

## Devolution in the Round

The Constitution Unit has published three reports on devolution: to Scotland, Wales and the English regions. This briefing highlights the key points from the three reports and sets them in the context of a wider programme of constitutional reform. These are initial findings: the Unit will produce a further report on the wider context later in the year.

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Devolution need not be uniform across the UK; but devolution to Scotland and Wales alone may not satisfy popular and political demand. There needs to be a coherent policy which promises the benefits of devolution for the whole of the UK.

Devolution legislation can be brought forward in stages. Each stage must be coherent, mesh with other stages, and not foreclose options for other regions and nations of the UK.

The timetable will reflect political priorities and public demand. The development of directly elected Regional Assemblies in England is likely to be gradual, variable and on a long timescale: in some European countries the process has taken twenty years.

To ensure coherence and to keep up the momentum of constitutional reform, there needs to be strategic leadership from a senior Cabinet Minister with dedicated official support.

Legislative devolution should not follow the 1978 Scotland Act model: the legislation should specify the powers retained by Westminster, not the powers devolved.

In the longer term there may not be a sufficient role to justify Secretaries of State for Scotland, Wales and Northern Ireland. They might be replaced by a Cabinet Minister responsible for territorial relations within the UK.

If there is a prospect of change in the electoral system for the House of Commons, any changes in Scottish and Welsh representation at Westminster could be considered as part of the wider change.

One possible role for a reformed House of Lords would be to represent the nations and regions of the UK.

## Rolling Devolution

Although some have proposed the immediate introduction of a federal system for the UK, the political realities, parliamentary constraints and different degrees of enthusiasm suggest a rolling programme of devolution is more likely.

The motivations for devolution in Scotland, Wales and the English regions are different. Scotland and Wales already have administrative devolution to the Scottish Office and Welsh Office, which allows a degree of policy and spending autonomy. Through the Government Offices for the Regions the first steps have been taken towards administrative devolution to the English regions. In Scotland and Wales the pressure is now to introduce an element of democratic choice and local accountability. That feeling is present in some English regions, but not all. Both feelings - a wish for greater autonomy, and for greater democracy - are likely to grow in England if Scotland and Wales set the pace.

Devolution need not be uniform. Although the principle of equal political rights for all throughout the UK is attractive it is breached in practice already through different degrees of administrative devolution in the UK and special arrangements in Northern Ireland. Other European countries live with lopsided devolution; and the UK did so for 50 years with Stormont. But devolution for Scotland and Wales alone may be difficult to sustain politically if it encourages, as it will, demands for similar treatment for some or all of the English regions.

A rolling programme of devolution would allow different parts of the UK to move at their own speeds depending on local demand. Devolution can embrace different settlements for Scotland; for Wales; and as between the different regions of England.

## Scotland then Wales

In the 1979 referendums the Scots voted by a narrow margin for the Scottish Assembly proposed in the Scotland Act 1978; but the Welsh rejected the proposed Welsh Assembly by four to one.

Opinion polls suggest that demand is still greater in Scotland, and the work of the Scottish Constitutional Convention has built a strong civic consensus for change. Wales needs to have a wider debate of the kind generated by the Convention about the functions and powers of a Welsh Assembly. To allow time for that debate there is a case for legislating first for Scotland which would:

- prevent the Scottish proposals overshadowing the Welsh proposals.
- enable cross-fertilisation from the Scottish experience.
- allow more time for consultation and preparation of the Welsh legislation.

## English Regions

The English regions could also have a rolling programme of devolution. It would be possible to establish directly elected Regional Assemblies in one step; but it seems more likely that some regions will be ready for this earlier than others, depending on local demand. This points to a period of transition which could involve the establishment of indirectly elected Regional Chambers (of representatives from local authorities) as an interim step. Ultimately, it might be possible to accommodate a pattern under which Assemblies existed in some English regions and not in others; or Assemblies with varying functions and powers.

