

## REVIEW OF THE EXPERIENCE OF DEVOLUTION IN SCOTLAND: a response to the Commission on Scottish Devolution

### Summary

- *It is important that consideration is given to the relationship between the governing institutions of all the nations and regions of the UK. There is no overarching statement of the purpose of Devolution that addresses the interests of each of the nations and regions to each other and to the UK as a whole.*
- *If the Commission recommends significant changes to the Scotland Act, for example to the fiscal powers, the RSE would recommend that democratic approval to the proposed changes should be sought through a referendum.*
- *The RSE strongly recommends that the messages of the Gould report are learned and that preparations for the 2011 elections are concluded well in advance of the elections in order to ensure that the problems experienced in 2007 are not repeated. The RSE also recommends that the Scottish Parliament be given full legislative and administrative control over its own elections, with the exception that the franchise for voting entitlement should remain a reserved matter.*
- *The RSE recommends that the levels of social security benefits and funding should remain reserved, to retain risk pooling, although there may be scope for administrative devolution to bring economic development and training closer to the benefit system.*
- *Given that responsibility for local government taxation and housing are already devolved the RSE recommends that council tax benefit and housing benefit should be devolved to enable policy innovation in these areas.*
- *The RSE believes that an over-emphasis on a concept of Scottish energy self-sufficiency or failure to utilise efficiencies of scale could be damaging to the Scottish energy system, to its achievement of emissions targets and to its economy.*
- *In terms of the marine environment the RSE recommends that the Scottish Parliament be given the appropriate legislative competency to enable it to legislate out to 200 nm.*
- *It is recognised that the Scottish Higher Education research community engages successfully with the Research Councils and the RSE recommends that the UK-wide system be retained.*
- *The RSE recommends that there should be further consideration of fiscal devolution for the Scottish Parliament. Such a model would have to involve a mix of assigned revenues and additional devolved revenue raising powers. There would also need to be a new equalisation regime to take account of the outcome of a fundamental needs assessment for each of the nations and regions of the UK.*
- *Consideration should be given as to whether the Scottish Parliament should also be assigned borrowing powers.*
- *As an essential component of developing an overarching structure and narrative for devolution in the UK, it is essential that new and robust inter-governmental structures need to be developed. These should be built in partnership between the UK Government and devolved administrations, and their purpose and decision making structure enshrined in primary legislation.*

- 1 The Royal Society of Edinburgh (RSE) welcomes the opportunity presented to make a submission to the Commission on Scottish Devolution. The Commission's review is timely given the debate that has been taking place in Scotland and the UK and represents an important opportunity for the Holyrood and Westminster Parliaments to engage with the public on an issue of the highest priority. The paper presented here was prepared by a working group of expert Fellows of the RSE under the direction of Sir John Arbuthnott, and has been approved by the RSE Council.
- 2 The RSE believes that in addition to the questions posed by the Commission on various aspects of Scottish Devolution it is also important that consideration is given to the relationship between the governing institutions of all of the nations and regions of the United Kingdom. The ongoing public debate reveals a need for further understanding of Devolution across the United Kingdom. We cover this theme in the paper before addressing, in turn, the questions posed by the Commission in its call for evidence.
- 3 A number of recommendations are made by the RSE working group and approved by the RSE Council on: the UK and Devolution (Paras 10 and 11); the Gould report (Para 24); elections to the Scottish Parliament (Para 30); social security, council tax benefit & housing benefit (Paras 33 and 34); energy policy (Para 36); the marine environment (Para 38); UK Research Councils (Para 40); fiscal devolution & borrowing (Paras 59-61); and on inter-governmental structures (Para 68).
- 4 The RSE would be pleased to discuss further with the Commission on Scottish Devolution any of the comments or recommendations that have been made in this paper. Where the Commission would wish to receive some further detailed analysis of a particular area, the RSE would be prepared to establish expert working groups within its Fellowship to assist the Commission in its work.
- 5 The Commission on Scottish Devolution has been asked to look primarily at the Scottish situation, although, there are many other constitutional changes that should also be taken into account. Wales has already had its second devolution act, Northern Ireland has a power sharing Executive, and there has been the establishment of the London Assembly and Mayor. There has also been the launch of the National Conversation by the SNP Scottish Government. Given all of these developments it would seem essential that there should be an overall review of how the UK is currently governed, how it should be governed in the future, and in this context close attention should be given as to how England should be governed in the future.
- 6 It is already the case that there is an increased interest within England as to its government and relationship with each of the other nations of the UK. From a number of sources, particularly in sections of the media, this debate is fuelled by poorly informed views as to the fiscal situation of each of the constituent parts of the UK. It is essential that the issue be considered and debated in an informed manner, involving a much higher level of public debate, and that a narrative is developed mapping out how each of the nations and regions of the UK should be governed and interact with each other. Such a review must consider the fiscal arrangements appropriate to the good governance and accountability of each level of government. There are also important implications for Local Government.
- 7 The relationship between the EU, the UK Government and the devolved administrations is an area that was not given as much attention in the original devolution acts as would have been desirable, and so any new examination of the governance of the UK should also look at how each of the parts of the UK should best contribute to the representation of the UK within the EU.
- 8 **The original devolution settlement in 1998 was given democratic approval through consideration of a referendum throughout Scotland, and the Commission may wish to consider whether a referendum should be conducted on the outcome of its work. This should particularly be considered if the recommendations involve significant changes to the 1998 Scotland Act, for example to the fiscal powers. In such circumstances the RSE would recommend that democratic approval to the proposed changes should be sought through a referendum.**

