

The **Constitution** Unit

# **Nations and Regions: The Dynamics of Devolution**

**Quarterly Monitoring Programme**

## **Devolution and the Centre**

**Quarterly Report  
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### *Key Points:*

- The Children's Commissioner for Wales Act, the first formally Wales-only legislation introduced at Westminster at the instigation of the National Assembly for Wales, passed through Parliament on 11 May 2001.
- Over a year after Margaret Beckett, Leader of the House of Commons, announced that the Standing Committee on Regional Affairs was to be revived, the Committee finally met on 10 May 2001.
- The subject of Devolution to the English Regions was debated in the House of Lords at the behest of the Bishop of Durham, Chair of the North East Constitutional Convention.
- The new House of Lords Select Committee on the Constitution, under the Chairmanship of Lord Norton of Louth, has begun work on its first report.
- Devolution Guidance Notes 8 and 9 have been Published by the Cabinet Office, while DGN 6 has been revised.
- The roles of the Territorial Secretaries of State and the future of the Barnett Formula continue to be a topic of debate, both within and without Parliament.
- The Foot and Mouth crisis has shown intergovernmental networks in practice post-devolution.
- Court proceedings before the Judicial Committee of the Privy Council under the devolution acts continue to be limited to human rights issues.
- The Joint Ministerial Committee on Devolution (Europe) met in London on 1 March 2001, while meetings of the British-Irish Council continue at official level.

- **The Children's Commissioner for Wales Act 2001**

The Children's Commissioner for Wales Bill, the first formally Wales-only legislation introduced at Westminster at the instigation of the National Assembly for Wales, passed through Parliament on Friday 11<sup>th</sup> May 2001. The Act makes further provisions for the Children's Commissioner for Wales established under Part V of the Care Standards Act 2000, and specifically:

- sets out the principal aim of the Commissioner as safeguarding and promoting children's rights and welfare
- empowers the Commissioner to consider and make representations to the National Assembly for Wales on any matter affecting the rights and welfare of children in Wales
- introduces a power to review the exercise of functions of the National Assembly and other persons;
- extends the power of the Commissioner to examine particular cases of children and to assist in particular cases by applying those powers to a wide range of bodies; and
- extends the power to review and monitor arrangements for complaints procedures, whistle-blowing and advocacy by applying it to a wider ranges of bodies in Wales providing services to children.<sup>1</sup>

The Children's Commissioner for Wales Act legislated to give effect to the recommendations of Sir Ronald Waterhouse's inquiry into child abuse in Wales which had not been published at the time of passing the Care Standards Act. The Act had an uncontroversial passage through Westminster and had cross party support within the National Assembly for Wales.

The National Assembly for Wales has indicated that it wishes to promote Wales-only primary legislation on a regular basis. Whether it will succeed in this ambition, given the pressures of legislative time at Westminster, remains to be seen. Certainly ready access to the primary legislative process is seen as a priority in Wales.

- **House of Commons**

**1: The English Question**

In the Commons debate on the Elections Bill and Elections Publications Bill, 4<sup>th</sup> April 2001, the English Question was raised yet again, this time by Mr Douglas Hogg:

**Mr Hogg:** The Bill – I refer to the Elections Bill, not the Election Publications Bill – refers to England, Wales and Northern Ireland; it does not refer to Scotland, so why should Members who represent Scottish constituencies vote on the Bill? It is no conceivable business of

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<sup>1</sup> See further Wales Office Press Release, 'Children's Commissioner Bill Becomes Law,' 11 May 2001; <http://www.hmsso.gov.uk/acts.htm>.

theirs. It is the business of Northern Ireland Members and Welsh Members, although I do not see one here, and it is certainly our business.

**Mr Straw:** Did the right hon. And learned Gentleman take a similar view, even privately, when the Bill to establish a poll tax in Scotland alone came before the House? Did he say that the Bill should be voted on only by Scottish Members?

**Mr Hogg:** The right hon. Gentleman is missing the essential consequences of devolution. Before devolution, ours was a unitary state, whereas since devolution, affairs in Scotland have been explicitly and exclusively the responsibility of the Scottish Parliament. I shall not proceed with this line of argument, Madam Speaker. Even the Home Secretary will understand the folly of his intervention.

Mr Hogg's amendment was not accepted by the House and Mr Straw, despite Mr Hogg's suggestions to do so, did not encourage Scottish members not to participate in the debates on the Bill.<sup>2</sup>

## **2: Select Committees**

### *The Scottish Affairs Committee*

The Scottish Affairs Committee published its long awaited report on the Drinks Industry in Scotland on 1 May 2001.

### *The Welsh Affairs Committee*

On 28 March the Welsh Affairs Committee published its report *Wales in the World: the role of the UK Government in promoting Wales abroad*.<sup>3</sup> The Welsh Affairs Committee published its report entitled *Welsh Young Offenders Outside Wales: Interim Report and Proposals for Further Inquiry* on 11 May 2001.<sup>4</sup>

The Committee has taken written evidence in preparation for its inquiry into post-devolution primary legislation as it affects Wales. The Committee is expected to return to the subject early in the next Parliament.

