committal motion:** a Committal motion is a proposal that a Bill should next be considered by a committee. (U.K Parliament, n.d)
- **Censure motion:** a 'motion of censure' is one that seeks to criticize the behavior of the government: typically, the motion is critical of a specific government policy, or of the conduct of a particular government minister. (U.K Parliament, n.d)
- **Early Day Motions (EDMs):** used by MPs in the Commons to draw the attention of the House to a particular issue, event or campaign. Other MPs may show their support for an EDM by adding their own signature to it. (U.K Parliament, n.d)
- **Point of personal privilege:** the point of personal privilege will be asked preferably via floor message.

The way in which EAFITMUN 2022 House Of Commons will be carried out, will be further explained in the handbook. If you have any doubt about how the debate works, how the motions function, it all will be explained in the handbook. Nevertheless, we invite all MP's to do their own research and watch official videos from the House Of Commons to get a notion of how we expect the committee to develop.

h. Stages of a bill

A bill needs to pass through certain stages in the House of Lords and House of Commons before it can become a law. A bill can start its journey in both houses. When a bill is successfully voted, it becomes an Act, and therefore it becomes law.

We, the Speakers Of The House will send you the draft of a bill one week prior to EAFITMUN 2022 House Of Commons. This is the bill the MP's will debate and will amend, following the procedure of the committee.

- **The first reading of a bill:** is the first reading which consists of the formal presentation of the bill and does not involve any debate at all.

- **The second reading of a bill (Which opens the debate):** is where the House debates the general principles of a bill. The MP that has drafted the bill (or in the case that the bill was drafted by more than one MP) will present the content and general principles of the bill, and then make a short statement in favor of the bill. Then, the Official Opposition spokesperson responds with their views on the bill, and whether the Opposition believes it

should become an act or be archived. Later on, the debate continues with other Opposition parties and all members of parliament to express their opinions of the bill through a period of moderated caucus. At the end of the debate, the Commons decides whether the Bill should be given its second reading by voting, meaning it can proceed to the next stage.

- **The committee stage:** is where the MP'S can propose amendments and then vote each one of them (Each MP will have 1:30 seconds to present the amendment and explain why it is necessary) after every amendment has been proposed and voted, the bill can go to the third reading stage.

- **The third reading of a bill:** there is no debate, and it is the last reading of the bill, it is limited to what is in the bill. At the end of the reading, the bill proceeds to be voted on and if it has the necessary majority it becomes a law.

4. Scotland's right to independence and Scotland Act of 1998

a. Regulatory framework

The principal regulatory framework we will be using on EAFITMUN 2022 House of Commons will be The Scotland Act of 1998. The main approach of the debate will be the following question, 'Should Scotland have the right to choose their own independence? Such matters are regulated by the following act. Reserved Matters are set out in Schedule 5, Part 1 of which reserves "aspects of the constitution" to Westminster (UK Parliament). This includes, among other things, "the Union Of the Kingdoms of Scotland and England" and "the Parliament of the United Kingdom".

Even though under The Scotland Act of 1998 independence is a reserved matter, there are certain procedures that can change Schedule 5 temporarily or permanently. Procedures such as the Section 30 Orders can change the list of subject matters reserved to the UK Parliament listed in the Scotland Act 1998 – either increasing or reducing the scope of reserved matters. Even an Act made by the UK Parliament can change Schedule 5 (Which we will be prioritizing in this committee), such was the case of 2014 when by a Section 30 Order, the UK Parliament gave temporary permission to Scotland to host a referendum.

b. Conceptual framework

- Scotland Act

When we talk about the Scotland act we make reference to a series of acts that have been proposed in the House of Commons regarding different topics of Scotland. In this committee when we refer to the Scotland Act we will be talking about the Scotland act of 1998. To refer to another Scotland Act the year must be named. This act establishes the reserved matters, which are reserved to the UK parliament. This series of matters includes referendums regarding Scottish independence from the United Kingdom.

- Schedule 5 from The Scotland Act 1998

The Schedule 5 from The Scotland Act of 1998 lists the matters that are reserved to the UK Parliament.