## Northern Ireland

Any new Assembly created in Northern Ireland will have implications for devolution in other parts of the UK, in terms of its structure; powers; electoral system; and consequential changes to central government. But any new Assembly will be designed to operate in the special circumstances of Northern Ireland: here too there does not have to be a uniform pattern across the UK.

## Design of the Legislation

The sovereignty of Parliament should enable greater flexibility in a devolution settlement in the UK than is possible in federal systems. It should be exploited.

Legislative devolution should not follow the 1978 Scotland Act model: powers retained should be specified, not powers devolved. This would make the legislation more workable in practice, more principled, more comprehensible and more durable, and probably easier to draft.

Executive devolution is possible - but if it followed the model of the Wales Act 1978 it would be technically difficult to draft. It would not allow much policy autonomy but it could have a place in a programme of rolling devolution as a step towards legislative devolution. It could be a starting point for Welsh devolution, and is a step the English regions might want to take in due course.

## Passage of the Legislation

To ensure coherence and to maintain momentum for a programme of constitutional reform, including devolution, there needs to be a central unit in Whitehall charged with preparing the devolution legislation, supervised by a strong central Minister. A senior Minister and a body of officials need to have an overview of the whole programme, and recognise the inter-relationships between different constitutional reform measures.

Reform of parliamentary procedures will also be needed. Changes might include:

- partial referral of bills to a standing committee, to reduce the time needed on the floor of the house.
- advance timetabling of all bills.

- allowing some bills to be carried over from one session to the next.

## Referendums

A referendum is not necessary for constitutional reform, but might be desirable if popular consent for specific change is in doubt.

In relation to devolution, this is more likely to be the case in Wales (given the 1979 referendum result) than in Scotland. A referendum could be held in advance of the legislation, as the Government has proposed in Northern Ireland; but an advance referendum would require separate legislation. For the English regions, the referendum offers a possible way of settling the boundaries of the regions for directly elected Regional Assemblies. Any referendum will need to be conducted according to clear and widely agreed guidelines, if the result is to be regarded as fair.

## Finance

Financial arrangements will be the key to making devolution work. The specific financial arrangements will need to reflect the functions of different assemblies. But there are three basic principles:

- devolved assemblies should be able to raise a proportion of their own revenue. Otherwise they will have political accountability to the local electorate but no fiscal accountability. They will constantly blame central government for restricting their finances whilst central government will constantly blame them for overspending (as we have seen with local government).
- the assemblies should have freedom to allocate the spending according to their own priorities. The element of own revenues need not be large to give some ability to vary spending decisions at the margin.
- the principle of equalisation according to need across the UK should continue to apply in the allocation of public resources. This has led to regional transfers throughout the UK, governed in Scotland, Wales and Northern Ireland by the Barnett formula. That formula is based upon a needs assessment carried out 20 years ago. It will come under increasing scrutiny and pressure, and could not provide a basis for financing eventual English regional government. Any new needs assessment could in future be carried out by an independent commission, and repeated every five to ten years. The commission could make recommendations about the allocation formula, and monitor its application. Its role would be advisory: allocation decisions would remain the responsibility of the Government and be approved by Parliament.

## Changes in Central Government

Rolling devolution might in time have major consequences for central government. Part of its rationale is to reduce the overload on Westminster and Whitehall. The role of the

Secretaries of State for Scotland and Wales will reduce over time if assemblies with legislative power are established. Government departments will have to reorient themselves from top down policy making, to policy observation, co-operation and co-ordination.

There may be political pressure for reduction in the number of Scottish and Welsh MPs to offset the establishment of assemblies. If a reduction in the number of MPs is thought prudent then it should be considered either by a Speaker's Conference or by a UK Electoral Commission established to provide independent advice on electoral issues. Labour and the Liberal Democrats have both proposed establishing an Electoral Commission. The prospect of proportional representation for the House of Commons might lead either body to recommend no change until such time as decisions on the electoral system are made.

Although reduced in the House of Commons, Scottish and Welsh representation might be strengthened in a reformed House of Lords. One possible function for the House of Lords in the future might be the role fulfilled by the upper house in federal systems: it could represent the nations and regions of the UK. This would give the devolved assemblies a stake in the institutions of central government.