### *The Northern Ireland Affairs Committee*

During the quarter the Northern Ireland Affairs Committee has published three reports: The Northern Ireland Prison Service;<sup>5</sup> The Parades Commission;<sup>6</sup> and Relocation Following Paramilitary Intimidation.<sup>7</sup> The inquiry into the legal aid system in Northern Ireland is ongoing.

### *The Liaison Committee*

In its report *Shifting the Balance: Unfinished Business* the Liaison Committee noted that the 'territorial' select committees had all described the effects of

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<sup>2</sup> House of Commons Debates, 4 April 2001, column 364.

<sup>3</sup> First Report, 28 March 2001, HC 38.

<sup>4</sup> Second Report, 11 May 2001, HC 511.

<sup>5</sup> First Report, 28 February 2001, HC 263.

<sup>6</sup> Second Report, 11 April 2001, HC 120-I.

<sup>7</sup> Third Report, 11 April 2001, HC 59-I.

devolution on their work and had also established good relations with their respective devolved administration. On the subject of formal meetings between the territorial committees and committees of the devolved administrations the Liaison Committee endorsed the recommendation of the Scottish Affairs Committee that the Procedure Committee look into the matter further.<sup>8</sup>

Taking a wider view the Secretary of State for Scotland, Helen Liddell, has stated that following the general election attention must turn to developing relations between Westminster and Holyrood. Underlining the Government's commitment to the 'devolution partnership,' Ms Liddell emphasised that partnership through union would be the only practical way forward for Scotland:

Membership of the United Kingdom isn't a crutch that a miraculously revived Scotland can throw away; it's a leg. It hurts if you try to cut it off, as the separatists would do. And once the operation was completed you would fall over.<sup>9</sup>

### **3: The Grand Committees**

#### *The Welsh Grand Committee*

The Welsh Grand met on 12 March 2001 to discuss the Budget Statement and its implications for Wales.

#### *The Scottish Grand Committee*

The Scottish Grand met on 28 March 2001 to debate the oil and gas industry.

#### *The Northern Ireland Grand Committee*

The Northern Ireland Grand Committee met on 22 March 2001. The Committee dealt with life sentences and financial investigations.

#### *Standing Committee on Regional Affairs*

Over a year after Margaret Beckett, Leader of the House of Commons, announced that the Standing Committee on Regional Affairs was to be revived, the Committee finally met on Thursday 10<sup>th</sup> May 2001. Membership of the Committee was announced on 13<sup>th</sup> March 2001: the Committee was jointly chaired by Bill O'Brien (Lab) and Jonathan Sayeed (Con). Further members were: Joe Ashton (Lab), Candy Atherton (Lab), Karen Buck (Lab), David Chidgely (Lib Dem), Louise Ellman (Lab), Nigel Evans (Con), Andrew George (Lib Dem), Dennis Murphy (Lab), Ian Pearson (Lab), Lawrie Quinn (Lab), Anthony Steen (Con), and Derek Wyatt (Lab). Although the Committee had a standing membership of 13, any MP representing an English constituency may attend and speak at its meetings.

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<sup>8</sup> First Report, 15 March 2001, HC 321.

<sup>9</sup> 'Liddell aims to build on Holyrood-Westminster links', *The Herald*, 8 May 2001.

The long delay in establishing the Committee was because of Conservative lack of interest. This was reflected at the first meeting of the Standing Committee on Regional Affairs which dealt with Regional Economic Performance and Imbalances and was attended by 9 of the standing members of the Committee and a further 6 MPs, with the North East of England particularly well represented. Only one Conservative MP, Anthony Steen, attended. Mr Steen began the proceedings by questioning the decision that the committee sit on the day before the prorogation of Parliament and left shortly afterwards in order to prepare his own election campaign.<sup>10</sup> For further details of the debate see the May 2001 monitoring report on the English Regions.

- **House of Lords**

***1: Devolution to the English Regions***

On 21<sup>st</sup> March 2001 the issue of Devolution to the English Regions was debated in the House of Lords. Opening the debate, The Bishop of Durham suggested that devolution to the regions could be a way of re-invigorating popular interest in the democratic process and co-ordinating the various governmental structures operating at regional levels:

While I applaud the work of the regional development agencies, not least in the North East, they work under considerable frustration because of fragmented funding streams from the Government and the fact that they have been tied to national programmes.<sup>11</sup>

In his response however, Lord Waddington suggested that, far from bringing cohesion to policy in the regions, institutions of devolved regional governance in England would be no more than 'costly talking shops'<sup>12</sup> which would:

...bring about what can best be described as the Balkanisation of England and the side-lining of our Parliament at Westminster as the regional bodies, already busy setting up separate offices in Brussels, look more and more to Brussels for direction and funding.<sup>13</sup>

A further concern among some of their Lordships was the perceived lack of accountability within the current system of Government Offices, an

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<sup>10</sup> The early departure of Mr Steen prompted Alan Beith of the Liberal Democrats to take on the mantle of opposition spokesman and reflect on the apparent lack of interest of Conservative MPs in the Committee:

Perhaps I should have moved to the top seat on the Opposition Benches because, in the absence of the Conservative party, I have taken over as official Opposition spokesman. When we resolve at the end that the Committee has considered the matter, we shall have to say "the Committee minus the Conservative party", which is an appalling state of affairs. The hon. Member for Totnes (Mr Steen) disappeared without so much as a goodbye, which is rather sad if his fate in the coming election is as I predict.