## The UK and Devolution

- 5 In considering Scottish Devolution it is important to recognise that it does not exist in isolation from the interests of the other nations and regions of the UK.
- 6 Devolution within the UK has to date taken place in a piecemeal and asymmetric manner, and there is no overarching statement of the purpose of Devolution that addresses the interests of each of the nations and regions in relationship to each other and to the UK as a whole.

- 11 The RSE recommends that the Commission on Scottish Devolution should also consider the inter-governmental relationships carefully, and make comment upon them. In considering the merits of its recommendations the Commission should not just consider their implications for Scotland but for the UK as a whole – including the position of England.**

### Scottish Parliament and Devolution

- 12** Overall the devolution settlement has worked well in delivering parliamentary scrutiny, and in delivering effective government. Accountability of Scottish Government has increased, and there is greater access for civic Scotland to policy makers. The experience of the Committees of the Scottish Parliament has been that they provide an enhanced level of scrutiny for Scottish public policy measures than existed in the pre-devolution period.
- 13** Whilst much of the debate about current constitutional powers is on whether the Scottish Parliament should have more powers, it is essential that this does not result in insufficient attention being given to how best to use its existing powers. The biggest short term (and possibly medium term) economic benefit to Scotland would come from making the existing devolution settlement work better and more efficiently.
- 14** The Governments formed since devolution have proved to date to be fairly stable, both through the two periods of Labour & Liberal Democrat coalition, and also in the last year since the election of the current minority SNP Government. At the same time as the structure of Government has been stable, the proportional nature of the Parliament has also meant that Parliament is able to hold Government to account to a far higher degree than in the solely “first past the post” model traditional in the UK, as even in the periods of coalition the overall majority of the Government was slim.
- 15** Support for devolution as measured by the Scottish Social Attitudes (SSA) Survey 2007, and as reported to the Commission by Professor John Curtice, shows that in 2007, 62% of respondents viewed devolution as their preferred constitutional arrangement, which would seem to indicate a degree of satisfaction with the settlement, although the same survey also indicated strong support for more powers to be devolved to Scotland.

### Policy Innovation

- 16** There have been a number of areas where Scottish policy has differed from the other parts of the UK, and where change would have been unlikely prior to devolution. Examples being free personal care for the elderly, the abolition of undergraduate student tuition fees and changes in health care. Issues which had long been stalled in the Westminster system such as Land Reform have been addressed, and the Scottish Parliament took a lead in UK terms in introducing the ban on smoking in enclosed public places. The approach to delivering public services in Scotland has also been significantly different to that in the rest of the UK.
- 17** Measures such as free care for the elderly, free prescriptions, and the abolition of tuition fees are perceived by political commentators as having a broad degree of popularity; however evidence from the Scottish Social Attitudes Survey indicates that the position is more mixed. For example, the 2007 SSA survey indicated that 63% of respondents believed that some students or their families should pay towards their tuition fees. It is probably too early to say whether each policy has a long term benefit for Scotland. For example, in the case of tuition fees there is the potential issue of whether Scottish universities can maintain their competitive position in relation to English universities without an additional source of income to compensate for the decision to forego student contributions for first undergraduate courses. The outcome of the work of the Joint Future Thinking Taskforce on Universities could be significant in establishing whether the funding gap can be addressed in other ways. This issue would become even more important should the fee cap be removed from English universities.
- 18** More broadly, the long term affordability of some of the measures above remains to be proven.
- 19** In more general economic terms it may also be too early to reach a judgement on whether devolution has led to better or worse outcomes for Scotland. There has been economic growth for the UK throughout the period since 1999 to date (the most recent quarter is now reported as having 0% growth), and economic growth for Scotland has been below the UK average for most of this time, although this was also the case for much of the pre-devolution period. Scotland has, however, performed above most of the regions and nations of the UK with the exception of some regions in the South of England. It is, however, too soon to judge whether the economic “lag” in Scotland that persisted for many years preceding devolution is being reversed.