- Reserved Matters

Reserved matters are decisions that are still taken by the UK Parliament at Westminster even though they have effect in Scotland, Wales, Northern Ireland or the regions of England (UK Parliament, n.d). Their opposite are the devolved matters. The Reserved Matters stated on The Scotland Act 1998 are the following:

- The Crown, including succession to the Crown and a regency.
- The Union of the Kingdoms of Scotland and England.
- The Parliament of the United Kingdom,
- The continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal.
- The continued existence of the Court of Session as a civil court of first instance and of appeal.

In the next page, there's a photo that summarizes which powers are reserved in each part of The United Kingdom

	Northern Ireland, Scotland and Wales	Also reserved in Northern Ireland	Also reserved in Scotland	Also reserved in Wales
Reserved	The constitution	Nuclear energy	Employment law	Employment law
	Foreign affairs	Prohibited weapons	Cross-border rail	Cross-border rail
	Defence and national security		Energy	Energy
	Nationality, immigration and asylum		Social security*	Social security
	Macroeconomic and fiscal matters		Genetics, surrogacy, medicines, embryology	Abortion, genetics, surrogacy, medicines, embryology
	Financial services and pensions regulation		Equal opportunities*	Equal opportunities*
	International trade and financial markets		The Civil Service	The Civil Service
	International development			Postal services
	Elections to UK and European Parliaments			Justice and policing
	National Minimum Wage			Charity law
	Competition			
	Intellectual property		*except elements devolved by Scotland Act 2016	*except elements devolved by Wales Act 2017

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770300/IntroductionToDevolution.pdf

- Devolved matters

Devolved matters are those areas of government where decision-making has been delegated by Parliament to the devolved institutions such as the Scottish Parliament, the Assemblies of Wales, Northern Ireland and London or to Local Authorities (UK Parliament, n.d.).

In the next page, there's a photo that summarizes which powers are devolved in each part of The United Kingdom

Devolved	Northern Ireland, Scotland and Wales	Also devolved in Northern Ireland	Also devolved in Scotland	Also devolved in Wales
	Health and social services	Justice and policing	Justice and policing	Welsh language
	Education, training and skills	Charity law	Charity law	Some income tax (due April 2019)
	Local government	Energy	Stamp duty land tax	Stamp duty land tax
	Housing	Employment law	Licensing of onshore oil and gas extraction	Landfill tax
	Economic development	Social security, child support, pensions	Some income tax (incl. ability to set rates and thresholds)	Road signs and speed limits
	Agriculture, forestry and fisheries	NI Civil Service	Equal Opportunities in relation to public bodies in Scotland	Equal Opportunities in relation to public bodies in Wales
	Environment and planning	Equal opportunities	Tax on carriage of passengers by air (date TBC)	Licensing of onshore oil and gas extraction
	Transport	Time	Abortion	Assembly and local government elections
	Tourism, sport, culture and heritage	Long haul rates of Air Passenger Duty	Landfill tax	
	Fire and rescue services		Some social security elements	
	Water and flood defence		Consumer advocacy and advice	
			Scottish Parliament and local government elections	

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770300/IntroductionToDevolution.pdf

- **Bills:** a bill is a proposal for a new law, or a proposal to significantly change an existing law. (UK Parliament, n.d.).
- **Act:** an Act of Parliament (also called a statute) is a law made by the UK Parliament. (UK Parliament, n.d.)
- **Speaker:** the Speaker is an MP who has been elected by other MPs to act as Chair during debates in the House of Commons. They are responsible for ensuring that the rules are observed and order is maintained in the Chamber. When a Speaker is elected they cease to be involved in party politics and become politically impartial. (UK Parliament, n.d.)
- **Member of Parliament:** a Member of Parliament (MP) is the person elected by all those who live in a particular area (constituency) to represent them in the House of Commons. (UK Parliament, n.d.)
- **Section 30 Orders:** Section 30 Orders are a process made under The Scotland Act 1998 by which the powers of the Scottish Parliament can be altered without the need for primary legislation. Alterations can be temporary or permanent. Section 30 (2) of the 1998

Act provides that “Her Majesty may by Order in Council make any modifications of Schedule 4 or 5 which She considers necessary or expedient”, subject to the agreement of both the UK and Scottish Parliaments. (Torrance, 2019).