<sup>11</sup> House of Lords Debates, 21 March 2001, Column 1427-1429.

<sup>12</sup> Ibid, at column 1431.

<sup>13</sup> Ibid, at column 1432.

unsatisfactory arrangement alluded to by both the Bishop of Durham and Lord Whitty.<sup>14</sup>

The Government's position was clarified towards the end of the debate by Lord Whitty:

...we are committed to bringing forward the opportunity for English regions to directly elect their regional governments. At that point, the responsibility for various aspects of economic, strategic and planning policies would fall to those regions. We would hope that all the English regions would eventually take up that option. However, the decision will be theirs and it will be facilitated by this Government. We intend within the next few months to bring forward a Green Paper on these issues: the scope, structure and nature of devolution; and the nature of the electoral process for the English regions.<sup>15</sup>

The plan of establishing devolved regional government where the desire exists was endorsed for the Liberal Democrats by Baroness Hamwee with Lord Smith of Clifton calling for the diversity of the English regions to be unleashed and celebrated.<sup>16</sup> However, there was considerable opposition to any plans for further devolution from the Conservative benches led by Lord Waddington and reinforced by Lord Elliott of Morpeth:

I believe it is unnecessary to introduce regional government into England. It is a difficult proposition. I am against devolution; I have always contended that it is too small an island for federalism. I believe it would be disastrous for people in England to have another level of local government.<sup>17</sup>

## ***2: The Constitution***

In a short debate on Constitutional Change in the House of Lords the Lord Chancellor, after concluding that the government had been correct in all aspects of its programme of constitutional reform, was asked by the Conservative peer Lord Renton whether devolution had 'made the trend towards an English national parliament at Westminster irreversible?' Lord Irvine responded in the negative. The Lord Chancellor went on to assuage the fears of their Lordships over policy divergence between Westminster and the devolved administrations:

My Lords, it is the nature of all forms of devolution that diversity is promoted. It is not necessarily the case that the Government will like every decision of the Welsh Assembly, or indeed every decision of the Scottish Parliament or Executive. But the function of devolution is to promote diversity, in which we should rejoice.<sup>18</sup>

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<sup>14</sup> Ibid, at columns 1428 and 1465 respectively.

<sup>15</sup> Ibid, column 1466.

<sup>16</sup> Ibid, column 1444.

<sup>17</sup> Ibid, column 1442.

<sup>18</sup> House of Lords Debates, 3 April 2001, Columns 719-722. The recently published DGN on Post-Devolution Primary Legislation Affecting Wales (DGN 9) sets out the relevant

### ***3: House of Lords Committee on the Constitution***

The House of Lords Committee on the Constitution has undertaken to produce its first report on how it proposes to deal with the terms of reference under which it is to work and how to fulfil its obligations to the House. The Committee began this work by questioning the leaders of the respective groups within the House of Lords. On Wednesday 28<sup>th</sup> March the Committee heard evidence from Lord Craig of Radley, Convenor of the Crossbench Peers, and Baroness Jay of Paddington, Leader of the House.

#### *Devolution and Whitehall*

- **Publication of Devolution Guidance Notes**

Devolution Guidance Note 9 (Post Devolution Primary Legislation Affecting Wales) was published by the Cabinet Office on 27<sup>th</sup> February 2001. The document, agreed between the UK Government and the Cabinet of the National Assembly, sets down guidance to be followed by Whitehall departments when dealing with legislation affecting the Assembly's responsibilities. Similarly to previous DGNs the document encourages interaction between administrations from an early stage, outlining that the Cabinet of the Assembly must be consulted on Westminster bills which:

- Confer new functions on the Assembly;
- Alter the Assembly's existing functions (including legislation on, for instance, freedom of information, which would affect the overall discharge of its duties and those public bodies for which it is responsible); or
- Otherwise affect areas which are the responsibility of the Assembly, including where it will otherwise be responsible for implementation in Wales, though policy control remains with the UK Government.

Early identification of possible disagreements lies at the heart of the DGN, to the end that by the time any proposed legislation covered by the guidance reaches the Legislative Programme Committee (LP) all such issues have been addressed and, as far as possible, resolved. Accompanying papers to LP must:

- Explain any provision proposed in respect of Wales which differs from the provision proposed for England or the rest of the UK;
- Identify any exception to the general rule that a new function created by the Bill will pass to the Assembly in cases where it already exercises similar functions within that subject area and identify the policy clearance for that decision;
- Identify any change to the existing functions of the Assembly, including any new function being vested in the Assembly which

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nomenclature to be used with regard to the National Assembly for Wales. The guidance recommends that "the term 'Welsh Assembly' is always to be avoided".

might raise issues of general principle, and the policy clearance for the change; and

- Confirm that the Assembly Cabinet has been consulted on draft clauses as necessary (including commencement and other transitional provisions), summarise the Assembly Cabinet's view and indicate whether DP (The Devolution Policy Committee of Cabinet) or the Joint Ministerial Committee are likely to become involved (either in correspondence or through a meeting).