20 The economic levers available under devolution are also limited mainly to areas such as investment in education and skills, development of infrastructure, and the economic development role of bodies such as Scottish Enterprise. Most taxation and all of the benefit system are still reserved to Westminster, as are decisions on issues such as levels of public sector borrowing and monetary policy. This issue will be addressed later in the paper.

### Experience of 1998 Scotland Act

21 Broadly, the Additional Member (AMS) electoral system has seemed to work well, producing a far more proportional result than is typical in the UK, although there are still tensions between the roles of constituency and regional MSPs. Whilst more proportional than a First Past the Post (FPTP) electoral system, the AMS electoral system is still capable of producing a disproportionate result, mainly due to the retention of the 73 FPTP constituency seats. For example, had Labour retained Cunninghame North (that turned on a majority of only 48), then the party that won the second most votes would have won the most seats.

22 The Arbuthnott report on Boundary Differences and Voting Systems<sup>1</sup> (published January 2006) recommended the retention of the AMS system, with some modifications. It further recommended that the system should be reviewed again, after two electoral cycles, and if further reform were judged necessary, consideration should be given to the introduction of the Single Transferable Vote system for the Scottish Parliament elections.

23 In the first two elections to the Scottish Parliament there were not an excessively large number of spoiled ballot papers, and the difficulties experienced in 2007 would seem to have been largely due to poor planning of ballot papers and public engagement, which caused a degree of confusion amongst some voters. This has been extensively considered by the independent Gould report<sup>2</sup>.

**24 The RSE strongly recommend that the messages of Gould are learned and that preparations for the 2011 elections are concluded well in advance of the elections in order to ensure that the problems experienced in 2007 are not repeated.**

25 It would also appear to be the case that there is a need to develop a robust system to manage and resolve inter-governmental and inter-parliamentary

issues. In the first two terms of the Scottish Parliament this was not as apparent an issue, as the Administrations at Westminster and Holyrood were largely of the same party. It was inevitable at some point that this would not be the case, and following the elections last year it is clear that more effective structures are needed to resolve issues of conflict and to encourage joint working on areas of shared responsibilities, such as the approach to climate change. This issue will be further considered later in the paper.

### POWERS OF DEVOLUTION

26 There are a number of potential areas where further devolution of powers has been suggested in political and civic Scotland, and a number of these are considered within this paper.

#### Constitution

27 *Elections to the Scottish Parliament, and the franchise for local government elections, including the voting age:*

The Gould report recommended transferring to the Scottish Parliament responsibility for its own elections. Gould reached this conclusion after the study into the difficulties experienced in the 2007 Scottish elections, and reached the view that a contributing factor was the division of responsibilities for the elections between the Scotland Office and the Scottish Executive. His Committee formed the view that a single jurisdiction having responsibility for all aspects of the election would help to reduce problems associated with this divided responsibility, and on balance recommended that the Scottish Parliament should be the appropriate body.

28 Given the concerns that also emerged through the Gould report regarding political parties seeking to gain advantage through issues such as ballot paper design, consideration should be given to an independent body being given responsibility for such issues. This could either be an expanded role for the Electoral Commission, or possibly under the Chief Returning Officer for Scotland position, as proposed by Gould.

29 As regards the local government voting age, it would seem appropriate that the franchise for entitlement to vote is an integral right that accrues from UK citizenship, and that it would not be appropriate for this to vary in different nations within the UK. As such it would be appropriate to retain responsibility for the electoral franchise as a reserved matter.

1 Arbuthnott report available at <http://www.scotlandoffice.gov.uk/uploads/Final%20version%20of%20report.pdf>

2 Gould report available at <http://www.electoralcommission.org.uk/document-summary?assetid=13223>

- 30 The RSE recommends that the Scottish Parliament be given full legislative and administrative control over its own elections, with the exception that the franchise for voting entitlement should remain a reserved matter.**

### Social Policy

- 31 *Social Security:*** Social security, benefits and pensions are all currently reserved, in order to pool risks over the regions and nations of the UK. This is consistent with the practice in other devolved and federal states in Europe. It could, however, be argued that this produces a disconnect between economic development and training on one hand, and welfare provision on the other. This though may be necessary or desirable in order to pool the risk; retaining social security funding at the centre can compensate for economic development weakness in some regions or nations. A number of options exist here, ranging from retention of the reserved position, to full devolution, with an alternative of devolution of the administration of benefits, whilst levels of benefits and funding remain reserved.
- 32** Council tax and housing benefit are issues that perhaps should be considered separately from the other parts of the welfare system. Council tax benefit is closely related to council tax itself, which is a devolved issue. There is currently a dispute between the Scottish and UK Governments about what should happen to council tax benefit if council tax was replaced by an alternative form of local government taxation. It would seem logical that the tax and benefit should both be the responsibility of the same level of government, as without this connection it would seem difficult to ever reform or replace council tax. A similar, though less current, argument could be made over housing benefit, given that housing is a devolved issue, whilst housing benefit is reserved.
- 33 The RSE recommends that the levels of social security benefits and funding should remain reserved, to retain risk pooling, although there may be scope for administrative devolution to bring economic development and training closer to the benefit system.**
- 34 Given that responsibility for local government taxation and housing are already devolved the RSE recommends that council tax benefit and housing benefit should be devolved to enable policy innovation in these areas.**

