

COMMISSION ON SCOTTISH DEVOLUTION

AN APPROACH TO THE TASK

Introduction

1. The purpose of this paper is to outline an approach to the work of the Commission for members to consider. The terms of reference for the Commission, as set out in the motion approved by the Scottish Parliament in December 2007, and restated in the Secretary of State's written Westminster Ministerial Statement of 25 March 2008, are:

“To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom.”

The Commission is asked to make an interim report no later than the end of this calendar year. The United Kingdom Government and the Scottish Parliament will work together to provide support for the Commission. On 25 March it was also announced that Sir Kenneth Calman will chair the Commission.

Pattern of meetings

2. The Commission will wish to consider how frequently it should meet. For the purposes of this paper it is assumed that it will be difficult for the Commission to meet more than once a month. The Commission will need to manage its time carefully and, almost certainly, individual Commissioners will need to be allocated to particular tasks or areas of inquiry. Following discussions amongst the political leaders involved in setting up the Commission and the Chairman, Sir Kenneth Calman (announced on 25 March), it is proposed that two expert groups be established to support the work of the Commission:
 - First that there should be a expert group to look at the issue of financial accountability. This will be chaired by a prominent academic, Professor Anton Muscatelli.
 - Second that an expert group be established to look at the functions of Government, in particular the devolved/reserved boundary. David Edward has agreed to chair this group.

Both these groups can draw on individuals with particular areas of expertise to make up their membership.

3. Obviously the Commission may wish to consider further expert support groups or formal sub-groups of the Commission itself although it will be important to keep the overall structure manageable.

Background briefing

4. It is recognised that individual Commissioners will have different levels of knowledge on the working of the existing devolution settlement. Colleagues in the Scottish Parliament have therefore put together briefing packs for Commission members covering:
 - Scottish Constitutional Convention of the 1990s
 - The 1997 White Paper on Devolution
 - The Report of the Consultative Steering Group which considered how the Scottish Parliament would conduct its business
 - The Report on the Financial Issues Advisory Group which considered how financial issues would be handled under devolution
 - Post Devolution, the Report of the Steel Commission and the current Scottish Ministers' National Conversation Consultation Document
 - the proceedings of the debate in the Scottish Parliament last December when the motion proposing the Commission was approved.
5. In addition, the Scottish Parliament staff have helpfully drawn up a list of all potential source documents on devolution and individual Commission members can access these if they wish.

Guiding Principles

6. The Commission will wish to discuss whether it should begin by drawing up some statements of principle which will guide its deliberations. At the press conference announcing the chair on 25 March 2008, questions were asked about the consideration of the independence option. But the remit makes clear that the Commission is to review the Scotland Act 1998 with a view to securing the position of Scotland within the UK. That is fundamental to the task. The guiding principles must therefore be:
 - Securing the position of Scotland in the UK
 - Enabling the Scottish Parliament to serve better the people of Scotland
 - Improving the financial accountability of the Scottish Parliament.

These principles should be underlined in all that the Commission does in setting about its remit. The Commission may wish more extensively to articulate these principles in its interim and final reports and develop a fuller narrative around the benefits of Scotland remaining part of the Union for all parts of the UK.

Public engagement

7. The Secretary of State's written Ministerial Statement of 25 March said that he hoped that there will be full engagement by the people of Scotland with this

Review. Given that the proposals for devolution were endorsed by the electorate in a referendum in 1997 it is essential that any further consideration of the devolution settlement be conducted with as full a level of engagement with the people of Scotland as possible.

