

The Future of Scottish Devolution within the Union: **A First Report**

Volume II: A Summary of Evidence

Overview

This second volume of the Commission's First Report provides a summary of the evidence received by the Commission, from the outset of its work, up until the publication of this report.¹

The Commission has actively sought evidence in a wide range of ways, as summarised in Chapter 3, Volume 1 of this report.

The Commission has to date gathered evidence in four main ways. This volume therefore contains four main parts, as outlined below. Each part summarises the evidence received via that means and contains various sections, also set out below.

Local engagement events – including summaries of:

- how the local engagement events were run
- the events as a whole
- views expressed at each individual event, and
- feedback from participants on the events.

Written submissions – including:

- a list of those who submitted evidence
- summaries of written submissions covering:
 - suggested topics for consideration
 - principles
 - experience of devolution
 - particular features of the Scotland Act (excluding the devolved/reserved boundary)
 - the devolved/reserved boundary
 - financial accountability
 - intergovernmental relations, and
 - general/miscellaneous comments.

Oral evidence – including:

- a list of those who submitted evidence
- summaries of oral evidence covering:
 - principles
 - experience of devolution
 - particular features of the Scotland Act (excluding the devolved/reserved boundary)
 - the devolved/reserved boundary

¹ For these purposes a cut off date of Friday 21 2008 November was used.

- financial accountability
- intergovernmental relations, and
- general/miscellaneous comments.

Other sources – includes details of other evidence received, including:

- responses to the Commission questionnaire
- a list of reference sources, and
- research commissioned by the Commission from the University College London Constitution Unit: *Towards a New Settlement? A review of experience from the first decade of Scottish devolution*

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Part 1: Local engagement events

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A: Overview

Introduction

- 1 The Commission has carried out a comprehensive programme of local engagement events to consult directly and face-to-face with the people of Scotland and beyond, from all backgrounds, age groups and political persuasions.
- 2 These events were designed to focus on the issues that affect people's daily lives, listen to their experiences and hear their thoughts on the future. The views expressed at the events have formed part of the wider evidence base that the Commission has considered in identifying areas for further consultation, and in reaching a conclusion on the success of devolution.

The events

- 3 Events have been held across Scotland – in Glasgow, Dumfries, Inverness, Dundee, Stornoway and Ayr – and beyond – in Newcastle-upon-Tyne. The majority of events were over-subscribed, and attended by a wide range of people who were responding to posters, articles in the press, and open invitations to local civic organisations or via local radio or Facebook. A number of representative organisations and elected representatives attended, further widening the range of people who have engaged with the Commission in this way.
- 4 The format for the events was designed to ensure that we could engage with people, have full and frank discussions and listen to a wide range of views. All events were run by an independent facilitator and each event began with a short overview of devolution in Scotland to provide contextual information and clarify understanding of the devolution settlement. Attendees were then encouraged to offer their views on the three main areas of the Commission's work: experience of devolution within the Union; improving the financial accountability of the Scottish Parliament; and the distribution of functions and inter-institutional relations. All views were recorded (unattributed) and have contributed to the evidence gathered by the Commission.

Summary of views at the events

- 5 Attendees discussed a range of issues including their expectations of devolution. The overwhelmingly consensus was that devolution has been both positive and successful. Many felt that it had provided people with a renewed sense of confidence and cultural identity. However, there appeared to be a lack of understanding of the settlement which resulted in some confusion with regards to the level of competence already possessed by the Scottish Parliament and who was accountable. Attendees also discussed how the new Scottish institutions had worked in practice and impacted on their lives and whether there was sufficient transparency. Many attendees remarked that that whilst it was an appropriate time to review devolution, the institutions were still very young.
- 6 Discussions also explored the funding arrangements of the Scottish Parliament and how the financial accountability of the Scottish Parliament could be improved. Many commented that they had been reliant on the media for information and felt that, prior to the event, they had not fully understood the current system. The majority of attendees felt that any alternative would need to take into account the cost of delivering public services to all parts of Scotland and the stability needed for capital projects. Some felt that MSPs were already financially accountable for their spending decisions and that this

was sufficient. Others felt that financial accountability could be improved by simply ensuring that the Budget Bill was scrutinised in more detail, for example by a dedicated committee. A number of attendees observed that the current funding arrangements led to a perception outside of Scotland that Scotland got more than its fair share, and that the media fuelled this perception.

- 7 Participants were encouraged to offer views on alternative options. Many considered the current block grant to be a good starting point as it offered a simple, stable and predictable method of funding that was attractive, particularly in the current economic climate. Some expressed support for the assignment of taxes and some for the use of revenue raising powers as a policy tool. The majority felt that the Single Variable Rate had not been used to date because it would be unpopular with the electorate and queried whether any further revenue powers would ever be used. A number of attendees expressed concern at the possibility of introducing more bureaucracy. There was some support for borrowing powers, with many citing local authorities' prudential borrowing powers, but general agreement that the overall UK context would need to be considered. Some said that it was important to consider how any changes would impact on Scotland's relationship with the rest of the UK – both constitutionally and economically.
- 8 Comments on the distribution of functions varied with many attendees content with the current distribution, some supporting the devolution of specific functions and some concerned with those areas where there is scope for the policies of the Scottish and UK Governments to conflict due to the lack of clarity. The majority felt that the Commission should develop specific criteria to assist it in considering whether the devolution of specific functions was desirable. We also heard views on the way in which the Scottish and UK Governments and Parliaments could work together and how Scotland could exert greater influence at a European Union level on matters where it has a significant interest. Participants were generally unclear about how Scotland was represented in reserved matters and suggested that there needed to be better communication between the Scotland Office and MPs. There was particular concern about constituents' cases not being adequately resolved where they concerned both reserved and devolved matters and attendees expressed support for a better relationship between MPs and MSPs.
- 9 The event in Newcastle-upon-Tyne explored the perception of devolution outside Scotland. There was agreement that devolution had worked well in Scotland with the devolved administration delivering innovative policies. Devolution appeared to have affirmed a historical and cultural identity, increasing confidence and enhancing democracy in Scotland. However, there was some concern about the impact of different policies at the border, where there is now a need for greater collaboration, and the need for the media to responsibly explain issues.

