

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director Corporate Services

Council: 28 January 2009

Subject: The Future of Scottish Devolution within the Union

1. Purpose

1.1 This report advises of the new consultation issued by the Commission on Scottish Devolution and invites the Council to agree a formal response.

2. Background

2.1 The Commission on Scottish Devolution was set up to review and recommend changes to the present constitutional arrangements for the government of a devolved Scotland.

2.2 An initial consultation was carried out, closing on 3 September 2008. The Council, at its meeting on 27 August, agreed the terms of its formal response as part of that consultation.

2.3 The Commission has now issued its First Report which it has followed with a second consultation.

3. Main Issues

3.1 In the First Report, the Commission examined which powers are devolved to the Scottish Parliament and which are reserved to the UK, to see where there is evidence to justify altering present arrangements.

3.2 It identified certain functions as being integral to the effective functioning of the United Kingdom where devolution would be undesirable in principle, namely:- the monarchy, the constitution, defence, national security, foreign affairs, currency and coinage. It also considered that certain aspects of management of the UK economy are indispensable to maintaining the Union.

3.3 The Commission subsequently identified twelve broad themes which it divided into two categories:-

- i) those issues where it had received considerable evidence and which would seem to require further consideration of how to deliver a particular function. These include:- broadcasting, energy policy, animal health and movement, firearms, misuse of drugs, regulation of health care professionals and marine planning; and
- ii) those where insufficient evidence had been received and where further evidence would be needed before making recommendations. These

include the civil service, insolvency, employment law and relevant aspects of immigration and health and safety.

- 3.4** Further evidence is required on financial accountability, on relationships between Parliaments and Governments and on the effectiveness of the Scottish Parliament's procedures for scrutinising legislation.
- 3.5** The second consultation document has been issued to gather this further evidence. It is made up of forty-nine questions which form the Appendix to this report. It closes on 27 February 2009. A copy of the full consultation document has been issued to each member.

4. Personnel Issues

- 4.1** There are no personnel issues arising directly from this report.

5. Financial Implications

- 5.1** The current report relates solely to responding to the consultation and in itself has no financial implications. The final recommendations of the Commission, insofar as implemented, will inevitably have financial implications for the Council.

6. Risk Analysis

- 6.1** The report itself has no significant risk implications.

7. Conclusions

- 7.1** This is the second phase of a significant consultation, the results of which could help define the relationship between the Scottish and UK Parliaments in the future. It is essentially political in nature and since the response is unlikely to be agreed by consensus, the Council can either agree a response by majority vote or remit to the individual political groups to make their own responses.

8. Recommendation

- 8.1** It is recommended that the Council decides how it wishes to respond to the consultation and that, if minded to agree the response in Council, it considers the questions detailed in the Appendix individually.

Joyce White, Executive Director of Corporate Services

Background Papers

Letter dated 18 June 2008 from the Commission on Scottish Devolution inviting the Council to submit evidence.

Report by the Executive Director of Corporate Services to the Council on 27 August 2008 and minute thereof.

Letter dated 22 December 2008 from the Commission on the second phase consultation

Consultation document dated 19 December 2008 (available for download at www.commissiononscottishdevolution.org.uk)

Wards Affected: All wards

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CONSULTATION – THE FUTURE OF SCOTTISH DEVOLUTION WITHIN THE UNION

SECTION 1 – PRINCIPLES

- Q1.** The Commission regards the continuing political Union as a given, in accordance with its remit. Should any changes in devolution presume a continued common UK legal and political citizenship?
- Q2.** Are the UK's constitutional arrangements sufficiently flexible to allow devolved interests to be taken properly into account when they impact on these reserved matters (international affairs, defence and security)?
- Q3.** The Commission takes the view that the economic Union of the UK is greatly to Scotland's benefit. Is the Commission right in concluding that, when changes in powers or finance are considered which might allow the Scottish Parliament to serve the people of Scotland better, they should not run the risk of significantly undermining the economic aspect of the Union?
- Q4.** Should there be scope for much greater differences in social provision, and in consequence greater reliance on Scottish tax resources? Alternatively, should devolution be in the context of a common social citizenship across the UK and, if so, should the elements of that citizenship be articulated in some way?

SECTION 2 – POWERS AND FUNCTIONS

Broad themes

- Q5** Are there any areas that have not been discussed by the Commission (i.e. other than the twelve broad themes of - constitution and institutions; culture; charities; sport and gaming; employment and skills; energy; environment and planning; health and biosecurity; justice and home affairs; marine and fisheries; revenue and tax –raising; science, research and higher education; social security; trade and commerce) where further consideration is required and, if so, what are the key issues for analysis?