The revised edition of DGN 6 (Circulation of Inter-Ministerial and Inter-Departmental Correspondence) was published on 23<sup>rd</sup> March 2001. Amendments to the original version were on the whole relatively minor, with the with the general rule remaining that:

...the devolved administrations be made aware of issues which impact on their responsibilities, whether or not these are the subject of inter-Ministerial correspondence, in time for them to contribute views **before the UK government has reached its own policy conclusions.**

A new clause was inserted to remind officials of the joint responsibilities of the First Minister and Deputy First Minister in Northern Ireland:

Under the Good Friday Agreement and the Northern Ireland Act 1998, the First Minister and Deputy First Minister are jointly responsible for convening the Northern Ireland Executive Committee and co-ordinating its work. Consequently, any inter-Ministerial correspondence addressed or copied to the First Minister or the Deputy First Minister should also be copied to the other, in recognition of their joint constitutional status.

DGN 8 (Post-Devolution Primary Legislation affecting Northern Ireland) was published by the Cabinet Office in April 2001. Again stressing the importance of co-operation and early consultation the guidance note emphasised the following points:

- That there should be consultation with the Northern Ireland Executive Committee on policy proposals affecting devolved matters in Northern Ireland, whether or not they involve legislative change.
- That the agreement of the Northern Ireland Executive Committee need only be obtained for legislative provisions which are specifically for transferred purposes (but that in any case it is good practice to consult the relevant Northern Ireland Department and OFMDFM on with regard to provisions made for reserved or excepted purposes as they may have consequences for transferred areas of responsibility).
- That UK departments considering legislation on reserved matters should also consult the relevant Northern Ireland Department, the OFMDFM and the NIO to determine whether this is best done at Westminster or by way of parallel Assembly legislation (this point

being particularly important with regard to those functions which may be devolved in the future).

- UK departments should consult the NIO with regard to legislation which may alter the legislative competence of the Northern Ireland Assembly.
- The relevant Northern Ireland Department and NIO will ensure that Whitehall departments are consulted about Assembly legislation which may impinge on reserved matters.

DGN 7 (Court Proceedings regarding Devolution Issues under the Scotland Act 1998 and the Government of Wales Act 1998) remains unpublished.

Also published during the quarter was a document entitled *Devolution in Practice: a checklist for officials*. The document, compiled and agreed by members of the four administrations, offers a set of principles to be referred to by officials during their dealings between administrations. The document pays particular attention to communications, consultation and confidentiality and is intended to complement the values enshrined in the Memorandum of Understanding and concordats:

Effective and efficient relationships between the administrations cannot be sustained by memoranda and concordats alone. They must be an everyday part of the business of government across the UK. Accordingly, we will ensure that devolution is fully reflected in the training and development of our staff, as part of our commitment to provide them with the skills and knowledge to do their jobs effectively. In support of this we endorse this leaflet, developed jointly between our four administrations, which offers practical guidance for the running of day-to-day business under devolution.

All of the above documents are available on the Cabinet Office website at: <http://www.cabinet-office.gov.uk/>

- **Departmental End of Year Reports**

The Scotland Office, Northern Ireland Office and Wales Office all published departmental end of year reports during March 2001.<sup>19</sup> Each contained details of the Government's spending plans for 2001-02 to 2003-04 and short sections on the Devolution Framework outlining the Memorandum of Understanding and Concordats agreed by each department, the Joint Ministerial Committee machinery and the roles of the Territorial Secretaries of State.

- **The Offices of the Territorial Secretaries of State**

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<sup>19</sup> Each report is available on the relevant department's website: Scotland Office - <http://www.scottishsecretary.gov.uk/>; Northern Ireland Office - <http://www.nio.gov.uk/>; Wales Office - <http://www.oss.wales.gov.uk/>

Following publication of the Constitution Unit briefing, *Three into One Won't Go: The Future of the Territorial Secretaries of State*, the debate continues over the future roles of the Secretaries of State for Scotland, Wales and Northern Ireland.<sup>20</sup> Despite widespread reports in the media that the Government plan to combine the posts of Scottish and Welsh Secretaries creating a 'Minister for the Union and Constitutional Affairs' this is unlikely to happen in the near future.<sup>21</sup>

Writing in *Scotland on Sunday*, William Hague outlined the Conservative Party's plans to 'strengthen the Union and improve the government of Scotland.'<sup>22</sup> Mr Hague argued that to ensure a strong voice for Scotland at Westminster and in Europe it would be necessary to hold on to the post of Secretary of State for Scotland. Labelling any plans to remove, or merge, the Offices 'a serious mistake', Mr Hague proposed an increased UK role in Cabinet for the Secretary of State for Scotland allowing the post holder to lead UK delegations at an international level.

Outside politics, further groups have entered the debate. On 6<sup>th</sup> March CBI Scotland endorsed Mr Hague's approach stating in their press release that:

The Council of CBI Scotland firmly believes that the role of Secretary of State for Scotland must be retained to represent Scotland's interests in the Cabinet of the UK. Although the Scottish Parliament has some significant powers, which affect business and micro economic environment in Scotland, the UK Government and Westminster Parliament retain control over most of the macro economic, fiscal and legislative matters. Scotland is not a region. It is a partner within a union, which forms the UK. We do not want Scotland's representation in the cabinet to disappear nor to be diluted by the creation of a secretary of state for the devolved territories. This would give the appearance of some kind of colonial overlord sitting in London supposedly looking after the collective interests of the devolved territories of the UK.