Feedback on the events

- 10 The Commission sought feedback from participants at the events through feedback forms, and the comments were very positive. Attendees welcomed the opportunity to speak directly with members of the Commission. Most appreciated the consultative manner in which the events were conducted as it enabled them to hear a range of other views. Some participants felt that the events could have been longer to enable greater discussion but noted that the Commission welcomed further evidence after

Conclusion

- 11 The Commission has found the local engagement events exceptionally helpful. It has been particularly important to hear the views of people from across Scotland (and beyond) and discuss potential solutions with them. Whilst there were many common themes across the engagement events, those issues that concerned the Central Belt were not the same as those that concerned those in other areas such as the North or South of Scotland. Whilst people spoke positively about devolution, there was greater engagement on specific issues that affected them directly than the constitution. These issues varied across Scotland but were generally determined by the local industries and public services.

B: Summaries

i Glasgow local engagement event

Experience and strengthening of devolution and the Union

- 1 There was consensus that devolution had been positive and successful, increasing confidence and strengthening cultural identity. Participants agreed that the settlement should be reviewed to ensure that Scotland could effectively tackle new challenges that had not been envisaged in 1999.
- 2 The main points in the different discussions are summarised below:
 - Devolved arrangements have enabled greater access and a greater volume of Scotland specific legislation but there are concerns about the quality of some of the legislation due to a lack of in-depth pre-legislative scrutiny.
 - Scotland has been able to lead the rest of the UK in some areas (e.g. Planning Bill which has been ahead of England and Wales and the legislation leading to the smoking ban).
 - The Scottish Parliament is more representative than the UK Parliament (for example, women and smaller parties due to the electoral system) but it should increase engagement with young people.
 - There is a lack of understanding of devolution and this has an impact on accountability of both the Scottish and UK Parliaments and the public's perception of 'who's to blame'.
 - There is a need for clear non-partisan information about the system of governance in Scotland.
 - It could be beneficial to have UK Government Ministers appear at the Scottish Parliament (and vice versa).
 - Devolved institutions are still very young.

Improving financial accountability of the Scottish Parliament

- 3 There was a general understanding of the current system but lack of clarity over the pros and cons. Participants agreed that independent expert advice was essential. There was no agreement on the way in which the financial accountability of the Scottish Parliament could be improved but consensus that it was a complex area with implications for the rest of the UK.

- 4 The main points in the different discussions are summarised below:
- MSPs are politically accountable for their expenditure.
 - Greater scrutiny of the Budget Bill in Scottish Parliament is needed – perhaps by a dedicated committee.
 - It is important to consider the constitutional relationship between Scotland and the rest of the UK. For example, full fiscal autonomy would be tantamount to federalism or a separate Scotland.
 - Full fiscal autonomy with the consequent requirement to make a payment to the UK Parliament for reserved matters could create a greater debate than the current block grant.
 - It is difficult to come up with an alternative – particularly one that recognises that it is more expensive to provide public services in Scotland and one that does not create a “bureaucratic monster”.
 - There was some doubt that Scotland could sustain current levels of public spending (difficulties with Government Expenditure and Revenues in Scotland (GERS) data)
 - Many participants supported a mixed system.
 - The Scottish Parliament is accountable for its expenditure – corresponding revenue raising powers would add to this accountability and the public would see the trade off between taxation and public expenditure.
 - It is easy to articulate the principles of any changes but not the changes themselves.
 - The wide impact of any changes should be considered. For example, if the Scottish Parliament was wholly responsible for fiscal issues, what would this mean for voluntary organisations in Scotland funded by UK-wide bodies?
 - There was some support for borrowing powers.

Distribution of functions and intergovernmental relations

- 5 There was a good understanding of the distribution of functions but agreement that the balance should be re-considered in the light of new challenges. There was agreement that the Scottish and UK Governments should formalise relations to increase transparency and accountability, and therefore public confidence.
- 6 The main points in the different discussions are summarised below:
- The UK is made up of different nations but many things bind the nations together (for example, a common attitude to social rights) and any further changes should respect this rather than reinforce borders.
 - At a time when there is a greater need to work together and co-ordinate efforts globally, we should not be considering further substantive devolution – this trend should be reflected within the UK as well on the international stage.
 - The development of UK policy in the EU should be more transparent to address calls for a stronger Scottish voice in certain areas.
 - The Commission could approach the balance of functions by querying which matters should be reserved for a strong Union (for example, defence, foreign affairs, single market)?

- Efficiency and effectiveness are important considerations.
- It was thought that functions were distributed fairly well.
- The Commission should look at how existing powers could be used more effectively – devolving more powers will not necessarily result in stronger devolution.
- A stronger Scottish voice in the UK Government/Parliament would reduce the need for a further devolution of powers.
- The Scotland Office should be more transparent so people can see how Scotland is being represented on reserved matters.
- Divergent social policies across the border could lead to unintended consequences but there is some need to reflect local needs in reserved policy (for example, social policy and immigration policy impacting on the immigrant community in Glasgow).
- The UK Government was democratically elected by the UK and should be able to pursue its policies for the benefit of the whole of the UK without difficulties in any part of the UK.
- The Scottish and UK Governments should have good formal channels of communication and ensure that the public is aware of them to increase confidence.
- Intergovernmental rows reduce confidence in the system and people feel that they are losing out.
- Relations between the devolved administrations are as important as relations between the devolved administration and UK institutions.

ii Dumfries local engagement event

Experience and strengthening of devolution and the Union

- 1 Participants agreed that devolution had been a success, generating a greater optimistic and inspirational approach to matters. There was support for a review at a time when the UK was facing new global challenges.
- 2 The main points in the different discussions are summarised below:
 - The Scottish Parliament has meant more Scottish bills and more quickly but the speed is a concern as it may not allow for sufficient scrutiny.
 - Scottish Government and Parliament can now respond to specific rural issues but the public are only interested in populist issues, such as post offices.
 - The EU has a large role to play in the laws that affect rural communities – the Commission should consider ways in which Scotland can have a more direct role, as part of the UK, in the EU.
 - Lines of accountability are not clear – greater public understanding of devolution is needed.
 - The concern that constituents' cases that engaged both reserved and devolved matters would fall into the 'gap' has not materialised.
 - Devolution has moved decision making from the UK Parliament to the Scottish Parliament, which is just as remote – the Scottish Government and Parliament should make greater efforts to engage with people outside the Central Belt

- Inequalities within Scotland should be addressed before further powers are devolved to the Scottish Parliament – there is a feeling that Dumfries and Galloway is disadvantaged compared to the Highlands and Islands .
- The media drive the perception of inequality between public spending in England and Scotland but this is not the opinion of those living and working in the Borders and is unhelpful.