### Economic Powers (other than fiscal)

- 35 *Energy:*** Responsibility for the majority of energy policy is currently reserved, with the exception of the development of renewables, the encouragement of energy efficiency, and the powers to grant consent for new electricity generation and transmission infrastructure. It seems likely that the current allocation of competences in this field could result in continuing conflict between the two Governments, particularly given the intention of the UK Government to support the development of a new phase of nuclear power generation, and the opposition of the Scottish Government to nuclear new build. This could have implications for Scotland in terms of the stability of energy supply, sustainability and affordability. The RSE published a major Inquiry Report on Energy Issues for Scotland in 2006<sup>3</sup>, and this Report remains relevant today. The RSE Inquiry Report has been substantially influential in informing the debate on future energy policy; however it remains the case that a number of the key issues examined still need to be resolved satisfactorily to achieve the strategic aim of *a secure, competitive, socially equitable, and low carbon emissions supply of energy for Scotland* set out fully in the Inquiry Report.
- 36 The RSE believes that an over-emphasis on a concept of Scottish energy self-sufficiency or failure to utilise efficiencies of scale could be damaging to the Scottish energy system, to its achievement of emissions targets and to its economy. The approach should encourage interdependency within the UK, European and global markets.**
- 37 *The marine environment:*** An expert working group of the RSE<sup>4</sup> recently submitted a response to the Draft UK Marine Bill published by DEFRA, and in the submission the RSE emphasised the vital importance of clarifying the legislative interactions between the proposed UK and Scottish Bills. The issue is examined more fully in the submission, and the working group recommended as follows:
- “The issue concerning the interactions with the Scottish Marine Bill is of great concern. The boundary between the jurisdiction of the Scottish and UK Bill at 12 nm (nautical miles) is unworkable because it will add complexity and will lead to conflict and/or inconsistency in several important areas including fisheries, marine conservation, licensing/consenting and charging. We recommend strongly that the Scottish Bill should legislate out to 200 nm.”*

<sup>3</sup> [http://www.royalsoced.org.uk/enquiries/energy/full\\_report.pdf](http://www.royalsoced.org.uk/enquiries/energy/full_report.pdf)

<sup>4</sup> [http://www.royalsoced.org.uk/govt\\_responses/2008/draft\\_marine\\_bill.pdf](http://www.royalsoced.org.uk/govt_responses/2008/draft_marine_bill.pdf)

- 38 The RSE recommends that the recommendation from our submission to the draft Marine Bill be taken on board, and the Scottish Parliament be given the appropriate legislative competency to enable it to legislate out to 200 nm.**

### Scientific Research

- 39 Research Councils and funding of scientific research:** The Scotland Act reserves the Research Councils, but not all research, which leaves the Scottish Government free to commission research. There is strong support from Fellows within the Society that the Scottish Universities should continue to be active in UK Research Council funded activities, particularly to maintain the critical mass required to fund modern scientific research. Scottish universities and research institutes have been highly successful in accessing the competitive funding available, due to research excellence in many key disciplines. There are also large scale funding sources available through European Framework programmes, so research is increasingly an area of overlapping competency. The high international reputation of research in UK universities must be maintained. The RSE produced a joint report with the Royal Society in April 1999, “Devolution and Science: Implications of Scottish Devolution” which recognised this trend, and made a number of recommendations that are still valid today.
- 40 The RSE believes that the UK Research Councils work well, and ensure the high level of international reputation of UK research. It is further recognised that the Scottish Higher Education research community engages successfully with the Research Councils, and the RSE therefore recommends that the UK-wide system be retained.**

### Legislative Competency

- 41** For the majority of policy areas it would seem best to have a clear definition for which Parliament has legislative competency, although there are areas where both Parliaments and Governments already have overlapping responsibilities to act. A particular example of this being Climate Change, where both the UK Government and the Scottish Government are promoting legislative Bills.
- 42** There already exists a protocol whereby the Scottish Parliament can consent to Westminster legislating on a devolved issue, where this is seen to be administratively efficient, through a legislative consent motion. These are usually granted on relatively non-contentious issues. There may be a case for developing a reverse legislative consent motion where Westminster could

issue a limited devolution for the Scottish Parliament to legislate on a specific issue. Such a mechanism could be used to implement legislation on an area of law that is of priority to Scotland, but not necessarily to other parts of the UK, and for which the UK Government has no existing plans to introduce legislation.