Helen Liddell countered claims that post-devolution the job of Secretary of State for Scotland is less arduous than other Cabinet posts by asserting that in her first seven weeks in the job she had been 'run ragged.'<sup>23</sup> At Westminster when the issue was raised by the Conservative MP Mr James Gray (North

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<sup>20</sup> See Devolution and the Centre Monitoring Report Number 2 (February 2001) for an outline of the Constitution Unit position and an introduction to the debate.

<sup>21</sup> See 'Blair plans Ministry of Justice in big shake-up of Whitehall,' *The Independent*, 20 March 2001; 'Downing St studies ways to reshuffle ministry pack,' *Financial Times*, 12 March 2001. There have, however, also been reports that the Government's plan to create a Secretary of State for the Union have been 'shelved for the foreseeable future', see for example: 'Scotland Minister 'has no job to do', *The Herald*, 19 March 2001.

<sup>22</sup> 'Play the Scottish Card', *Scotland on Sunday*, 4 March 2001.

<sup>23</sup> 'Liddell 'run ragged' as Scottish Secretary', *The Herald*, 20 March 2001.

Wiltshire) in a written question to the Secretary of State for Scotland he received a rather more terse response:

**Mr Gray:** To ask the Secretary of State for Scotland what discussions she has had with the Prime Minister concerning the future of her department.

**Mrs. Liddell:** I have regular discussions with the Prime Minister on a wide range of issues.<sup>24</sup>

- **The Barnett Formula**

Newspaper reports have claimed that the Government plans to reassess the operation of the Barnett formula following the general election.<sup>25</sup> According to *The Guardian* Treasury figures show that public spending in Scotland, Wales and Northern Ireland now lies respectively at 23%, 18% and 39% higher than similar spending in England. The paper reported that:

Ministers are preparing themselves for a post-election battle with the three devolved administrations by unstitching the complex Whitehall formula which guarantees them much higher levels of public spending than the English regions.<sup>26</sup>

According to the report the Deputy Prime Minister, John Prescott, plans that the forthcoming review of local government finance will extend to funding across the UK, and added that the Barnett formula was only intended by the Government to continue for the duration of the current Parliament.

Downing Street quickly moved to quash the rumours. A spokesman for the Prime Minister maintained that current spending plans, involving the Barnett formula, were in place until 2004 and that the Deputy Prime Minister had in fact been talking only about funding for the English Regions.<sup>27</sup> The announcement from No 10 did not, however, rule out a review of Barnett in the long term, or even that such a review may come out of the forthcoming Green paper on English Regional Government.<sup>28</sup> Despite this, the *Financial Times* claimed that:

Ministers and officials are conducting a confidential review of the formula, but are refusing to speak about it publicly for fear of boosting the Scottish and Welsh nationalist parties ahead of the election.<sup>29</sup>

Government Ministers in Parliament have consistently denied that the Barnett formula is due to be reviewed. Mr George Foulkes, Scotland Office Minister, has stated that:

...the Barnett formula is fair; it does not squeeze, but continues to provide a fair expenditure allocation to Scotland, based on need.<sup>30</sup>

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<sup>24</sup> House of Commons Written Answers, 3 April 2001, Column 169W.

<sup>25</sup> 'Scots and Welsh face subsidy axe,' *The Guardian*, 24 April 2001.

<sup>26</sup> Ibid.

<sup>27</sup> 'Prescott 'gaffe' forces No 10 into cuts denial,' *The Times*, 25 April 2001; 'Regional funding formula review denied,' *Financial Times*, 25 April 2001.

<sup>28</sup> Ibid.

<sup>29</sup> 'Labour signals rapid regional referendums,' *Financial Times*, 11 May 2001.

While Mr George Howarth, Parliamentary Under Secretary of State for Northern Ireland, has added:

...there are no plans to change Barnett...beyond updating it from time to time to take account of changes in the relative population in each part of the United Kingdom.<sup>31</sup>

Indeed it has now been announced that the Government's spending plans have been finalised up to 2004 and so any review of the Barnett formula in the near future would appear to be unlikely.<sup>32</sup>

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<sup>30</sup> House of Commons Debates, 6 March 2001, column 136.

<sup>31</sup> House of Commons Debates, 9 May 2001, column 103.

<sup>32</sup> 'Liddell aims to build on Holyrood-Westminster links,' *The Herald*, 8 May 2001.

- **Devolution and the Cabinet**

**1: The Prime Minister**

In an interview reported by *The Herald* the Prime Minister admitted that he has become more relaxed in his attitude towards devolution and that he made a mistake in 'not letting go' of affairs in Wales post-devolution.<sup>33</sup> Mr Blair was quoted as saying:

I've come to terms with the fact that this is devolution and if people want to do things in a different way, that's up to them. They've got to account for it.