Improving financial accountability of the Scottish Parliament

- 3 Participants supported a change to the current system if it did not impact negatively on rural communities, as it cost more to deliver public services in rural areas. There was agreement that there should be clearer information on Scottish Government expenditure as the public were unclear about the spending choices and decisions. For example, which public services have been cut/scaled down to deliver policies such as free personal care for the elderly, free prescriptions, free hospital car parking and tuition fees? This would help improve accountability to some extent.
- 4 The main points in the different discussions are summarised below:
 - Consensus that spending in Scotland was higher because of the isolated nature of many of its communities and the more expensive infrastructure needed to support them. This would need to be factored into any consideration.
 - There was uncertainty as to how much revenue was raised in Scotland and whether this would cover current expenditure – without considering the impact of further devolution of functions.
 - Participants felt that the Scottish Government may be able to react to Scottish needs if they had more control over raising revenues. However, this responsibility would require an acceptance that revenues might not meet spending requirements.
 - There was a general feeling that there should be some connection between tax and spending.
 - The lack of clarity around Scottish Government expenditure was contrasted with the demands placed on organisations in receipt of Government funding to account for expenditure.

Distribution of functions and intergovernmental relations

- 5 Participants felt that the Scottish and UK Governments needed a more co-ordinated approach to issues that related to both reserved and devolved functions. There was no strong support for further devolution of powers, except in a small number of areas, but a feeling that the UK needed to act together on issues.
- 6 The main points in the different discussions are summarised below:
 - The current split between devolved and reserved functions means that the Scottish Parliament is spared many of the 'difficult' decisions.
 - There is a need to consider areas like immigration where Scotland has different skills needs to the rest of the UK.
 - A single UK approach or voice is often more effective and the Commission should not recommend a further devolution of functions based on the wish, by some, for a different policy outcome in certain areas.

- A joined-up approach across the UK is vital in certain areas.
- The role of Secretary of State for Scotland has value but there needs to be greater action in reserved areas on behalf of Scotland – and it needs to be communicated.

iii Inverness local engagement event

Experience and strengthening of devolution and the Union

- 1 Participants agreed that devolution had been successful and that those who had been initially weary had now embraced it. There were concerns on the impact of devolution on local government and the Central Belt dominance.
- 2 The main points in the different discussions are summarised below:
 - There is good access to the Scottish Parliament which has enhanced democracy and interest in politics.
 - The Scottish Parliament has provided local solutions to local problems.
 - The principle of subsidiarity should be extended to local government – power seems to be moving away from local government at the moment.
 - There is some concern about the quality of the Parliamentarians in the Scottish Parliament.
 - The List system has created Regional MSPs that ‘cherry pick’ populist issues.
 - The Scottish Government/Parliament should only follow different policies to the rest of the UK when there is a Scottish need to do so as otherwise Scotland will be at a disadvantage to the rest of the UK. For example, the abolition of tuition fees will discourage those from poorer backgrounds from attending university and restrict Scottish university funding. This could reverse support for the success of devolution.

Improving financial accountability of the Scottish Parliament

- 3 Participants viewed taxation as an essential element of any Government and felt that some form of taxation should be exercised by the Scottish Government. However, there was support for the current block grant.
- 4 The main points in the different discussions are summarised below:
 - The Scottish Government discretion to spend the block grant as it chooses means that some public services are not delivered to the same standard across the UK – drawback of devolution.
 - The Scottish Parliament would never use the Single Variable Rate as it would be politically unacceptable – would they use any taxation power?
 - Higher or new taxes in Scotland (to accommodate the expense of delivering public services to rural areas) would result in businesses and people leaving Scotland.
 - Full fiscal autonomy was rejected as tantamount to a separate Scotland.
 - The current system is simple, stable and predictable which is vital in the current economic climate.
 - The media should not chase headlines by fuelling inaccuracies about the block grant.

- Devolution is about Scottish solutions to Scottish issues not just financial accountability.
- If the block grant was lost, the stability for capital projects would be lost.

Distribution of functions and intergovernmental relations

- 5 There was a feeling that the Commission should focus on those policy areas that were 'local' and required a different approach to the rest of the UK. Participants supported formal intergovernmental relations.
- 6 The main points in the different discussions are summarised below:
 - Potential criteria when considering a further devolution of functions:
 - Measure of 'uniqueness' of interests.
 - Political/international perspective.
 - Fairness.
 - Security.
 - An alternative approach would be to re-reserve primary legislative powers and devolve all secondary legislative powers.
 - The Commission should retain a single Civil Service but consider formal relations between Civil Servants– as they will serve different administrations.
 - The marine environment managed by the Crown Estate is an example of a local issue that should be dealt with in Scotland. Firearms is a UK issue that should be dealt with by the UK Government.
 - The EU is particularly important in rural communities. There is a lack of understanding in how the UK position in the EU is developed – how does Scotland contribute to the policy position?
 - A lack of public understanding about the settlement and the EU can be exploited by those who favour a different constitutional settlement.
 - Informal mechanisms are reliant on goodwill and could be perceived as complacency.

iv Grove Academy engagement event

Experience and strengthening of devolution and the Union

- 1 Students agreed that devolution had been working well. There was some support for further devolution to local government.
 - The level of public knowledge is generally driven by media commentary: bus passes; smoking ban; prescription charges; personal care; tuition fees; car parking.
 - It is a good thing that issues that affect Scotland differently to the rest of the UK are generally now decided in Scotland.
 - Devolution has brought governance and politics closer to Scotland.
 - Scotland has distinct challenges which should be reflected in reserved matters – this does not necessarily mean that they should be devolved.