### Fiscal Powers

- 43** The current position where the Scottish Parliament has responsibility for over half of public expenditure in Scotland, and yet has responsibility (directly through non-domestic rates or indirectly through council tax) for only a small percentage of tax raised in Scotland creates two significant problems. These are a lack of accountability due to the disconnect between tax raising and public spending, and a tendency for dispute between Westminster and Holyrood over spending settlements (particularly when the Governments have different political compositions).
- 44** The current financial settlement is mainly a continuation of the pre-devolution Barnett arrangements for the previous Scottish Office, with the addition of the tax varying powers on the basic rate of income tax, which to date have never been used. Lord Barnett himself has observed that he never anticipated the measures he introduced in the late 1970s to still be the basis for the distribution of finance to Scotland, Wales, and ultimately Northern Ireland, some 30 years later.
- 45** This position would seem to be absolutely central in relation to the work of the Commission, and it is the view of the RSE that there needs to be a rebalancing of the revenue raising powers of the Scottish Parliament.
- 46** If the current fiscal arrangements for Scottish Devolution are compared with other countries with a devolved or federal structure then it can be shown that the Scottish model is at the low end of the range regarding the percentage of its expenditure that it is responsible for raising.
- 47** Designing a devolved taxation system is an altogether more difficult matter. One possibility is *full fiscal autonomy* under which the Scottish Parliament would raise all the main taxes and pass on a negotiated sum to Westminster for common services. It would be free to alter the rates and coverage. This system works in the Basque Country, where it is rather effective. Tax rates there are set locally but variation is limited by agreements with the central government to avoid distortions, and by European competition and VAT rules.

- 48 More common, however, are measures to divide and share taxes between the levels. The weakest form is that of *assigned taxation*, with a proportion of the product of certain taxes going to Scotland, but with the rates set centrally. This would create a connection between Scotland's economic performance and the revenues received by the Parliament, but would not amount to devolution. If there were fiscal equalization to redistribute revenues across the UK, then it would be rather meaningless. The Stormont regime in Northern Ireland operated with assigned taxes, together with a central government contribution similar to that made by the Basque Country. The first drafts of the current Northern Ireland Act provided for such assigned revenues but balanced this with a provision for the UK Government to make transfers, which emptied the provision of significance. The desire of many that within a union or federal system that there should be risk pooling does require some equalization. The issue is to determine the appropriate balance between risk pooling, the provision of growth incentives, and devolved accountability through a link between revenue retention and economic performance.
- 49 In a system of *tax-sharing*, such as in Germany, most taxes are harmonized across the federation, but the two levels of government set the levels and coverage jointly. This is an unlikely possibility for Scotland, since Westminster will not subordinate its discretion over taxes to a joint decision with Holyrood; this would leave neither level really autonomous.
- 50 A stronger measure is *fiscal devolution*, with the devolved governments able to vary the rates, coverage and deductions of certain taxes. Some taxes could be handed over completely to the Scottish Parliament; these might include fuel duty, excise taxes or charges such as road tax. Other taxes could be both shared and partially devolved. One candidate for this is VAT. However, its variation is limited by European laws and, for technical reasons, it is appropriate for the level of VAT to be set at that of the economic market. In federal systems, VAT is levied at the federal level to be used for federal expenditure (Canada) or shared on a population basis (Germany).
- 51 Differential rates of corporation tax within a state are likely to violate EU competition and regional policy provisions, as was seen from the reaction to the proposal to bring Northern Ireland's rate down to that of the Republic of Ireland. The Basque Government has also come into conflict with the EU Commission over its corporation tax regime. Variations among member states, on the other hand, are permitted, as countries like the UK and Ireland have resisted harmonization. It would seem, then that the scope for devolving corporation tax is limited, although there might be some variations of business taxes and allowances at the margin, as there is on business property taxation.
- 52 This leaves personal income tax as the prime candidate for devolution. Federal systems typically divide income taxes into a federal and sub-federal element, with each level having discretion over the rates and allowances. In Canada, except for Quebec, the system is integrated, with one collection system but provincial governments can decide exactly how they link their rates to the federal rate and what additional allowances to provide. This could provide a model for Scotland.
- 53 It is argued that differential taxes within the UK could cause economic distortions, with cross-border shopping and migration to take advantage of the best deal. To some extent this already happens from time to time in Europe, as people in the south of England go to France to buy alcohol. Cigarettes are smuggled in order to avoid excise duties. Variations in excise taxes and duties might cause similar distortions if a Scottish government should choose to tax alcohol more heavily. The scope, however, is limited, as the costs of crossing the border will usually outweigh the savings and the border itself is rather sparsely populated. There is evidence in Switzerland since the federal reforms that devolved tax powers have resulted in a race to the bottom as cantons competitively cut taxes. Experience elsewhere suggests that when taxes are devolved the variations between neighbouring jurisdictions are not great. Governments know that raising taxes too much will drive away taxpayers, while cutting them will deprive them of revenues.
- 54 The great difficulty is not in devising devolved taxes, since this is done all over the world. It is, rather, that of fiscal equalization, of distributing resources equitably across the UK. Systems of fiscal equalization are set so as to equalize, to a greater or lesser extent, the resources available to different territories, taking into account their resources and their needs. The principle looks simple, that each territory should be able to provide the same level of services, but the practice is extremely complicated. In determining the resources of each level, wealth and taxable income can be taken into account and a full equalization would provide that one penny on income tax should produce the same revenue everywhere. Since this would encourage poorer regions to raise higher taxes, knowing that other regions would pay, this is usually limited to a contribution towards a standard basket of services.