The interview was published shortly before the Labour party conference in Inverness and the day after the Scottish Executive had been defeated in Holyrood over a proposed aid package for fishermen.<sup>34</sup> While lamenting the previous day's events at Holyrood the paper described Mr Blair's 'phlegmatic' approach as 'refreshing.'<sup>35</sup>

**2: The Foreign Secretary**

In a speech to the Centre for The Open Society the Foreign Secretary, Robin Cook, declared that devolution to Scotland, Wales and Northern Ireland will 'stand the test of time as one of this Government's most radical and significant achievements.'<sup>36</sup> Mr Cook stated that devolution had, not only been a success for Scotland, Wales and Northern Ireland, but for the UK as a whole and that the new constitutional settlement, by recognising the cultural diversity of the UK, had guaranteed its future. Despite these worthy statements on the nature of the Union a large section of the press chose to focus on the Foreign Secretary's thoughts on curry.<sup>37</sup>

- **Foot and mouth disease**

The crisis over the outbreak of foot-and-mouth disease preoccupied both large parts of Whitehall and the political world between March and early May. Much discussion focused on the performance of the Ministry of Agriculture, Fisheries and Food and inter-departmental and inter-agency working within the UK Government and its supposed failure to get the crisis under control at an early stage, and has led to speculation about the Ministry's future<sup>38</sup>. As a consequence the Prime Minister took personal

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<sup>33</sup> 'Blair tells of mistake over devolution,' *The Herald*, 9 March 2001.

<sup>34</sup> 'All at sea over fishermen - First defeat for incompetent Scottish Executive,' *The Herald*, 9 March 2001.

<sup>35</sup> *Ibid.*

<sup>36</sup> Speech to The Centre for the Open Society, 19 April 2001. Extracts from Mr Cook's speech are available on the Foreign and Commonwealth Office website: [www.fco.gov.uk](http://www.fco.gov.uk)

<sup>37</sup> 'Chicken tikka massala 'is national dish'', *The Times*, 19 April 2001; 'Cook's tikka massala is a curious dish,' *The Telegraph*, 20 April 2001. *The Herald* did however run with 'Cook says devolution will help ensure UK unity,' 20 April 2001.

<sup>38</sup> See for example 'Blair tackles Ministry amid rising tension,' *Financial Times*, 29 March 2001; 'One crisis too many may consign MAFF to the knacker's yard,' *Financial Times*, 31 March 2001; 'Brown's 'empire' to be reduced after poll,' *The Times*, 30 April 2001; Peter Riddell 'The lessons that must be learnt in Whitehall,' *The Times*, 4 May 2001. On the crisis generally, see 'Lessons of an epidemic will reach far across the land,' *Financial Times*, 5 May 2001.

charge of the crisis on 23 March, and the Cabinet Office Briefing Room A ("COBRA") mechanism was invoked to deal with it, with meetings chaired initially by the Prime Minister and subsequently by various Ministers including the Defence Secretary, Geoff Hoon MP. COBRA initially met twice-daily and continues to meet, though much less regularly.

One aspect of the crisis that has been little discussed is the intergovernmental aspect. Many of the relevant government functions relating to animal movements and disease control are devolved to the Scottish Executive and the National Assembly for Wales. The statutory instruments to give legal effect to many of the steps to deal with the crisis were therefore made by the Scottish Ministers (for Scotland), the National Assembly for Wales (for Wales, sometimes jointly with the Minister for Agriculture, Fisheries and Food). The Minister for Agriculture, Fisheries and Food made instruments for England only, and for certain UK-wide matters such as export restrictions. COBRA appears to have played a key intergovernmental as well as intragovernmental role; as well as the front-line departments involved, the Wales Office, Scotland Office and Northern Ireland Office attended COBRA meetings. These offices acted as the channel for policy communication and co-ordination from the UK Government to the devolved administrations, as the devolved administrations quite naturally do not appear to have participated in COBRA directly.<sup>39</sup>

While there have been differences of emphasis and approach (a selective approach to slaughtering was adopted in England and Wales before Scotland, for example; Phoenix is an English calf), by and large the policy has been consistent across Great Britain despite this need for policy co-ordination. Clearly there was a spectacular behind-the-scenes effort of co-ordination to ensure that a consistent line was taken and maintained in public, both before and after the COBRA mechanism was invoked. Equally it has been apparent that there have been considerable disputes behind the scenes about the line to be taken, and that these have been intergovernmental as well as within the UK Government (it is clear MAFF resented the heavy involvement of the military and the Ministry of Defence, for example<sup>40</sup>) or between the UK Government and the NFU (as over vaccination). By and large, Scottish and Welsh Ministers supported the UK Government line, even though the interests affected in Scotland (such as tourism) were economically very severely harmed, and the harm extended nationwide while only small areas in south-west Scotland were affected by foot-and-mouth<sup>41</sup>. This unanimity extended beyond party boundaries to Liberal Democrats in the Scottish Executive, such as the Rural Development Minister Ross Finnie MSP. (Now

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<sup>39</sup> See 'Blair tackles Ministry amid rising tension,' *Financial Times*, 29 March 2001.

<sup>40</sup> See 'Brown bridles at 'military takeover' of Maff,' *Sunday Telegraph*, 25 March 2001.