- **Referendum:** a referendum is when a question is decided by putting it to a public vote. Referendums are an example of direct democracy. In the UK, most decisions are made by Parliament on behalf of the public which is known as indirect or representative democracy. (UK Parliament, n.d.).

- **Prime Minister:** the Prime Minister is the leader of the Government. He or she is the leader of the party that wins the most seats at a general election. After a general election the monarch calls upon the leader of the largest party to form the Government. The Prime Minister chooses the other Members of the Government and has a residence and offices at 10 Downing Street. (UK Parliament, n.d.).

- **Secretary of State:** the title is typically held by Cabinet Ministers in charge of Government Departments. While most departments are run by a Secretary of State there can be some exceptions, for example, the Chancellor of the Exchequer heads HM Treasury. (UK Parliament, n.d.).

- **Shadow Cabinet:** the Shadow Cabinet is the team of senior spokespeople chosen by the Leader of the Opposition to mirror the Cabinet in Government. Each member of the shadow cabinet is appointed to lead on a specific policy area for their party and to question and challenge their counterpart in the Cabinet. In this way the Official Opposition seeks to present itself as an alternative government-in-waiting. (UK Parliament, n.d.).

5. General Context

a. Background of the problematic

- **Union of the Crowns:** until the early 17th century England and Scotland were two entirely independent kingdoms. This changed dramatically in 1603 on the death of Elizabeth I of England. Because the Queen had died unmarried and childless, the English crown passed to the next available heir, her cousin James VI, King of Scotland. England and Scotland now shared the same monarch under what was known as a union of the crowns. (Parliament UK, nd.)

- **England and Scotland:** following the 1603 Union of the Crowns, England (Including Wales) and Scotland remained separate states but shared a monarch. This was a “personal union” of crowns, with different laws of succession in Scotland and in England. This was followed by unsuccessful attempts to deepen this personal union by merging the kingdoms and parliaments of England and Scotland. “This was finally achieved in 1707 with an “incorporating” rather than “federal” union.” (Scottish independence reference: legal issues, 2022)

Article I of the 1706 Treaty of Union stated that the two kingdoms of Scotland and England would in 1707 “and forever after be United into One Kingdom by the Name of Great Britain”. The Treaty required ratification and legislation in both parliaments. The Union with Scotland Act 1706 was passed by the Parliament of England, and The Union with England Act 1707 by the Parliament of Scotland. These are often referred to collectively as the “Acts of Union 1707”.

On 1 May 1707, the Scottish and English parliaments were replaced by a single Parliament of Great Britain. In Scotland, separate legislation guaranteed the status of the presbyterian Church of Scotland and dealt with Scottish representation in the new parliament at Westminster. Scotland nevertheless retained institutional autonomy under the terms of the Treaty, with its own system of law, local government, religion, and education.

- **The development of devolved matters:** while Northern Ireland possessed legislative devolution within the UK, Scotland and Wales didn't. Instead, a system of what became known as “administrative devolution” developed from the late 19th century. A Scottish Office was created in 1885, followed by “Welsh departments” within UK ministries in the early 20th century. As the name implies, “administrative devolution” referred to specific allocations of civil servants working on a territorial rather than policy basis, in simpler words, this kind of devolution consisted of councils from Scotland and Wales advising the UK government on matters of Scotland and Wales interest.

These reforms were accompanied by broader debates regarding legislative devolution in Scotland and Wales. A Royal Commission on the Constitution was established in 1969 to consider these questions as well as general constitutional reform in the UK and its Crown Dependencies. The Royal Commission reported in 1973 and proposed devolved Assemblies in Edinburgh and Cardiff.

Later on, two acts were proposed, The Scotland Act 1978 and the Wales Act 1978, but those

legislation were brought to an end because members of the Labour Party amended the Acts so that referendums were required to give effect to them. A majority of voters in Wales rejected devolution, while in Scotland the necessary threshold of the electorate (40%) did not endorse an Assembly.

Following referendums new referendums in Scotland and Wales, a devolved Scottish Parliament and National Assembly for Wales were established in Edinburgh and Cardiff in 1999. Both bodies gradually assumed more powers via amending Acts. The UK Parliament remains legislatively supreme in relation to Scotland, Wales, and Northern Ireland.

- Are the referendums regarding independence legal or illegal?: since the establishment of The Scotland Act in 1998, a discussion began, questioning if The Scottish Parliament could or could not host a referendum regarding independence.