- It would be interesting to know whether devolution has increased turnout among the 18-25 year olds in Scottish Parliament elections, who are unlikely to vote in UK Parliament elections.
- Young people are affected by many of the issues for which the Scottish Parliament has responsibility.
- Some young people can contemplate being an MSP – certainly more than being an MP – because the hours seem more reasonable and the role more attuned to ordinary life.

Improving financial accountability of the Scottish Parliament

2. Students commented that the media played an important role in this debate and should present the information in a neutral informative manner. There was support for the current block grant, assignment of taxation and raising some revenues.
- It is right that the Scottish Parliament decides how to spend the block grant – this means that they are accountable for their expenditure.
 - Variations across the UK are important as the UK is not uniform – block grant is useful in this sense.
 - There is a case for the Scottish Parliament to directly spend revenue that is raised in Scotland (rather than channelling it through the Treasury) and with a block grant to account for Scotland's interest in reserved matters. However, the Commission would need to consider all the implications, including calculating Scotland's new block grant.
 - Variation of taxes means that Scottish taxation could reflect Scottish culture and the Scottish Parliament can 'earn' the money that it spends.

Distribution of functions and intergovernmental relations

3. There was a feeling that further devolution would create a stronger Scottish Parliament but that this would be inconsistent with the purpose of devolution. Students showed strong support for formal intergovernmental relations.
- UK should retain defence and national security.
 - It is logical for service personnel – as well as other related defence areas – to remain part of defence, as it would not make sense for there to be a UK decision to deploy UK troops but a Scottish decision to keep Scottish troops in Scotland.
 - There is an understanding of why Scotland is represented by the UK but a feeling that Scotland needs a more direct role given the influence of the EU over rural areas.
 - There is a case for immigration to be re-considered – Scotland has different needs for labour and a different population profile.
 - The Sewel Convention has been used to avoid difficult decision in the Scottish Parliament. Scottish MPs should be more involved in the process.

Summary

4. The main points in the different discussions are summarised below:
 - Devolution is a success.
 - The Scottish Parliament has more powers than students had thought.
 - There is a need for a better level of understanding by the public so that they better understand the country that they live in.
 - Certain matters, like defence, should remain reserved to the UK Government
 - Certain matters, like immigration, need a flexible approach .
 - There should be a further review in another 10 years to ensure that devolution continues to work for people in Scotland.
 - The Scottish Parliament may 'get it wrong' sometimes but the electorate will hold MSPs accountable in elections.

v Dundee local engagement event

Experience and strengthening of devolution and the Union

- 1 Participants viewed devolution as a positive development for Scotland and believe that it has been a success, even at this early stage. There were concerns about Central Belt dominance and lack of public understanding.
- 2 The main points in the different discussions are summarised below:
 - Devolution has helped strengthen a sense of cultural identity and increased democracy.
 - It has provided a greater access to information and decision-makers and there has been a larger volume of Scotland specific legislation.
 - Many have experienced change as a result of Scottish Parliament legislation.
 - It has worked well on the whole, with the exception of the building.
 - There was some surprise there is not more difference in policy in Scotland and the rest of the UK.
 - The Scottish Parliament has been innovative and used existing powers to help boost the economy – additional levers would be helpful.
 - Success of devolution can be demonstrated by the handling of the foot and mouth crisis. There was an increased focus on talking to people and working with them to find a solution. This helped many sceptical farmers see the benefits of devolution.
 - The bulk of Scottish Parliament legislation has focussed on regulation and the delivery of services but the most effective have been where Scotland has pioneered an approach that has now been reflected across UK level (for example, the ban on smoking in public places)
 - The electoral system has worked well and produced co-operation despite volatility – however, there were concerns with the list system and quality of Parliamentarians.

- There is a strong focus on the Central Belt which was sometimes disillusioning.
- It was felt that further devolution to local government and clarity of functions was a necessity.
- There is a lack of public understanding about devolution and this impacts on accountability, which is important in elections.

Improving financial accountability of the Scottish Parliament

- 3 There was support for the current system but agreement that reform was attractive. Many commented that reform would improve financial accountability but also introduce new policy tools/economic levers. Participants identified a number of problematic features of any alternative.
- 4 The main points in the different discussions are summarised below:
 - The current focus on expenditure should be balanced with raising revenue to develop a more responsible approach to governance.
 - The media is misleading in its presentation of the current system.
 - A new system should be transparent and accommodate additional expense to deliver public services in rural areas.
 - Would Scotland be able to raise sufficient funds?
 - A needs assessment is necessary before any reform of the current system.
 - The Scottish Parliament has taken years to grow accustomed to its new powers – is it the right time to add significant new powers? The Budget Bill is not sufficiently scrutinised so there is concern about the level of scrutiny of any new taxation powers.
 - Would the Scottish Parliament use taxation powers? The Single Variable Rate has never been used.
 - Different taxes would have practical problems and a negative impact on Scotland as people migrate to the rest of the UK.
 - There is no straightforward alternative to the block grant.

Distribution of functions and inter-governmental relations

- 5 There was a feeling that the role of Scotland in EU negotiations needed to be clarified. The Commission should focus on policy areas that were 'local' and required a different approach to the rest of the UK. Participants supported formal intergovernmental relations.
- 6 The main points in the different discussions are summarised below:
 - Overall, functions are balanced.
 - The use of devolved powers to frustrate reserved powers is wrong and there is a role for inter-governmental mechanisms in this situation.
 - A close link between energy and the environment suggests that energy should be devolved or the environment re-reserved.

