2.12 Referendums as an Instrument of Constitutional Change in the UK: 30-minute Pack

EDEXCEL 9PL0 · about 30 minutes

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Write full sentences for levels-marked questions and for any extended explanation. Allow approximately 30 minutes for this pack.

1 Explain the significance of the Edinburgh Agreement and the Section 30 order in establishing the legal basis for the 2014 Scottish independence referendum.

(Total for Question 1 is 5 marks)

2 Using the source provided, analyse the ways in which referendums can both reinforce and constrain parliamentary sovereignty in the UK constitutional system.

(Total for Question 2 is 12 marks)

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3 Explain how the 2011 Welsh referendum altered the constitutional relationship between the Senedd and the UK Parliament, and why this illustrates the advisory-parliamentary tension.

(Total for Question 3 is 6 marks)

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Mark scheme · 2.12 Referendums as an Instrument of Constitutional Change in the UK: 30-minute Pack

Question 1

Identifies that the Edinburgh Agreement (2012) was a political agreement between the UK and Scottish governments to hold a lawful referendum	**B1**
Identifies that a Section 30 order under the Scotland Act was used to temporarily transfer the power to hold the referendum to the Scottish Parliament	**B1**
Explains that these arrangements gave the referendum clear legal and political legitimacy and removed uncertainty about whether Holyrood could lawfully hold such a vote	**B1**
Explains that despite this legal footing, the referendum result still required political implementation through both Scottish and UK governments, illustrating the joint role of negotiation and parliamentary action	**B1**
Explains why this shows the role of negotiated agreements in making referendums effective tools for constitutional change, while reaffirming parliamentary sovereignty and intergovernmental cooperation	**B1**

Answer: The Edinburgh Agreement provided a political understanding that a legal referendum would be held, and a Section 30 order temporarily granted the Scottish Parliament the competency to hold the 2014 independence referendum. This gave the referendum legal legitimacy and clarity, showing how negotiated transfers of power between governments can enable popular ratification while ultimately relying on statutory mechanisms and parliamentary authority.

Question 2

Level 0 No relevant content.	**0**
Level 1 Basic, limited use of the source with descriptive points about referendums and Parliament, little or no developed analysis.	**1-3**
Level 2 Clear use of the source with some analysis of how referendums interact with parliamentary sovereignty, but discussion may be partial or unbalanced.	**4-6**
Level 3 Good use of the source with developed analysis showing multiple ways referendums can reinforce and constrain Parliament, including specific examples and consideration of mechanism.	**7-9**
Level 4 Excellent, well-focused analysis driven by the source, integrating detailed, accurate examples (e.g. 1997 devolution, 1998 Good Friday Agreement, 2014 Scotland, 2016 EU) to show nuanced ways referendums both empower popular will and remain subject to parliamentary authority, reaching a supported judgement.	**10-12**

Indicative content:

- The source claims referendums have compelled Parliament to legislate, which is supported by the 1997 devolution referendums followed by the Scotland Act 1998 and Government of Wales Act 1998, and by Parliament passing the 2017 Act authorising Article 50 notification after the 2016 EU referendum, showing referendums have strong political force.
- Referendums can reinforce parliamentary sovereignty politically, because Parliament exercises the legal authority to implement the result, demonstrating the constitutional primacy of Parliament even while responding to popular decisions.
- Referendums can constrain Parliament politically, because a clear popular verdict creates strong democratic and electoral pressure on MPs and ministers to respect the outcome, making it politically costly for Parliament to resist the popular will even though it remains legally free to do so.
- The source notes the advisory legal status of referendums; examples include that the 2014 Scottish independence referendum required negotiated legal footing via a Section 30 order and the Edinburgh Agreement, and that the Good Friday Agreement combined international agreement and domestic legislation, indicating referendum results need legal steps to have effect.
- Referendums can create constitutional expectations and conventions, such as the emerging norm that major constitutional change should be subject to popular ratification, which can bind political actors informally even if not legally binding, thereby constraining parliamentary discretion in practice.
- Counterpoints include that Parliament can refuse to implement a referendum or can legislate differently from the precise wording of the question, illustrating the ultimate legal discretion of Parliament; a strong answer might cite hypothetical or historical instances where parliamentary action departed from referendum intent.
- A balanced conclusion evaluates the tension: referendums strengthen democratic legitimacy and create political constraints on Parliament while leaving legal sovereignty with Parliament, so they both reinforce and constrain Parliament in different ways, depending on political context and the willingness of Parliament to resist popular pressure.

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Question 3

Identifies that the 2011 referendum authorised the Senedd to make primary legislation in devolved areas without needing a Legislative Competence Order from Westminster	**B1**
Identifies the change reduced direct Westminster control over Welsh law-making in devolved fields	**B1**
Explains that Parliament still retained sovereignty and could in theory legislate to alter the Senedd's powers, showing Westminster remains the ultimate legal authority	**B1**
Explains that the referendum result was implemented by Parliament passing the necessary legislation, illustrating referendums are politically powerful but require parliamentary action	**B1**
Explains why this is an example of the advisory-parliamentary tension: the Senedd gained popular legitimacy for greater autonomy but the legal authority depended on Acts of Parliament	**B1**
Offers an example or brief development, e.g. how the change streamlined Welsh law-making and was welcomed as enhancing democratic accountability in Wales	**B1**

Answer: The 2011 Welsh referendum authorised the Senedd to make primary legislation in devolved areas without requiring Westminster to grant Legislative Competence Orders. This reduced Westminster oversight in devolved law-making, but the legal basis for the change remained parliamentary: Parliament enacted the necessary legislation to give effect to the popular decision. The case therefore shows the tension between popular ratification and parliamentary sovereignty, since referendums secure political legitimacy while Parliament remains the ultimate legal authority.

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