Although the UK and Scottish governments agree that the Scottish Parliament cannot unilaterally end the Union they differ as to the “purpose” and “effect” of referendum legislation. They therefore disagree whether it would necessarily “relate to” reserved matters. Constitutional academics are also divided. This disagreement is not only legal, but political and historical, concerning differing sources of “sovereignty” as well as competing political mandates.

“As a matter of law, a referendum is not required for Scotland to become independent, nor were they necessary to devolve power to different parts of the UK during the 20th century”(Scottish independence referendum: legal issues, 2022) Northern Ireland was granted devolution in 1921 via an Act of the UK Parliament, which was also the UK government’s intention when it unsuccessfully attempted to devolve power to Scotland and Wales in the late 1970s. In that way, it could be easy to say that referendums are in fact not required and therefore are not included in the reserved matters stated in Section 5 of The Scotland Act 1998, but the discussion goes further than that.

Also,

It can be argued that a referendum that merely consults on independence and does not, in itself, purport to end the Union, should be looked at in light of that more limited purpose. In legal if not political terms the purpose can be said merely to be one of consultation. Similarly, its effect in all the circumstances would, in legal terms, merely be to gauge the opinion of the Scottish electorate: ergo, such a

provision would not 'relate to' the reserved matter of the Union since its legal purpose and legal effect are each inconsequential to the continued legal efficacy of the Union. (Tierney, 2017)

A counter-argument to the statement that referendums regarding independence are not included in the reserved matter is not particularly complicated

The Scotland Act 1998 provides that an Act of the Scottish Parliament is not law if it is outside the legislative competence of the Parliament. It is outside that competence if it relates to reserved matters. The Union of the Kingdoms of Scotland and England is a reserved matter: therefore, an Act to hold a referendum on independence – ending the Union – is outside competence. This is itself a straightforward and [intuitively plausible argument](#). (Tierney, 2017)

Even though referendums are not required by law to grant independence, they have become a conventional part of constitutional change. These have taken place in Scotland in 1979, 1997 and 2014, all of them regarding constitutional matters. In 2010, The House of Lords constitutional committee concluded that "if referendums are to be used, they are most appropriately used in relation to fundamental constitutional issues" (Referendums of the United Kingdom, 2010) Proposals for any of the nations of the UK to secede from the Union fell within this definition.

The truth is, while most of the time it is understood that Scotland needs permission from Westminster to hold a referendum regarding independence, this has yet to be tested in court. The Scottish Government has [not explicitly conceded](#) that a second vote could not be held without approval from the UK Parliament, and a number of experts have concluded that the matter is not [legally settled](#).

- Do referendums have legal effects?: although legislation for some UK referendums have included direct legal effects (for example that on AV in 2011), most have been pre-legislative in that they have possessed no such effect. Rather they are advisory in a technical sense but operate on the understanding that a government (or governments) will regard them as binding politically, the most recent example being the Brexit referendum of 2016.

Whether referendums are binding or not and whether they are legal or illegal, will be the question to be answered from every Member of Parliament of EAFITMUN 2022 and could be the topic of a general or emergency debate. In addition, do the Members of Parliament

believe that a referendum is needed for every constitutional change? If yes, does the referendum need to be before or after The Act, or both? If not, why? all of these questions will be up to debate in the House.

- The Scotland referendum from 1997, and The Scotland Act of 1998: in 1995, the Labour Party committed to holding a pre-legislative two question referendum on establishing a Scottish Parliament with tax-varying powers. Two years later, the Labour Party won the 1997 UK general election.

A White Paper from the government explained the policy in more detail. Then, after more papers explaining how the Scottish parliament would work there were concerns following the media speculation over “whether the Scottish Parliament would be able to hold a referendum on independence”. Shortly after that, Pat McFadden an advisor to Tony Blair (Prime Minister from 1997 till 2007) wrote the following:

The reserved powers model means that the Scottish Parliament will have the power to legislate on anything not in the reserved list. Therefore it can have referendums on anything it wants, even if it cannot enact the result [...] Donald [Dewar]’s view is that the Scottish parliament can have a referendum on whatever it likes, even matters outside its competence, which is in line with the logic of the White paper. The only way to stop this would be to insert what would be called a glass ceiling – to put forward a measure in the [Scotland] Bill that the Scottish parliament could only hold referendums on matters within its competence.