- There could be scope for adopting a European model with the UK deciding the framework and structure and Scotland implementing the policy.
- There should be a general presumption in favour of devolution, with the onus on those who wish something to remain reserved to show good cause (e.g. the risk of circumvention through cross-border movements and/or disproportionate cost of setting up two separate regimes).
- Scotland needs a stronger voice on reserved areas like immigration.
- Research councils and the Civil Service are a real benefit to Scotland as UK-wide organisations. They must remain reserved.
- Benefits of being part of the UK should help determine which policy areas should be reserved and which should be devolved.
- Formal and transparent relations between the institutions are necessary and probably the only area of the settlement that requires tweaking.
- There is a need to communicate the Secretary of State for Scotland's/Scottish MPs' actions in acting for Scotland in reserved areas.
- The political environment promotes idea of 'rows' between the Scottish and UK Governments which is exacerbated by the media.
- Even if an area is devolved, there should be regular discussion between the Scottish and UK Governments so that best practices can be shared.

vi Stornoway local engagement event

Experience and strengthening of devolution and the Union

- 1 Devolution had been a success that had enabled local solutions to local problems, such as the Road Equivalent Tariff for ferries. It was a driver for social change and improved lives. Participants felt that the Scottish Government should devolve powers further to local government.
- 2 The main points in the different discussions are summarised below:
 - Devolution has been positive for Scotland.
 - It is about improving lives and reflecting the cultural identity of the people in Scotland – that is why Scottish Parliament debates should be retained.
 - The devolved institutions tried to engage with local organisations and local government so there was greater access to information and decision-makers than before devolution. However, it was felt that there was too much focus on the Central Belt.
 - Local government remained the first point of contact for many.
 - Many felt that the Scottish Parliament should engage with young people for real empowerment across Scotland.
 - The role of Regional MSPs was unclear but the nature of the electoral system kept MSPs engaged.

- People were not interested in the devolved/reserved division – they were concerned with issues, some of which were decided in the EU.
- It is important for the Scottish and UK Parliaments to work together.
- Two governments provide a check that enhances democracy but it could have a negative impact on the delivery of public services where there is disagreement.
- Disagreements between governments allows people to consider the issues which enhances democracy.
- Arbitration body could provide the solution.
- There is a need for more local control of coasts, fishing and Crown Estates.

Improving financial accountability of the Scottish Parliament

- 3 There was support for reform with suggestions driven by the desire for Scotland to have greater control of its economy. Many commented that financial accountability needed to reflect the distribution of functions.
- 4 The main points in the different discussions are summarised below:
 - Currently, there is no relationship between the economy and the level of funding available.
 - Revenue raising powers provide policy tools and economic levers.
 - Full fiscal autonomy was viewed as too unstable and prone to 'tax competition' with many favouring a mixed system. Others supported the block grant for its stability.
 - Full fiscal autonomy and the block grant in reverse was suggested – with the block grant paying for reserved matters, such as defence.
 - The cost of delivering public services in remote areas should be a key factor in any analysis.
 - There was disappointment that there was a lack of scrutiny of the Budget Bill as the Scottish Government should currently be accountable for its expenditure.
 - The social security system was an essential element of the financial accountability question and final package.
 - There was a lack of information available to the public for them to make an informed contribution to the debate.
 - Borrowing powers should be considered by the Commission.
 - There is no straightforward alternative to the block grant.

Distribution of functions and intergovernmental relations

- 5 There was support for further devolution on coastal matters and post offices as well as some clarification of Scotland's role in EU negotiations. Participants agreed that there needed to be formal inter-institutional relations.
- 6 The main points in the different discussions are summarised below:
 - Defence and foreign affairs should remain reserved.

- There is a need to separate the constitutional debate from the political debate.
- Candidates for further devolution included the marine estate managed by the Crown Estate and post offices.
- There was a feeling that the Scottish Parliament would be responsive to Scottish needs.
- Issues like community transport, where regulation is reserved but policy levers/funding is devolved, should be considered by the Commission.
- Energy should be considered by the Commission – transmission charges are a big concern for the Western Isles.
- Social justice issues are split between Scottish and UK Parliaments (for example, child poverty) so joined-up working is vital.
- Scotland should have a prominent role where there is a dominant interest in EU negotiations but there is a need to balance Scottish interests with the that of the rest of the UK.
- People are now accustomed to access on devolved issues and want similar levels of access on reserved issues – a greater role for the Secretary of State for Scotland is necessary.

vii Ayr local engagement event

Experience and strengthening of devolution and the Union

- 1 Participants agreed that devolution had enabled local solutions to local problems and provided greater access to decision-makers. The Scottish Parliament has also established itself in civic life and strengthened cultural identity.
- 2 The main points in the different discussions are summarised below:
 - Devolution has been a success.
 - People of Scotland wanted something to reflect their identity and devolution has addressed this need.
 - The Scottish Parliament has grown in confidence but is still relatively young.
 - There is concern about the level of scrutiny of legislation in the Scottish Parliament.
 - There is scope for decentralisation from the Scottish Parliament to local government but the Commission should not recommend a devolution of powers where there is a need for a holistic view – this applies equally to the UK Parliament and the Scottish Parliament.
 - Places like the Orkney Islands, Shetland Islands and the Western Isles should have greater autonomy/representation because of their remoteness.

Improving financial accountability of the Scottish Parliament

- 3 There was no general understanding of the current system, due to inaccurate reporting in the media. Participants showed some support for reform but showed concern about the stability of alternative models and the need to accommodate the greater expense of delivering public services in Scotland.

4 The main points in the different discussions are summarised below:

- The media has not provided detailed and accurate information on the current system and the press outside Scotland have distorted issues.
- The Scottish Parliament has not used the Single Variable Rate as raising it would be unpopular with the electorate.
- Local government has higher standards in relation to accounting for expenditure than the Scottish Parliament.
- The Scottish Parliament must approve the Budget Bill but there is not sufficient scrutiny.
- It would be difficult to consider revenue raising powers in isolation – the Commission must also consider associated benefits and policy areas and consider the pros and cons of devolving the entire package.
- The Commission should consider borrowing powers – local government has these powers.
- Sufficient accountability exists – the electorate vote for MSPs who vote on expenditure and if people are unhappy with a decision, they will voice their concerns during elections.
- Would the Scottish Parliament use any new revenue powers for fear of unpopularity?
- Expenditure should be linked to the raising of funds. The new local government concordat is in that sense a retrograde step as it leaves local authorities less responsible for the amounts available (freeze on council tax) but gives them more responsibility (removal of ring fencing) for spending.
- It would be risky to depart from the block grant, at least in the short term. Scotland could receive less as a result.
- The present system operates on the basis of solidarity across the UK in terms of social provision, allowing regions or areas that have particular problems, whether long-term or short-term, to be supported by others who are better off.

Distribution of functions and intergovernmental relations

5 Participants showed varying degrees of support for further devolution of functions. There was agreement that formal intergovernmental relations were crucial for the future success of devolution.