Richer regions also tend to demand that their poorer compatriots make an equivalent ‘fiscal effort’, a concept that cannot easily be quantified but which refers to the pain that taxpayers should feel from increased taxes. It is also argued that a system of full fiscal equalization does not give poorer regions an incentive to develop their own economies, since the result would be the loss of support from the centre. Equalizing for need is even more difficult, since it requires a measure of standard needs across the state, even though governments may be providing different services. Richer Spanish regions have been demanding that equalization be limited to the minimal basic services in health, education and social services, so that if poorer regions want to spend more on other items it should be at their own cost. The factors used to calculate need are often proxies, such as demographic balances, or sparsity of population, which can be assumed to impose additional costs, but they may also be items that could equally be considered matters of policy choice, such as minority language education or universal social services. The result is that fiscal equalization is an eminently political rather than a technical matter.

- 55 The only attempt ever to calculate relative need across the UK was the Needs Assessment Study carried out in the late 1970s in anticipation of devolution but never used. The present arrangements are the outcome of a historical process and political decisions taken from time to time. As a matter of political reality, this is the point from which any new settlement would have to start. Fiscal devolution would have to be accompanied by a new equalization mechanism, taking into account needs and resources. The basis could be provided by an independent body charged with calculating the figures and providing scenarios. The settlement, however, would have to be negotiated by the UK and Scottish Governments, and probably the other devolved governments as well. This would inevitably be conflictual and it would be desirable for a multi-year formula to be agreed, to avoid annual recriminations. There would also need to be a dampener to phase in changes over time.
- 56 The treatment of North Sea oil revenues is a particular case, for strong political reasons. Scotland suffers from various economic disadvantages due to its remote location, climate and difficult topography. Its advantages include the possession of natural resources and it could seem reasonable to include them in the balance. On the other hand, taxation of oil is not an ideal revenue source for sub-state governments, as the experience of the province of Alberta, with its highly unstable revenues, shows. It would certainly be a poor basis for the maintenance of a developed welfare state such as exists in Scotland. There would be a case, however, for Scotland to have access to a share of oil revenues, especially so as to benefit from periods of high oil prices, with the benefit shared with the UK Treasury. If an elaborate system of fiscal equalization were in place, these benefits might disappear, with Scotland becoming a net contributor to UK revenues. There could, however, be provisions for a share of oil revenues to be taken out of these calculations in recognition of the special status of natural resources, with the surpluses going into the long-term stabilization fund.
- 57 One issue that has arisen lately is what happens to UK-funded programmes when Scotland changes the relevant policy. This arose over free personal care for the elderly, when Whitehall refused to pass on the savings made on attendance allowances. More recently, it has refused to pass on the savings made on council tax benefits should the Scottish Parliament adopt local income tax. This is a serious restriction on the ability of the Scottish Parliament to legislate within its sphere of competence and provision should be made for such savings to accrue to the Scottish treasury.
- 58 The Scottish Parliament is unusual among devolved legislatures in its lack of an ability to borrow. This has caused problems when it has chosen not to use PFI/PPP procedures for capital expenditures. A radical solution would be to allow the Scottish Parliament to borrow freely, as happens in Canada, where the provinces are disciplined only by the bond markets. This would violate UK Treasury assumptions about counting public debt as a whole, and probably European rules as well. Less radically, the Scottish Parliament could be given borrowing powers and the ability to balance borrowing and spending over time, while putting into place procedures for limiting overall public debt, as Spain and its regions did in order to meet the Maastricht criteria. Another possibility is to allow revenue bonds, under which capital projects could be financed by borrowing, with the capital charges the first call on revenues. This would be suitable for roads and bridges (although the SNP Scottish Government has decided that these will be free) and some other public facilities.
- 59 **The RSE recommends that there should be further consideration of *fiscal devolution* for the Scottish Parliament. Such a model would have to involve a mix of assigned revenues and additional devolved revenue raising powers. There would also need to be a new equalisation regime to take account of the outcome of a fundamental needs assessment for each of the nations and regions of the UK.**