Electoral system

- Q6.** The Commission has not been set up to examine in any detail the administration of the electoral system in Scotland. Could responsibility for administration of the electoral system be devolved and, if so, to what extent? What would be the practicalities of doing so? In what sort of framework should any such devolved powers operate? And how might a suitable level of consistency throughout the UK be ensured?

Broadcasting

- Q7.** Are current arrangements sustainable? if not, what changes are required to ensure the specific broadcasting needs of Scotland can be addressed? In particular, should the responsibilities of Scottish Ministers in respect of broadcasting be changed and, if so, how?

Charities

Q8. The Commission has heard views that the separate regulatory régimes for charities in the United Kingdom cause practical difficulties. The Commission invites further evidence from practitioners in the area to inform its final recommendations.

Health and Safety

Q9. The subject matter of much of the Health and Safety at Work etc. Act 1974 is reserved. The Commission invites further evidence on any scope for changes to the arrangements for health and safety legislation.

Migration

Q10 What options are there for variations in migration policy in Scotland to meet specifically Scottish labour market needs? How might a distinctly Scottish policy impact on the UK more generally?

Energy

Q11. Energy, with some exceptions, is a reserved area – although as renewable energy sources are not explicitly mentioned in the Scotland Act they can be considered to be devolved. Are there any changes to responsibility for aspects of energy policy that could conceivably be made without compromising the integrity of the UK supply network, whilst maintaining consistency with the principles set out in Chapter 4 of the First Report? (These principles assert the need for subsidiarity while maintaining the devolved Scotland within the Union.)

Environment and Planning

Q12. Where might the Scottish Government's and Parliament's responsibilities for the environment and planning create the potential for conflict with UK policy in reserved areas and how might these frictions be addressed?

Animal Health

Q13 How might animal health protection in Scotland be most effectively funded, both routinely and in times of emergency? If funds were to be allocated to Scotland for animal health, how should this be calculated given the nature of the Scottish livestock industry, which is proportionally larger than England's?

Health (human)

Q14 Health policy is largely devolved, with only a few specific matters reserved. The Commission invites further evidence on the aspects of health policy that remain reserved.

Health Professionals

Q15 Is the approach of the Scotland Act the most effective way of defining responsibilities and guaranteeing consistency to ensure the transfer of health profession skills across the UK?

Firearms, drug misuse and drink driving

Q16. What are the implications of devolving responsibility for firearms, drug misuse and drink driving, and what cross-border issues might arise from different policies?

Tribunals

Q17. Are current arrangements operating satisfactorily? If not, what changes does the system require in order to function more effectively?

Marine Environment

Q18. What is the best way to manage the marine environment and how might the various authorities involved work better together?

Research Councils

Q19. The Commission is minded to recommend that research councils continue to operate on a UK-wide basis. Before reaching any conclusion, the Commission invites further evidence on research councils.

Higher Education

Q20. What is the most effective way of ensuring the continued success of higher education in Scotland whilst respecting the differences in policy approach that devolution inevitably creates?

Social Security

Q21. All social security benefits and pensions are reserved, although the benefit system is closely linked to devolved areas and could perhaps better reflect Scotland's needs and priorities. To what extent is a broadly common social citizenship across the UK desired, and should there be scope for significant divergence in welfare services offered?

Q22. How might the current social security arrangements be made to work more effectively in response to specifically Scottish issues and concerns?

Corporate Insolvency

Q23. The Institute of Chartered Accountants in Scotland (ICAS) claims that necessary insolvency expertise is still lacking in Scotland and has proposed that responsibility should be exercised at a UK level. Is there support for reserving corporate insolvency as a whole and, if not, how might the problem raised by ICAS be resolved?

SECTION 3 – FINANCIAL ACCOUNTABILITY

Funding Principles

Q24. Do the broad principles of equity, accountability and efficiency provide the correct framework to analyse potential mechanisms or systems that could be used to fund the Scottish Parliament? Should one be weighted above the others and, if so, why?

Funding Mechanisms

Q25. The Commission recognises that there are three generic mechanisms that may be used to fund the Scottish Parliament: the assignment of tax revenues, the devolution of taxes and block grant from the UK Government – are there any others which might apply?

Excise Duties

Q26. What are the potential benefits and costs of allowing a Scottish variation of existing excise duties such as those on alcohol and tobacco?

Corporation Tax

Q27. Would allowing the Scottish Parliament to determine a Scottish rate of Corporation Tax produce wasteful tax competition?