<sup>41</sup> See 'Scottish Ministers face fearful public and sceptical landowners in fight for tourism,' *Financial Times*, 5 April 2001; 'Scotland worse hit as tourists look to London,' *Financial Times*, 12 April 2001

that the worst of the crisis has subsided, however, Finnie has been more critical of the approach taken.)<sup>42</sup> One might even say that a more consistent line was taken in public across the four governments than was taken *within* the UK Government. It is also notable that this common line was maintained by Liberal Democrat Ministers in the Scottish and Welsh administrations. The fact that a unified line was maintained in public so thoroughly suggests that the mechanisms for inter-governmental co-operation put in place by the Memorandum of Understanding<sup>43</sup> and the various concordats<sup>44</sup> have worked effectively. Despite this, however, the UK Government appears to intend to review the handling of such crises to ensure that there is better co-ordination between levels or orders of government as well as between UK Government Departments in future<sup>45</sup>.

Whether that would have happened in different circumstances is more questionable. Factors such as major political differences between the UK Government and devolved administrations, or less equivocal evidence about the efficacy of vaccination may have made a considerable difference. Quite how intergovernmental co-operation worked may be considered by official enquiries, if those take place. One has already reported on the apparent causes of the crisis compared with that in 1967, but Michael Meacher MP's announcement of another in April was swiftly rejected by the Prime Minister's official spokesman<sup>46</sup>.

#### *Devolution and the Courts:*

- ***Follen v Her Majesty's Advocate:***

Judgment was delivered by the Judicial Committee in the case of *Follen v Her Majesty's Advocate* on 8<sup>th</sup> March 2001.<sup>47</sup> The application for special leave to appeal was based on the decision of Lord Advocate to continue a prosecution against the appellant for offences under the Misuse of Drugs Act 1971. The

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<sup>42</sup> See 'Scotland says it will not change policy,' *Financial Times*, 18 April 2001; 'Finnie suggests slaughter will never to be used again', *The Scotsman*, 11 May 2001

<sup>43</sup> Cm 4806

<sup>44</sup> E.g. between MAFF and the Scottish Executive and National Assembly, available on the internet at: <http://www.maff.gov.uk/aboutmaf/devolve/concord.htm> and: <http://www.maff.gov.uk/aboutmaf/devolve/walescon.htm> respectively.

<sup>45</sup> See 'Ministers set to revise handling of national crises,' *Financial Times*, 5 May 2001.

<sup>46</sup> *Comparing the 1967-8 and the 2001 Foot-and-Mouth epidemics*, available on the MAFF website at: <http://www.maff.gov.uk/animalh/diseases/fmd/news.htm>. The anonymous 18-page report makes no mention of intergovernmental issues. See also 'Intensive farming 'is partly to blame' for rapid spread of foot-and-mouth,' *Financial Times*, 4 May 2001 (which ascribes authorship to the Cabinet Office). Regarding Mr Meacher's announcement of an inquiry, see 'Inquiry announced into foot and mouth crisis,' *Daily Telegraph*, 3 April 2001 and 'Blair's farm campaign hit by blunders,' *Daily Telegraph*, 4 April 2001.

<sup>47</sup> *Gary Follen v Her Majesty's Advocate*, Reasons for the Report of the Lords of the Judicial Committee of the Privy Council, Delivered 8<sup>th</sup> March 2001 (available from the website of the Judicial Committee at: [www.privacy-council.org.uk/judicial-committee/](http://www.privacy-council.org.uk/judicial-committee/)).

judgment, delivered by Lord Hope, refused the applicant's petition as it fell without the jurisdiction given to the Judicial Committee under the Scotland Act 1998. In giving judgment, Lord Hope emphasised that in devolution matters the Judicial Committee had no original jurisdiction, and as such is limited to adjudicating upon those cases which fall within the parameters of Paragraph 13 of Schedule 6 of the Scotland Act 1998.<sup>48</sup>

- ***McLean v Procurator Fiscal, Fort William and Advocate General:***

The case of *McLean v Procurator Fiscal, Fort William and Advocate General*<sup>49</sup> was heard by the Judicial Committee during the week beginning 30 April 2001. The devolution issue raised concerned whether financial restrictions imposed by legal aid rules on defence costs are compatible with Article 6 of the European Convention on Human Rights.

- ***Kelly v Procurator Fiscal, Kirkcaldy:***

The case of *Kelly v Procurator Fiscal, Kirkcaldy*<sup>50</sup> due to be heard by the Judicial Committee of the Privy Council during the Hilary Term, was withdrawn. A further case concerning Article 6(1) of the European Convention on Human Rights, *Kelly* was to have addressed arguments surrounding the impartiality of clerks of the district courts in Scotland.

- **The Advocate General for Scotland:**

In the House of Commons the Advocate General for Scotland, Dr Lynda Clark QC, stated that of the 1237 cases involving devolution issues up to 22 March 2001 she had intervened in 19. Intervention by the Advocate General had, she said, generally occurred at Privy Council level as most cases have been satisfactorily dealt with by the lower courts. The Labour MP for Dumbarton, Mr John McFall, whose question had prompted the response, suggested that the figures proved that relationship between Westminster and Holyrood was stable. Dr Clark added that she was:

...pleased to confirm that there is a high level of discussion and co-operation in the legal offices, as there is across the board, in relation to policy matters. The devolution settlement is working...<sup>51</sup>

On the issue of the Advocate General's involvement in cases before the Privy Council, the labour MP Mr Eric Joyce (Falkirk West) asked a question arising from some of the (rather unlikely) concerns of his constituents:

**Mr Joyce:** I am often asked by my constituents as I go round my constituency whether it is necessary for the Advocate General to

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<sup>48</sup> Lord Hope, at paragraph 9.