8. Methods for securing public engagement by public bodies are now well established and the Scottish Parliament, in particular, has expertise in these matters. The Commission's engagement with Scotland might take a number of forms:
 - A website can be established so that the papers and proceedings of the Commission are there for all to see. This should facilitate individual citizens registering their views on particular issues although some care needs to be taken over the handling of comments that can be posted anonymously.
 - Individuals and organisations can be invited to submit evidence on their view of how devolution has operated to date. In the first part of the Commission's work the submission of evidence and views could be invited on a fairly open basis – albeit against a background of the guiding principles underpinning the remit. Once the Commission had begun to form views as to the key issues then a further more detailed consultation could be mounted in the autumn as a precursor to finalising an interim report.
 - In parallel with requesting the submission of evidence and views, the Commission individually, collectively or in groups might take oral evidence. This could be carried out in the Scottish Parliament or by groups of commissioners visiting different parts of the country.
 - The views of prominent or expert individuals could be sought e.g. former First Ministers, Presiding Officers and others (some of those individuals are currently contributing to the House of Commons' Justice Committee's review of Devolution, 10 years on, the proceedings of which can be made available to members of the Commission).
9. In commissioning evidence from civic Scotland, it will be important to give Scottish Ministers the opportunity to make their views known on the current devolution settlement if they so wish. A draft letter for the Chairman to send to the First Minister is being prepared by the secretariat on this basis. In addition to inviting Scottish Ministers to offer their views, the Chairman's letter should specifically request that civil servants working in support of Scottish Ministers be free to answer factual questions from the Commission about the operation of the devolution settlement. There is a considerable body of knowledge and expertise residing in Sir John Elvidge and his colleagues and it will be to the benefit of the Commission to be able to access this. This has to be subject to the views of their current Ministers to whom they owe their loyalty. The Chairman should offer to meet the First Minister.

Research

10. It would be helpful for the Commission to flag up at an early stage any particular areas on which it would wish to commission investigative work or research. The secretariat suggest that for the next full meeting of the Commission it should present a paper informed by the Scotland Office describing the operation of the devolution settlement in legislative terms since 1999. This would describe the operation of the Scotland Act setting out, in particular, the further shifts of devolution which have taken place, and also the process of securing Legislative Consent Motions in the Scottish Parliament (the Sewel Convention). This work could restate for members the areas currently reserved to Westminster and also identify those issues which have become the subject of debate between Scottish Ministers and the UK Government. This is likely to cover , inter alia , issues such as:
- the marine environment
 - climate change and energy
 - broadcasting
 - the balance of regulation at the UK and Scottish level
 - employment and social security issues.

The list is not exhaustive. It should also not be assumed that because an area of policy has become a subject of debate that it necessarily implies that the solution is more or less devolution. But a paper along these lines could identify those issues which have been the subject of debate. This could help form an agenda for the Functions expert group.

11. The secretariat might also, either directly or through commissioning an outside expert, pull together some material on international comparisons of the operation of other systems of devolution. These comparisons might be examined in political, legislative and financial terms. It will also be useful to examine the context in which Government operates in 2008 compared with 1998. Different factors may affect Government today – e.g. international security, expansion of the European Union, patterns of immigration, climate change – and it will be important to consider how the new context might affect the conduct of Government , whether reserved or devolved.

Conclusion and the Way Forward

12. The Commission is invited to discuss and confirm how it wishes to approach its task. In particular it is invited to agree:
- That the guiding principles explicit in the remit be the necessary backcloth to all the activities and deliberations of the Commission. Indeed it may wish to ask the secretariat to work these up into a fuller narrative for inclusion in the various stages of the Commission's reporting.
 - That expert sub-groups be established now on financial accountability and functions with other expert groups, or sub groups of the Commission, to be established later as necessary.

- That public engagement must be at the heart of its consideration and that evidence and views be invited, in the near future, from individuals and organisations in Scotland, initially on an open basis but with the prospect of further consultation once the Commission begins to form views on the key issues.
- That a website be established to allow the people of Scotland to be informed on the deliberations of the Commission and, if appropriate, to express their views.
- That Scottish Ministers be invited to offer their views on the operation of the current devolution settlement through a letter from the Chairman to the First Minister which should offer a meeting. This might shortly precede a request for evidence and views from individuals and organisations in Scotland but be set in that context.
- That the Commission agrees to take oral evidence where appropriate both in Edinburgh and throughout Scotland, including individuals who have held prominent positions in Scottish public life (First Ministers, Presiding Officers).
- To the secretariat commissioning a paper from the UK Government on the operation of the Scotland Act 1998, in particular, about how the powers contained in the Scotland Act 1998 have been used to adjust the Devolution Settlement and on any issues of debate around the devolved/reserved boundary which have emerged from the operation of the devolution settlement to date.
- That the secretariat commissions work on international comparisons of other models of legislative and financial devolution; and that it prepares advice to the Commission on how the context in which Government operates has changed since 1998.
- That , taking account of all these points, if agreed, and any further work the Commission requests, the secretariat draw up a detailed work plan, in consultation with the Chairman, which will allow the Commission to plan its activities so as to meet the objective of submitting an interim report to the UK Government and the Scottish Parliament before the end of 2008 and, thereafter, a final report in 2009.

Commission Secretariat
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