6 The main points in the different discussions are summarised below:

- Various issues require consideration by the Commission e.g. broadcasting, immigration, enforcement of health & safety legislation.
- Shifting the reserved/devolved boundary would inevitably involve costs, and is being promoted primarily by those who want to secure more power for themselves. This should not be seen as a priority compared with other things that public funds could be spent on.
- Some areas are best considered by a UK Government across the whole of the UK e.g. defence, foreign affairs, employment law.
- The more devolution, the more funding needed – if the Scottish Parliament is to start raising revenue, the public may favour re-reservation of functions.

- The Commission should only devolve functions where there is a real need for a distinct Scottish approach and devolution enhances democracy.
- Some areas require a joint approach e.g. energy and environment.
- Polarisation of issues is sometimes encouraged by politicians but this does not serve the people of Scotland – the new Secretary of State for Scotland has recognised this and is looking to work across political divides.
- The main intergovernmental structures that exist, such as the Memorandum of Understanding, are not well-understood, and more information about them should be provided.
- Formal relations between Scottish and UK institutions has introduced a higher level of accountability and transparency.
- Scottish Parliament debates are toothless – a new mechanism is required to provide a Scottish voice on reserved issues e.g. should there be an adapted role for the Secretary of State for Scotland?
- Relations between MPs and MSPs are often poor.
- There are concerns with Scotland's representation in the EU in the context of fishing. Information on the current system is needed.

viii Newcastle-upon-Tyne local engagement event

How has devolution to Scotland worked?

- 1 There was consensus that devolution had worked well in Scotland with the Scottish Government delivering innovative policies. Devolution affirmed a historical and cultural identity and increased confidence as well as democracy in Scotland. However, there was some concern about the impact of different policies at the border, where there is now a need for greater collaboration, and the responsibility of the media to fully explain the issues. There was also some support for evidence-based research on the impact of devolution.
- Devolution is still quite new but has been a success.
 - Scotland has developed a strong voice.
 - People in the North-East recognise multiple identities (Geordie, English and British) but this is not reflected in the media – is the same true of the media in Scotland?
 - Points of tension in the North-East existed before devolution and are grossly exaggerated by the media.
 - The North-East is close to Scotland: there is connectivity between people living and working across and around the border. The rest of the UK would not wish to see Scotland leave the Union.
 - Devolution has struck the right balance between embracing national identity and retaining the benefits of being part of the UK.
 - The UK Government should tackle cross-cutting strategic issues, which has been highlighted in the recent global economic crisis – the Scottish Government would not have been able to act in the same way as the UK Government and with the same impact.

- Devolution has provided the Scottish Government with a healthy remit that has allowed for innovative policies. The Scottish Government should share best practices so that the UK Government could roll out policies across the rest of the UK where they have worked well in Scotland.
- There is a tendency for the public/media to focus on headlines without fully understanding the issues e.g. free personal care - free policies mean a lack of funding in another area.
- The consequences of different policies are not sufficiently highlighted e.g. the abolition of tuition fees means that children from poorer backgrounds may be less likely to go to university.
- Policy divergence is important if you have devolution but it should not be “difference for the sake of difference”.
- The differences of policy and approach that now mark the Scotland/England border have an impact on business, public health etc. For example, different policies on animal health (e.g. whether to vaccinate) could affect those farming near the border.
- You cannot strengthen devolution in Scotland without considering the impact on the rest of the UK.
- There should be a common UK-wide basis for the NHS, whose core values depend on equity across the UK.
- What has been the impact of devolution on UK-wide collaboration? The Scottish Government would like to lead fisheries negotiations in the EU but have failed to appreciate that the UK position should reflect the whole of the UK.
- There should be an evidence based study of the standard of living pre- and post-devolution in Scotland.
- The North-East has more in common with Scotland than with the South-East, but devolution has made it harder for the two to make common cause on matters of mutual interest such as housing, transport etc. On health matters for example, researchers in the North-East have been told to work with those in the Midlands, when colleagues in Edinburgh are probably closer and working in more similar circumstances.

Has devolution in Scotland affected your view?

- 2 The general consensus was that the referendum package offered to the North-East in 2004 was not as compelling as that available in Scotland. There was also a distinct lack of leadership and concerns about increased bureaucracy and costs of a regional assembly. There was some feeling that the North-East would respond differently today.
- It is unclear whether an English Parliament would better represent and promote the interests of the North-East compared with the UK Parliament. England is still a very large and diverse unit, and some more local autonomy would be required. The same could be said for Scotland.
 - The North-East is made up of three northern regions and so has no singular identity. Scotland has an impetus that the North-East lacks.
 - Scotland is a good model for what could and should happen in the North-East. The

preconditions for some form of regional devolution exist in this area.

- Many areas are already governed at a regional level (e.g. health) because it is better delivered at this level.
- There has been some tinkering since the referendum in 2004 (e.g. select committees for Regional Development Agencies).
- The North-East needs to reconsider its position, particularly with the renewed emphasis on regions in Europe.
- It is not a constitutional question about governance but about the best delivery of public services.
- Most people judge issues of devolution and the constitution by reference to local concerns that directly affect them. There is common ground between the North-East and some parts of Scotland in relation to health, for example, where similar issues of poverty, unemployment and alcohol arise.
- There should be a level playing field across the UK that would accommodate devolution for Scotland, though perhaps with reduced powers, and new funding arrangements to underpin it.
- There is a lack of understanding and awareness of Scottish politics. The media are partly to blame for this, particularly when they fail to distinguish between policies that apply in England only and those that apply to the whole of the UK.
- It is striking that the main political parties (Labour, the Conservatives and the Liberal Democrats) issue three manifestos each – one for Wales, one for Scotland, and one for the whole of the UK, i.e. with no separate or distinct programme for England.