The statement of Pat McFadden keeps the discussion of whether referendums are legal or not, and he gives a good solution to the problem, to permit that the Scottish parliament only holds referendums on matters within their competence.

The Referendums Bill was introduced in the House of Commons on Thursday 15 May, the first Bill of the new Labour government, and received Royal Assent on 31 July 1997.

The Referendum Act 1997 made legal provision for a non-binding referendum. Ballot papers for the referendum, which was held on 11 September 1997, were read as follows:

- I agree there should be a Scottish Parliament; or
- I do not agree there should be a Scottish Parliament; and
- I agree that a Scottish Parliament should have tax-varying powers; or
- I do not agree that a Scottish Parliament should have tax-varying powers.

74% of voters agreed there should be a Scottish Parliament, while 63% agreed it should have tax-varying powers. The turnout was 60.4%. Following the referendum, the UK government proceeded to legislate for a devolved Scottish Parliament with tax-varying powers. The Scotland Bill was published in December 1997 and received its second reading in the Commons on 12 and 13 January 1998. This gave effect, with no substantial changes, to proposals in the earlier White Paper.

- **Constitutional academics regarding referendum:** after the Scotland Act got Royal Assent and it became a law, between 1998 and 2000, many academics oversaw the issue regarding constitutional referendums. Colin Munro, professor of Constitutional Law at the University of Edinburg stated:

There is nothing to stop the parliament arranging to hold a referendum, because that would not involve a change in the law. The actual separation of Scotland from the rest of the UK would be a Westminster decision, but Labour has already said that they would regard a majority vote in favour of the SNP as a vote for independence (Colin Munro, 11 March, 1998)

In 2003 legal researcher Mark D Walters, wrote that

a consultative referendum – even on secession – would not conflict with the policy of the [Scotland] Act so long as its purpose is to assist the Scottish Parliament in determining the democratic will of the electorate. (Nationalism and the pathology of legal systems considering the Quebec secession reference and its lessons for the United Kingdom, 2003)

Even though, The UK Supreme Court has not yet decided on the matter, we can see that constitutional academics are leaning on the side that a referendum is in fact legal, just if it is advisory.

- **2014 Referendum**

The Edinburgh agreement

Following months of negotiations between the UK and Scottish governments, ministers from each signed the Edinburgh Agreement on 15 October 2012. This included a draft Section 30 Order (A Section 30 is explained on conceptual framework) which would enable the Scottish Parliament to hold a referendum by the end of 2014. The draft Order stipulated that there should be a single question on independence, but the wording of the referendum question, the franchise, campaign finance and the detailed roles of the Electoral Commission and other bodies were to be a matter for the Scottish Parliament.

The Order was laid before the UK Parliament on 22 October 2012. Like the draft published on 10 January 2012, this altered Schedule 5 of the Scotland Act 1998 so that paragraph did not “reserve a referendum on the independence of Scotland from the rest of the United Kingdom”

On 5 December 2012, the Scottish Parliament debated and approved the draft s30 Order.

On 15 January 2013, the House of Commons also debated and approved the draft Order. Angus Robertson, leader of the SNP at Westminster, said:

This section 30 order is a testament to all who believe in the democratic process, democratic debate and the sovereignty of the people. Our challenge—this is for those on both sides of the referendum debate—is to ensure we do this in a way worthy of the proposition, the opposing case and, most importantly, the electorate.

Although now legally valid, the independence referendum remained advisory and not legally binding: neither the UK nor Scottish Governments were obliged to give practical effect to a vote for independence. At the same time, in the Edinburgh Agreement both governments had “committed to continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom”. When a referendum is proposed by the parliament, it can be stated that the referendum is not legally binding, and it can keep its advisory nature.

After the Section 30 Order became law, the Scottish Parliament debated and passed the Scottish Independence Referendum (Franchise) Act 2013, which extended the franchise for the referendum to 16 and 17 year-olds, and the Scottish Independence Referendum Act 2013, which established the referendum question and rules. The latter Act received Royal Assent on 17 December 2013.