<sup>49</sup> High Court of Justiciary, [2000] SLT 928, *The Times*, 11 August 2000 (Heard by Lord Prosser, Lord Milligan and Lord Morison).

<sup>50</sup> High Court of Justiciary, [2000] SLT 1038 (Heard by Lord Milligan, Lord Cameron of Lochbroom and Lord Allanbridge).

<sup>51</sup> House of Commons Debates, 3 April 2001, Columns 171-172.

appear before the Privy Council, and, if so, whether that takes up much of her time. What should I tell them?

**The Advocate-General:** I am delighted that my hon. Friend's constituents take such an interest in my interventions. Personal appearances by the Advocate-General in cases in the Privy Council is not a legal requirement under the 1998 Act, but it is certainly useful, and, I hope, helpful to the court, to have a responsible Law Officer available to present legal arguments in that new and developing sphere of law. It does take a lot of time. As some of my hon. Friends will know, a great deal of preparation time is required for legal research, and there are both conferences and days in court. I have therefore limited my personal appearances to cases that are more complex or involve interesting or novel points. However, if any of my hon. Friend's constituents wish to speak to me personally about the matter, I would be delighted to do so.

### *Intergovernmental Relations*

- **The Joint Ministerial Committee on Devolution:**

A meeting of the Joint Ministerial Committee on Europe took place in London on 1<sup>st</sup> March 2001 chaired by the Foreign Secretary, Robin Cook. The agenda included a review of the arrangements established when the EU concordat was agreed in October 1999 and the agreement of a common approach to be taken at the meeting of the Stockholm European Council held in late March.

- **The British-Irish Council:**

*1: Meetings of the British-Irish Council:*

There have been no meetings of the BIC at summit, or ministerial, level during the quarter. As mentioned in our February 2001 Devolution and the Centre Monitoring Report, meetings had been scheduled to take place at the end of January and in early February 2001 but both were cancelled. Official level meetings have recently taken place on the environment and knowledge economy.

In a joint statement on the progress of the peace process issued by the British and Irish Governments on 8<sup>th</sup> March 2001 the two Governments reiterated their commitment to the intergovernmental machinery set up under the Good Friday Agreement:

It continues to be essential that the full operation of the North South Ministerial Council and the British-Irish Council resume, and that all of the institutions continue their important work. The two Governments will do all within their power to sustain the full operation of the

institutions, including during any formal review of the Agreement which may be necessary, and call on others to do likewise.<sup>52</sup>

*2: House of Lords Debate: Council of the Isles:*

On 21<sup>st</sup> March Lord Wallace of Saltaire asked Her Majesty's Government whether the development of the Council of the Isles, or British-Irish Council as it is more properly known, has been satisfactory.<sup>53</sup> The Government response, given by the Cabinet Office Minister Lord Falconer, outlined the topics covered during the three meetings of the British-Irish Council and indicated that the agreed programme of future work for the Council would include the environment, social inclusion, the knowledge economy and drugs. He stressed that BIC work is continuing at official level, despite the fact that recent meetings of the Council have had to be cancelled to allow the political negotiations surrounding the peace process in Northern Ireland to continue. Further questions from Lord Wallace and Lady Saltoun of Abernethy on the membership and remit of the body were met with re-assurances from Lord Falconer that the Council did indeed include the Channel Islands and the Isle of Man and would represent their interests as well as those of mainland Britain and Ireland. Lord Falconer further indicated that official level meetings would soon be taking place in Jersey to emphasise the fact.

• **The British-Irish Interparliamentary Body:**

Minutes of the 22<sup>nd</sup> plenary session of the British-Irish Interparliamentary Body were published during the quarter.<sup>54</sup> The BIIPB had met on the 26<sup>th</sup> and 27<sup>th</sup> February 2001 in Killarney. In attendance were Parliamentary Observers from the devolved administrations in Wales, Scotland and Northern Ireland, and from the Isle of Man. Among other matters the Body discussed the foot and mouth outbreak, the cultural significance of parades, recent developments in the peace process, and heard reports from the Body's four subject committees. It was also agreed that representatives of the devolved assemblies should be involved in the future work of the body as members rather than observers. Each of the devolved administrations will be allowed to nominate five members and four associate members. The States of Guernsey and Jersey and the High Court of Tynwald will each in future be able to nominate one member and one associate member.

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<sup>52</sup> Statement by the British and Irish Governments, 8 March 2001, Northern Ireland Information Service ([www.nio.gov.uk](http://www.nio.gov.uk)).

<sup>53</sup> House of Lords Debates, 21 March 2001, Column 1417.

<sup>54</sup> The text of the minutes and further details of the British-Irish Interparliamentary Body are available at: [www.biipb.org/](http://www.biipb.org/)