2.12 Referendums as an Instrument of Constitutional Change in the UK

EDEXCEL 9PL0 · about 55 minutes · Write-in edition

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Write full sentences for levels-marked questions and for any extended explanation. Allow approximately 55 minutes for this pack.

1 Explain why the UK has developed a political convention that major constitutional changes should be put to a referendum.

(Total for Question 1 is 3 marks)

2 State three constitutional implications of the 1998 Good Friday Agreement referendum result for Northern Ireland and UK constitutional arrangements.

(Total for Question 2 is 5 marks)

3 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 3 is 5 marks)

4 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 4 is 12 marks)

5 Evaluate the extent to which referendums have strengthened democracy in the UK's constitutional arrangements.

(Total for Question 5 is 24 marks)

6 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 6 is 6 marks)

Mark scheme · 2.12 Referendums as an Instrument of Constitutional Change in the UK

Question 1

Identifies democratic legitimacy as a reason, that referendums provide direct public endorsement for major changes	**B1**
Identifies that referendums can help resolve contested questions between Parliament and regions or nations, e.g. devolution or independence	**B1**
Identifies that using referendums can strengthen the political acceptability and stability of reforms by showing popular consent	**B1**

Answer: Because referendums provide direct democratic legitimacy for major constitutional changes, can resolve contested questions between Parliament and constituent nations or regions, and help make reforms politically acceptable and stable by demonstrating popular consent.

Question 2

Identifies that the referendum endorsed the Good Friday Agreement, enabling the UK and Irish governments to legislate to implement it	**B1**
Identifies that the result led to the Northern Ireland Act 1998, creating the Northern Ireland Assembly and Executive with devolved powers	**B1**
Identifies that the referendum entrenched the principle of consent for Northern Ireland's constitutional status, tying any future change to majority support among the people of Northern Ireland	**B1**
Identifies that the referendum demonstrated how international agreements, domestic referendums and parliamentary legislation combined to produce constitutional change	**B1**
Identifies that, despite popular endorsement, legal implementation required Parliament and the governments involved to enact powers and institutions, showing parliamentary sovereignty remains central	**B1**

Answer: The 1998 referendum endorsed the Good Friday Agreement and led to the Northern Ireland Act 1998 establishing the Assembly and Executive. It entrenched the principle of consent for any change to Northern Ireland's status, illustrated how referendums, international agreements and Acts of Parliament can work together to effect constitutional change, and showed that parliamentary legislation was required to implement the popular decision.

Question 3

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 4

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.

Question 5

Level 0 No relevant content. **0**

Level 1 Basic, limited knowledge of referendums with little developed analysis or evaluation. Points may be asserted without evidence or lacking focus on democratic quality. **1-6**

Level 2 Clear, accurate knowledge of several referendums and relevant concepts, with some developed analysis of how referendums affect democratic legitimacy and accountability, but evaluation may be uneven or underdeveloped. **7-12**

Level 3 Detailed, accurate knowledge used to construct a sustained analysis weighing evidence that referendums strengthen democracy against evidence they can weaken it, with developed evaluation and examples, leading to a reasoned judgement. **13-18**

Level 4 Sophisticated, wide-ranging and well-evidenced evaluation that addresses multiple dimensions of democratic quality (legitimacy, accountability, participation, minority rights), uses precise examples such as 1997 devolution, 1998 Good Friday Agreement, 2011 Wales, 2014 Scotland and 2016 EU, and reaches a clear, balanced and well-substantiated judgement on the extent to which referendums have strengthened democracy. **19-24**

Indicative content:

- Arguments that referendums strengthen democracy: they provide direct popular endorsement for major constitutional change, increasing legitimacy; they can resolve contested issues between different parts of the UK by giving an explicit public mandate; examples include the 1997 devolution referendums and the 1998 Good Friday Agreement which secured local consent for new institutions.
- Referendums can enhance democratic accountability by making governments and parties commit to clear choices and by giving voters direct say on specific issues rather than only at general elections.
- They can increase political engagement and turnout on constitutional questions, enhancing the democratic standing of the resulting institutions, as seen in high turnout for the 1998 Good Friday Agreement and the 2014 Scottish referendum.
- Arguments that referendums can weaken democracy: major constitutional decisions may be reduced to simple yes/no choices that obscure complex trade-offs, and campaign misinformation or uneven information can distort the quality of public decision-making, a criticism levelled at the 2016 EU referendum campaign.
- Referendums risk majority tyranny and may disadvantage minority interests; the binary nature of votes can sideline protections for minority rights unless carefully designed and accompanied by safeguards in legislation.
- Referendums may create ambiguous mandates or political tensions if Parliament interprets results differently from public expectations, showing that popular ratification does not automatically produce clear legal or policy outcomes, as illustrated by debates over implementation after the EU referendum.
- Practical countermeasures: negotiated legal footing, clear question design, and post-referendum parliamentary legislation can mitigate weaknesses, as with the Edinburgh Agreement and Section 30 order for the 2014 Scottish referendum and the legislative steps after 1997 devolution referendums.
- A balanced conclusion might argue referendums have, in many cases, strengthened democratic legitimacy for specific constitutional changes when paired with clear legal processes and high-quality information, but they also carry risks to deliberative quality, minority protection and long-term political stability if used imprudently; therefore they strengthen democracy to a significant extent in some contexts but not as a universal rule.

Question 6

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.