The Scottish independence referendum was held on 18 September 2014. The question asked was: “Should Scotland be an independent country?” 55% of Scots replied “No”; 45% “Yes”. Turnout was 84.6%.

b. State of things

- Second Referendum: In 2016 a referendum across the United Kingdom asking whether

the UK should or not leave the European Union took place. Around 52% of all the voters decided the UK needed to leave the EU. However two countries voted to remain: Northern Ireland and Scotland with 55% and 62% respectively deciding the best decision was to stay in the EU.

The decision to leave the UK echoed Scottish voices for independence once again. Scotland is set to leave the EU against the wishes of the people of Scotland. Leaving the EU represents a fundamental change in the constitutional arrangements of the country, which will be particularly damaging to Scottish interests and which will take place without the support of the people of Scotland. (SNP,2019).

“There is no reason at all that an independent Scotland would not succeed.Nothing in life is guaranteed.But with hard work - and the independence to chart our own course - Scotland will prosper. And the people of Scotland have told us - all of us in this chamber - that they want the right to decide. Presiding Officer Today we have set out the path to deliver it” were the last words of Nicola Sturgeon’s statement on June 26 in which the SNP proposed a date for Scotland’s next referendum: 19 October 2023.

It will be in the hands of the Supreme Court of the United Kingdom to decide whether Nicola Sturgeon, First Minister of Scotland, can go ahead with the referendum or not. This follows section 30 of Scotland Act 1998 which establishes the need for an order for the referendum to take place.

However, Sturgeon has stated that if the Supreme Court doesn’t grant the order, a de facto referendum would take place, meaning that regardless of what the Supreme Court will decide, the referendum will be held.

- **Involved parties:** we have mainly two sides. Those in favour of an independence of Scotland and those who don’t. The ones in favour support a second referendum to take place, while the ones who oppose independence oppose a second referendum as well.

In Scotland we have mainly four pro-independence parties: The Scottish National Party (SNP), the Scottish Greens, the Scottish Socialist Party and the Alba Party. The first three were part of Yes Scotland, the organization who promoted to vote yes for independence in the 2014 referendum. The Alba Party is a newly created party mostly made up by defectors from the SNP. Only the SNP and Alba Party have representation in the House of Commons

Our principal involved party is the SNP. The Scottish National Party, as its name says, is a nationalistic and pro-independence party in Scotland. It's the third party with the most seats in the House of Commons and takes the majority of the Scottish seats. The SNP doesn't have any members in the House of Lords as they've always been against a non-democratically-elected House of Lords (BBC, 2015).

Although officially the SNP is supportive towards the monarchy (although they propose some reforms like the size of it or its budget), there's an important number of republican members (INews, 2019). Their leader Nicola Sturgeon has a positive view towards the monarchy.

We also have the newly founded Alba Party. Following allegations of sexual misconduct Scotland's former First Minister Alex Salmond resigned from the SNP in 2018. Then in 2021 Salmond founded Alba Party, and just like the SNP, nationalistic and pro-independence. MPs Kenny MacAskill and Neale Hanvey both resigned from the SNP and joined the Alba Party.

On the other hand, we have those opposing independence and also opposing a second referendum: the Conservative, Labour and Liberal Democrats parties. Boris Johnson, currently Prime Minister of the UK has stated it's not the time for a referendum (INews, 2022) while Labour's leader Sir Keir Starmer has warned if Labour wins next elections, he would block the possibility of a second referendum (The Times, 2022)

"It was, stated the First and Deputy First Ministers during the campaign, a "once in a generation opportunity" to achieve independence." has also been one of the arguments the parties opposing a second referendum have used. (Torrance, 2022).

6. QARMAS (Questions All Resolution Must Answer)

These are just suggestions of questions to guide the debate. Other questions or topics may be debated by MPs' request.

1. Do referendums have legal effects?
2. Are the referendums regarding independence legal or illegal?
3. Is denying the Scottish population a second referendum anti-democratic?
4. Should Schedule 5(2) of the 1998 Scotland Act be reformed? how?
5. Should a second referendum be approved taking into account its monetary cost?
Who would be responsible to pay for its implementation?

6. Should Scotland be able to decide regarding their independence without having to negotiate with Westminster?
7. Is there a way for Scotland to hold another referendum without a Section 30 or an Act by Westminster?



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