**60 Consideration should be given as to whether the Scottish Parliament should also be assigned borrowing powers, limited within UK Treasury plans for overall Government borrowing.**

**61 The work of the independent finance and accountability expert group headed by Professor Anton Muscatelli to assist the Commission in its work will undoubtedly contribute substantial material on these matters, considering the wide range of views that exist.**

### Inter-governmental Relationships

**62** Any devolved and federal system of government needs to have mechanisms regulating the relationships between the two levels. These have two purposes: policy co-ordination; and conflict resolution. The Scotland Act provides that conflicts of competence can be resolved in the courts and, ultimately, the Judicial Committee of the Privy Council. This mechanism has not been used, which has saved the UK the huge amount of litigation that has occurred in Spain. On the other hand, the lack of devolution jurisprudence means that the boundaries of the settlement are unresolved and that the courts have not gained experience in constitutional matters. For successful administration of devolved federal systems there is a requirement that governments and their administrations are fully aware of the subtleties and complexities associated with agreed settlements.

**63** The main formal mechanism for co-ordination and conflict resolutions are the Memorandum of Understanding, the Concordats signed in various fields and the Joint Ministerial Committees (JMCs). These, too, were little used when the two levels of government were dominated by the same political party, except for the JMC (Europe) preparing for meetings of the EU Council of Ministers. The JMCs have recently been relaunched.

**64** There are two perspectives on the role of JMCs in policy co-ordination. One starts from the premise that there is not a great demand for policy divergence across the UK and that the intergovernmental machinery can be a means for making common policies, but giving the devolved territories a stronger voice in this. The other starts from the premise that devolution is about policy divergence and experimentation, that Scotland makes its own policies for itself, but that there may be a need for some co-ordination in overlapping fields. If too many matters are taken into the intergovernmental policy machinery, Scotland will lose its policy capacity and be overwhelmed by the larger weight of Whitehall departments.

**65** Even if the starting point is the latter premise there is a need to think about what types of policy might be in need of co-ordination. There is a strong case for looking at the connection between reserved and devolved powers in relation to initiatives in social inclusion or in climate change. On the other hand, care is required about using any overspill to justify policy co-ordination. When top-up university fees were introduced for England, there were some complaints that the Scottish Executive was not consulted, since the matter had implications for Scotland. If the notion of common interest is stretched this far, then devolution will again be undermined since it would suggest that a huge swathe of public policy be subject to intergovernmental agreement, which would then have to be reciprocal, with Westminster able to intervene whenever a Scottish policy appeared to have spill over effects for England (and similar provision for Wales and Northern Ireland).

**66** JMCs also have the role of resolving intergovernmental disputes. Since they represent the governments concerned, they are essentially a political mechanism and have no independent standing of their own. Serious disputes about competences may then need to be resolved by the courts. Within a stronger JMC system with clearer guidelines, however, there will be motives to agree. Politicians do not like to be seen as obstructive, and there are possibilities of package deals, whereby issues are traded off against each other. The presence of the three devolved administrations can mean that the centre does not always get its own way. There is a chance, therefore that these could evolve into serious political forums.

**67** EU matters require an agreed UK position when they concern devolved matters. Hitherto, these have been dealt with largely through the same political mechanisms that have handled other intergovernmental matters. Although the JMC (Europe) has been active, it is the UK Government that has the last word on policy. The previous Scottish Executive took the view that it was best to cleave to the centre so as to maximize influence and never to take issue with Whitehall in public. This could not survive a change of government at either level and relations have become more politicized. More formal mechanisms are therefore needed but models from other European countries are of limited help. Spain now has a system similar to that of the UK, with the autonomous communities able to participate in certain formations of the Council of Ministers, but subject to the overall Spanish negotiating position. In Germany, the Länder have a stronger role, participating in the Council by right and determining the position where their exclusive competences are concerned, but this is a symmetrical system and the Länder are able to vote in the Bundesrat if necessary to arrive at a common position.