Part 2: Written submissions

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Introduction

- This summary includes the main points made in all written submissions received up to 21 November 2008, other than the submission by the UK Government.
- Points from virtually every submission have been included – with the exception of only a handful which appear to have misunderstood the remit; or where no clear views were expressed or were received very close to the deadline.
- Greater weight has generally been given to those points that are either made by more credible organisations or individuals (e.g. well-established representative bodies), or that are better supported by evidence or argument (rather than bare assertion). The selection of points to include is necessarily subjective to some extent.
- The structure of this document follows the Commission's remit and its task group structure. The nine questions attached to the main consultation (18 June) are included at the appropriate points. Further sub-headings have been included where these appear to offer a useful way of dividing up the points made.
- Under the headings provided, the order of points is unrelated to the order in which submissions were received. Where possible the order reflects the nature of the points made – for example, ranging from views strongly in favour of a particular idea, through more ambivalent views, to outright opposition.
- Direct quotations are verbatim, but it should be borne in mind that selective quotation out of a wider context may inadvertently alter meaning. Other points are paraphrased in terms that aim to preserve the general meaning of points made.
- A few organisations made two submissions (in most cases, one to the initial consultation and another to the more general consultation). These are distinguished by the use of "no.2" to refer to their later submission. Where the same point was made in both, it is recorded here only once.

List of written submissions (up to 21 November 2008)

Please note that the list below excludes a small number of submissions made in confidence or judged to be outside the Commission's remit.

University of Abertay, Dundee	Association of Chief Police Officers in Scotland
Action of Churches Together in Scotland	Association of Electoral Administrators (Scotland and Northern Ireland Branch)
Alex	Association of Scotland's Colleges
Councillor David Alexander (Falkirk Council)	Association of Scotland's Colleges (no.2)
Councillor David Alexander (Falkirk Council) (no.2)	Association of Scottish Community Councils
Ruthie Allan	Alastair Balls
Alloway & Doonfoot Community Council	Big Lottery Fund Scotland
Anonymous	Big Lottery Fund Scotland (no.2)
Anonymous	BBC
Architecture and Design Scotland	

Professor Norman Bonney	Glasgow City Council
Professor Norman Bonney (no.2)	Professor Adrian Grant
Boundary Commission for Scotland	Stanley Grant
Andrew Bradford	Professor John Haldane
British Ports Association	Health Protection Agency
Cairngorms National Park Authority	Highland Council
James Caldwell	David Hutchison
Caledonia Centre for Social Development	Institute of Chartered Accountants in Scotland
Campaign for an English Parliament	Institute of Chartered Accountants in Scotland (no.2)
Catholic Parliamentary Office	Institute of Directors in Scotland
Chartered Institute of Public Finance and Accountancy	Institute of Local Television
Chartered Institute of Taxation	Institute of Local Television (no.2)
Children in Scotland	Iain Jamieson
Church of Scotland	Judiciary in the Court of Session
Church of Scotland (no.2)	Christopher Kavanagh
Tom Clarke MP	Professor Michael Keating
Euan Colam	Ian Keillar
Comhairle nan Eilean Siar	Anne Kerr
Community Pharmacy Scotland	Law Society of Scotland
Confederation of British Industry Scotland	Law Society of Scotland (no.2)
Confederation of British Industry, Scotland (no.2)	Richard Lindsay
Council of Ethnic Minority Voluntary Organisations Scotland	Literature Forum, University of Glasgow
Jim Craigen	George Lyon (Scottish Liberal Democrats)
Professor Anna Dominiczak	Councillor Dr Christopher Mason
University of Dundee	James Matthews
Ecas	James Matthews (no.2)
City of Edinburgh Council	D R Mayer
Edinburgh Peace and Justice Centre	D R Mayer (no.2)
University of Edinburgh	Graeme McCormick
Educational Institute of Scotland	David Mcphail
Educational Institute of Scotland (no.2)	MG Alba
Electoral Commission	Keith Muir
Electoral Reform Society Scotland	National Farmers Union, Scotland
Environment Agency	National Trust for Scotland
Equality and Human Rights Commission	NHS National Clinical Assessment Service
Faculty of Advocates	NHS Tayside
Dr M A Fazal	North Lanarkshire Council
Federation of Small Businesses (Scotland)	North Lanarkshire Council (no.2)
Tim Flinn	Office of Communications (Ofcom)
Glasgow Caledonian University	A J Parrott
	A J Parrott (no.2)

Planning Aid for Scotland	Scottish Refugee Council
Quality Meat Scotland	Scottish Rural Property and Business Association
Quality Meat Scotland (no.2)	Scottish Screen
Reform Scotland	Scottish Trades Union Congress
Reform Scotland (no.2)	Scottish Trades Union Congress (no.2)
Regulatory Review Group	Scottish Women's Budget Group
Renfrewshire Council	Scottish Youth Parliament
Road Haulage Association Scotland	Shetland Islands Council
Robert Gordon University	Society of Local Authority Chief Executives
Royal College of Physicians and Surgeons of Glasgow	South Ayrshire Council
Royal College of Physicians and Surgeons of Glasgow (no.2)	South-East Scotland Transport Partnership
Royal College of Physicians of Edinburgh	SportScotland
Royal Scottish Academy of Music and Drama	David Steel
Royal Society for the Prevention of Accidents, Scotland	Struan Stevenson MEP
Royal Society of Edinburgh	Stonewall Scotland
Royal Town Planning Institute in Scotland	Stonewall Scotland (no.2)
James G Scott	Student Loan Company Ltd
Tavish Scott MSP (Scottish Liberal Democrats)	Taxpayers Alliance
Scottish Artists Union	David Taylor
Scottish Association for Public Transport	Thompsons Scotland
Scottish Ballet	Trading Standards Institute (Scottish Branch)
Scottish Borders Council	Alan Trench
Scottish Campaign for Nuclear Disarmament	Professor Ivan Turok
Scottish Competition Law Forum	UNISON Scotland
Scottish Council for Development and Industry	UNISON Scotland (no.2)
Scottish Council for Voluntary Organisations	United Free Church of Scotland
Scottish Council for Voluntary Organisations (no.2)	University and College Union, Scotland
Scottish Engineering	Christopher Vine
Scottish Environment Protection Agency	Councillors Walsh and Scoullar (Argyll and Bute Council)
Scottish Episcopal Church	Gordon West
Scottish Federation of Housing Associations	West Dunbartonshire Council
Scottish Funding Council	West Lothian Council
Scottish Green Party	Canon Kenyon Wright
Scottish Information Commissioner	Gareth Young
Scottish Labour Party	Youthlink Scotland
Scottish Natural Heritage	Angie Zelter
Scottish Natural Heritage (no.2)	
Scottish Police Federation	
Scottish Public Services Ombudsman	

A: Suggested Topics

Listed below are all the main suggestions made by those who responded to the initial call for evidence (22 May), inviting suggestions for topics the Commission should consider. Where such submissions expressed a definite point of view – e.g. that a particular reserved matter should be devolved – these comments have been included elsewhere in the summary, alongside points made during the main consultation.