Parliamentary procedure and practice in Westminster may be influenced by new practices in the devolved assemblies; new co-ordination functions may also be assumed by the House of Commons and in the House of Lords.

## Co-operative Machinery

For devolution to work it needs to be underpinned by co-operative machinery as well as political will. The official level machinery should help maintain effective working between central government and the devolved assemblies when the politics is under strain. Whitehall will need to maintain the same level of contacts with the devolved assemblies as it currently does with the Scottish and Welsh Office and the Government Offices for the Regions.

## Europe

There will inevitably be overlap between the competence devolved to assemblies and those where the EC has competence to legislate. Representation in the EU will continue to be through UK Ministers and Whitehall departments because the UK is the Member State. To secure representation of regional interests, the devolved assemblies will need to negotiate co-operation agreements with the UK government providing, inter alia, for participation in policy meetings, and attendance at working group and Council meetings on devolved matters.

## Local Government

The local authority associations in Scotland and Wales are strong supporters of devolved assemblies, and in England the ADC and AMA have shown a keen interest in regional government. Regional government could be perceived as a threat to local government, supervising it more closely or absorbing its powers; but indirectly elected Regional Chambers will be drawn from and controlled by local government. Directly elected Regional Assemblies will be independent of local government, but would draw their powers and functions from central government. A key decision will be how far Regional Assemblies would assume the function of allocating resources between local authorities.

In Scotland and Wales the key to developing constructive relationships might lie in bringing local government into the central political process: local authority members could be co-opted onto the relevant assembly committees; and dual membership could permit councillors to stand for election to the devolved assemblies without having to resign from their local authority. There is a case here too for co-operation agreements setting formal criteria for consultation, financial negotiation, etc. between devolved assemblies and local government.

## Electoral Systems and Cycles

Because of the political geography of the UK which concentrates support for political parties regionally there is a risk of a regional or national assembly being dominated by one political party. That has been evident in Northern Ireland; it is a risk in Wales; and it would be a risk in a number of the English

regions. Proportional representation would help to protect the interests of political minorities, and should be considered for all the devolved assemblies.

Another factor which needs to be considered is the timing of elections to devolved assemblies within the cycle of local government, Westminster and European elections; and ways of avoiding voter fatigue, and the perception that every election is a poll on the standing of the national political parties.

## Loosening Central Control

Devolution takes its place in a wider package of proposed reforms to the UK political system. It will in any event itself promote further change. It will open up to scrutiny parts of the political system which have remained relatively hidden to date: distribution of resources, of inward investment, of gains from European policies, and the attitude of Whitehall Ministers and departments to national and regional issues.

This new visibility will require a greater political trust and tolerance at the centre - and in the regions - and a new appreciation of the nature of the British state as a *union* rather than a *unitary* state. Devolution is a loosening of control, which carries risks. But breaking the central monopoly on the design of public policy could bring overall benefits through the encouragement of competition, diversity, and wider participation in the political process all round.

### About the reports

The Constitution Unit is a research project set up in April 1995 to conduct an independent inquiry into the implementation of constitutional reform. The Unit aims to: analyse current proposals for constitutional reform; explore the connections between them; and identify the practical steps involved in putting constitutional reforms in place.

A series of reports is being published by the Unit during 1996. Each report will be accompanied by a briefing. The reports deal with the practicalities of planning and legislating for constitutional reform; reform of the House of Lords; the introduction of devolved assemblies in Scotland, Wales and the English regions; human rights legislation; the relationship between constitutional reform in the UK and changes in Europe; and the conduct of referendums.

In the preparation of these reports, the Unit has been assisted by a wide network of experts. However, neither our advisers nor the Faculty of Laws, University College London (where the Unit is based) are responsible for the conclusions and recommendations of this report, which are those of the Unit alone.

Reports can be obtained direct from the Unit at a cost of £10 each. Briefings are available free of charge.



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