Belgium gives a very strong role to its communities and regions, which can speak for Belgium on devolved matters and each of which has a veto over the negotiating position, an unlikely prospect for the UK. Scotland's position could be strengthened, however, by more formal proceedings in the JMC and the ability to note its dissent, which would give Whitehall an incentive to compromise. The centre presently has a general power to impose its will, even in devolved matters, where European issues are at stake. If Scottish devolved powers were more strongly entrenched, this clause could be maintained, but there could be a more formal procedure for invoking it, so that it would be clear that the UK was overruling the Scottish Government. This would enhance transparency and accountability, without putting

the UK's European commitments at risk. It might also be possible to give the three devolved administrations a joint veto, where they felt that Whitehall was failing to take into account their concerns. Again, the intention would be to put them in a stronger position and give the centre a motive to compromise.

- 68 As an essential component of developing an overarching structure and narrative for devolution in the UK, it is essential that new and robust inter-governmental structures need to be developed. These should be built in partnership between the UK Government and devolved administrations, and their purpose and decision making structure enshrined in primary legislation.**

## Supplementary paper to the Commission on Scottish Devolution

### Research Councils and the Funding of Scientific Research

The publicly-funded research base in Scotland is located in the Universities, which cover the whole disciplinary range, and which are the principal locations of basic research; in specialist independent or Governmental research Institutes, such as the Moredun Institute, the Scottish office of the British Geological Survey and Macaulay Institute, which concentrate on strategic and applied, but also some basic research; and in the government departments, that undertake applied and strategic research in the policy domain, such as in SEERAD.

Most of this research is well-integrated into the broader UK research base, which is widely regarded as being the best structured, most productive and cost-effective in Europe, and globally, second only to that of the USA in its scope and impact. Project-based funding in universities is largely derived from UK Research Councils, which also fund many specialist institutes. The Research Councils play a central role in stimulating and funding major UK-wide consortia in which Scottish institutions are also involved. Non-governmental institutions are highly successful in winning competitive funding from the Research Councils. In recent years, the Scottish Funding Council has played an important strategic role in pump-priming university initiatives that have made them well placed to bid for major Research Council funds. For example, Scottish universities have won competitions to host the UK High Performance Computing Centre and the National e-Science Centre, and have been highly successful in winning funds from strategic initiatives in the energy field such as the Sustainable Power Generation and Supply initiative (Supergen).

This integration offsets one of the problems of small countries in research, that they cannot be internationally competitive in all sectors of research and in the businesses that rely on it. Without this, there is a risk that they cannot

maintain the breadth of research effort that would permit them to respond rapidly and flexibly to new scientific, technological and market opportunities that commonly arise in an unpredictable fashion.

There are three great generic benefits that Scotland receives from its part in an integrated UK research base:

- A large scale system has greater capacity to maintain research diversity and thereby the flexibility to pursue new directions.
- In a small scale system, it is difficult to achieve focus, for example in response to economic or policy imperatives, without losing diversity, and difficult to allocate large sums from a relatively small resource to fund major facilities or research efforts. Research pooling is proving to be an intelligent way to use existing resources most efficiently, but there are limits to its potential to resolve the dilemma of scale.
- Excellence in research arises from its competitive context. It benefits enormously from the openness to competition and the wider horizons that a large system offers.

It is for these reasons that an attempt to devolve research council functions would be a seriously retrograde step.

There are however signs that the integration of effort from which Scotland benefits are being eroded at the margins. There are important initiatives at the UK level, in areas such as science and society and innovation policy, which are not being exploited in Scotland, although they are generic in nature and could apply equally to Scotland. Irrespective of whether they relate to reserved or devolved powers, it is unfortunate if we do not collaborate with and take advantage of such initiatives. The legalisms of the devolution settlement should not inhibit our willingness to integrate policy and effort where this would be to Scotland's advantage.

*Additional Information and References*

This submission represents the views of an expert Working Group of RSE Fellows, and not necessarily the views of all of the Fellowship.

In responding to this consultation the Society would like to draw attention to the following Royal Society of Edinburgh responses which are of relevance to this subject:

- The Royal Society of Edinburgh and Royal Society of London Joint Working Group Report, *Devolution and Science: Implications of Scottish Devolution* (April 1999)
- The Royal Society of Edinburgh's submission to the House of Lords Committee on the Constitution inquiry into *Devolution: inter-institutional relations in the United Kingdom* (March 2002)
- The Royal Society of Edinburgh's Inquiry into *Energy Issues for Scotland* (June 2006)
- The Royal Society of Edinburgh's submission to the Defra consultation on the *Draft Marine Bill* (June 2008)
- The Royal Society of Edinburgh's submission to the Scottish Parliament Economy, Energy and Tourism Committee Inquiry, *Determining and Delivering Scotland's Energy Future* (August 2008)

Any enquiries about this submission and others should be addressed to the RSE's Consultations Officer, Mr William Hardie (Email: [evidenceadvice@royalsoced.org.uk](mailto:evidenceadvice@royalsoced.org.uk))

Responses are published on the RSE website ([www.royalsoced.org.uk](http://www.royalsoced.org.uk)).

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