



THE SCOTTISH OFFICE

Administrative Services

CI 13/2/1/16

Hand for file

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Ms McEwen  
Mr Burgess

29 April 1997

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## **REFERENDUM BILL**

Thank you for your letter of 18 April about the provision of information on the Government's proposals in advance of the Referendums. Paul Grice discussed the issue last week with Hugh Rawlings and colleagues from the Home Office. We remain firmly of the view that, given the amount of debate on devolution in Scotland in recent years and, in particular, in the run up to the Election there should be no automatic presumption of the need to weigh in with additional information beyond what will be contained in the White Paper. Our legal advice is that there is a significant risk of judicial review in attempting to produce information which is claimed to be "balanced or impartial" especially where it is provided for in legislation. A challenge (especially if it is successful) would be embarrassing and potentially disruptive to the referendums.

Although technically it might be possible to adopt different approaches in the legislation in Scotland and Wales there is no doubt that Ministers would find it difficult to defend two different policy approaches in a single Bill. We wondered therefore whether a better approach would be for you to disseminate a straight forward summary of the proposals. The advice from our Head of Information is that, provided the material does not seek to persuade people to vote 'yes', it would be regarded as a legitimate use of public funds. It would not require new legislative provision. And, if it is presented as a simple explanation of the proposals rather than an impartial or balanced view on them, the risk of successful challenge is greatly diminished. Its position as a factual document might be reinforced by the inclusion of information on the procedures for absent and proxy voting. I think the notion of giving space to the campaigning organisations would act in the opposite direction and would seem to present its own difficulties not least in identifying the organisations.

We have not ruled out issuing an abridged version of our White Paper though we see this very much as an issue on which Ministers are likely to have clear views. I understand it was agreed at last week's meeting that the draft paper which is being prepared for CRP should spell out these issues in some detail. (I gather that a revised draft has now been circulated for comment.) In the meantime, Paul Grice and Hugh Rawlings have agreed to hold back the instructions to Parliamentary Counsel. I suggest they take this forward on the basis of the CRP paper.

I am copy this letter to Caroline Sinclair.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Robert Gordon', with a long horizontal flourish extending to the right.

**Robert Gordon**

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*Mr Gordon*  
*Draft reply attached*

Cyfarwyddwr,  
Materion Economaidd

J D SHORTRIDGE

Director,  
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*PG*  
*28/4*

**RESTRICTED: POLICY**

Robert S B Gordon Esq  
Under Secretary  
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Our Ref: 4JDS32

18 April 1997

*Dear Robert*

**REFERENDUM BILL**

I have been reflecting further on the discussion we had at yesterday's IDGD meeting of the question of whether electors should be provided with information about the Government's proposals in advance of the Referendum.

I can see the need for this, particularly in Wales, where the proposals for a Welsh Assembly are currently much less well developed and understood than those for a Scottish Parliament, and where we cannot rely upon a national press to give the coverage required.

I think that what is ideally required is a summary of the respective White Papers which at the end contained short sections in which the "yes" and "no" campaigns could set out their views. Whatever the outcome, I am sure we must at this stage keep such an option open. For this reason I would want the Referendums Bill to contain a power for the Counting Officer 'to issue such information to the public relating to the Referendum as he considered appropriate'. Apart from anything else this should overcome any problems that may otherwise exist about incurring expenditure on information drops to all households.

A copy of this goes to Bill Jeffrey and Caroline Sinclair.

*Yours sincerely*  
*J D Shortridge*

J D SHORTRIDGE