Other Taxes

Q28 What might be the potential benefits and costs of allowing the Scottish Parliament to determine a Scottish rate of other existing taxes (e.g. air passenger duty, vehicle excise duty, stamp duty, insurance premium tax, landfill tax and aggregates levy)?

National Insurance Contributions

Q29. Should National Insurance contributions be rejected as a potential tax to be devolved to the Scottish Parliament?

New Taxes

Q30. Should the powers of the Scottish Parliament be extended to allow it to create new taxes whilst maintaining the reservation on existing taxes?

Scottish Variable Rate (SVR)

- Q31.** Could the scope of the SVR (the power of the Scottish Parliament to vary the basic rate of Income Tax by 3 pence in the pound) be widened and thus be made more flexible, and, if so, what would the impact of this be?
- Q32.** Are there any potential costs and benefits of extending the SVR to the higher rate of Income Tax?

Tax Decision

- Q33.** Because the SVR is a power to alter a tax rate already set by the UK Government, a decision to do nothing has no effect on the budget of the Scottish Parliament; that is, revenue is secured without the necessity to take a taxation decision. An obligation to make a tax decision might improve the accountability of the Parliament. Are there any ways in which the Scottish Parliament could be required to make a tax decision, so that its revenue would be affected if it did not?

Borrowing

- Q34.** The Commission considers that borrowing powers are linked to the scope for revenue raising, as the greater the dependence on uncertain flows of revenue, the greater the need to be able to borrow so as to smooth over revenue fluctuations and allow consistent profiles of spending and long-term capital investment. Significant borrowing powers, however, require effective means of fiscal co-ordination for macro-economic management.

Is the Commission's analysis of the issues in relation to borrowing correct?

SECTION 4 – RELATIONSHIPS BETWEEN PARLIAMENTS AND GOVERNMENTS

- Q35.** Is the absence of formal relations between the UK and Scottish Parliaments a cause for concern?
- Q36.** The Commission considers there is a case for establishing at the very least a formal link for the purposes of sharing information and establishing common interests between the Parliaments. Could this link be formed by way of a regular discussion between the Speaker of the House of Commons, the Lord Speaker and the Presiding Officers of the devolved legislatures?
- Q37.** Should joint committees of both Parliaments be established, either on general issues of mutual interest or focused on particular areas? Would this be a sensible way to address issues of mutual parliamentary concern and, if so, how might this be achieved?
- Q38.** Would greater participation by MEPs in deliberations at the Scottish Parliament, particularly those that have a European dimension, be helpful – perhaps through (non-voting) membership of appropriate Scottish Parliament Committees?

- Q39** How might regular, structured meetings between officials and Ministers of the UK and Scottish Governments, on formal and informal bases, best be achieved?
- Q40.** Is the Joint Ministerial Committee (JMC) the most effective mechanism for these relationships? If not, what alternatives or changes to the JMC should be considered?
- Q41.** Is the role a unified civil service plays in ensuring effective relationships between the UK and Scottish Governments both sustainable and desirable in the longer term?
- Q42.** How can the representation of Scottish interests at UK level be made more transparent?
- Q43.** The Commission invites views on the suggestion that the relevant Secretaries of State chair meetings with devolved Ministers seeking to agree a UK-wide position, with a UK Minister of State or Parliamentary Under-Secretary representing the view of England.
- Q44.** In circumstances where the predominant UK interests in EU matters are Scottish, how might Scotland be seen to be able to make direct representations within the EU?
- Q45.** What are the options for improved inter-governmental mechanisms to resolve potential disputes? What more radical approaches might be considered in relation to shared or concurrent competence?

SECTION 5 – OTHER FEATURES OF THE SCOTLAND ACT AND THE OPERATION OF THE SCOTTISH PARLIAMENT

- Q46.** The Commission will not be pursuing the idea of creating a second chamber or a formal unelected element within the Scottish Parliament, but it is interested in other ways of ensuring that legislation is of the highest quality. What would be the best mechanisms for ensuring the scrutiny of Scottish Parliament legislation is robust and effective?
- Q47.** Is the current arrangement whereby the Presiding Officer indicates his view on whether a Bill is within the Parliament’s legislative competence satisfactory and, if not, how might it be improved?
- Q48.** Should the current arrangements for “dual purpose” committees (committees which undertake both select committee-style inquiries and conduct the detailed scrutiny of legislation) be altered and, if so, how?
- Q49.** Is it now appropriate to loosen or even remove any of the constraints imposed by the Scotland Act on the Scottish Parliament’s procedures, now that the Parliament has been in operation for almost ten years?