Devolution structures and general features of the Scotland Act

- Scottish Parliament elections (UNISON Scotland, Scottish Green Party)
- Elections and electoral administration – currently a mixture of devolved and reserved (Electoral Commission)
- Quality of Parliamentary scrutiny (whether FMQs delivers effective scrutiny; whether scrutiny of legislation, including pre- and post-legislative scrutiny, is adequate) (Law Society of Scotland)
- Role of the Law Officers (Law Society of Scotland)
- Role of the civil service (Law Society of Scotland)
- Human Rights Act – differing time-limits for raising claims (cf time-limit for devolution issues under the Scotland Act) (Law Society of Scotland)
- European Union
 - its relationship with Scottish Parliament and Scottish Ministers (Law Society of Scotland)
 - Scotland's input into EU policy on food labelling, export health certificates etc. (Quality Meat Scotland)
- Local Government – are 32 authorities sustainable alongside a devolved parliament? (Royal Scottish Academy of Music and Drama)

Financial issues and taxation

- Interaction between presumption of devolution in most issues, but presumption of reservation of taxation (Law Society of Scotland)
- Taxation, government borrowing (Anon)
- Financial relationship between UK and Scottish Governments (Reform Scotland)
- Fiscal autonomy (UNISON Scotland)
- The funding arrangements (block and Barnett) (STUC)
- Borrowing powers of the Parliament (STUC)
- Council Tax benefit (UNISON Scotland, STUC)
- Pensions – interface between occupational pensions (reserved) and the regulation of public sector pensions (devolved). (UNISON Scotland)
- Social security, job seeking, pensions (Anon)

Specific reserved matters (in alphabetical order)

- Broadcasting (Scottish Ballet, UNISON Scotland, STUC)
- Built environment (RoSPA)
- Consumer protection (UNISON Scotland)
- Culture – the role of UK strategy/policy/investment/public service bodies such as Ofcom, BBC, British Council etc., how UK Govt departments reflect Scottish needs in their policies and in their relations with the EU; how changes to Scottish devolution would impact on partner bodies elsewhere in the UK; and how UK/Scottish Government relationships impact on UK initiative such as the Olympic and Commonwealth Games (Scottish Screen)
- Data protection (UNISON Scotland)
- Defence policy (Scottish Engineering)
- Employment
 - related taxation and work permit/visa issues – whether consistency of approach within the UK is needed (Scottish Ballet)
 - the link with economic development (which is devolved) (UNISON Scotland)
- Energy (Anon, UNISON Scotland, Scottish Engineering)
- Equal opportunities (UNISON Scotland, Equality & Human Rights Commission, STUC, Stonewall)
- Extradition (UNISON Scotland)
- Film classification (UNISON Scotland)
- Financial services (UNISON Scotland)
- Fishing (UNISON Scotland)
- Health and safety (RoSPA, UNISON Scotland, STUC)
- Higher education – interface between the institutes (devolved) and Research Councils, international development, immigration and regional policy (reserved) (University of Dundee)
- Housing Benefit (STUC)
- Immigration and asylum (UNISON Scotland, Equality & Human Rights Commission)
- Insolvency (UNISON Scotland)
- International development (Scottish Council for Voluntary Organisations)
- International relations – the level of responsibilities and influence within Scottish Parliament control (Royal Scottish Academy of Music and Drama)
- National Lottery and gaming (Scottish Ballet, UNISON Scotland, David Macphail, Scottish Council for Voluntary Organisations)
 - legislative responsibility is at UK level but high-level policy for Scotland is determined by Scottish Ministers – is this the most appropriate arrangement? (Big Lottery Fund Scotland)

- Postal services (UNISON Scotland)
- Regulation of healthcare professionals (Royal College of Physicians and Surgeons of Glasgow)
- Regulation of the professions (UNISON Scotland)
- Stamp-issuing authority (James Scott)
- Telecommunications (Anon, UNISON Scotland)
- Training and skills development (Scottish Engineering)
- Transport (Anon, RoSPA, UNISON Scotland, Scottish Engineering)

B: Principles

The principle of devolution and its connection with subsidiarity

- Rather than thinking about devolution as decentralization by a unitary state, the starting point should involve seeing the UK as “a union of self-governing nations” – which provides the basis for a “third way between the unionist and nationalist positions”. (Prof Michael Keating)
- Power should be reserved to Westminster only when it is necessary because Scottish Parliament action will not achieve its objectives alone, or where action at UK level would add value. (UNISON Scotland no.2)
- Support for subsidiarity. (Church of Scotland, UNISON Scotland, Scottish Green party, SOLACE Scotland)
- UNISON remains committed to the principle of devolution, and would not support federalism or independence. It supports the Claim of Right – that the Scottish people have a sovereign right determine the form of government best suited to their needs. (UNISON Scotland no.2)
- The starting assumption should be that all policies are developed at the most local level possible – and this should include further devolution from the Parliament to local authorities. (Glasgow City Council)
- Subsidiarity is balanced in Catholic social teaching by the principle of solidarity (i.e. a commitment to the common good). Other factors can “lead people of good will to differing opinions on constitutional and institutional arrangements”. (Catholic Parliamentary Office)
- Entrenching the position of the Parliament so that Westminster could only amend the devolution legislation with the Parliament’s consent would be in line with the principle of subsidiarity. (United Free Church of Scotland)
- It is not a question of more or less powers. It is a question of where the different powers are best exercised. If there is a need for Westminster to take a strategic decision in the interests of the whole of the UK (e.g. climate change, energy, national security, defence, international relations and so on) then the power should reside at Westminster. If there is no such UK-wide interest and unlikely to be in the future, then the power should be exercised at Holyrood.” (Anonymous contributor to Scottish Youth Parliament survey)
- “On the big issues that affect our relationship with the international community, we should have UK wide policies. On the issues that affect people more personally in their

everyday lives, then it helps for the Scottish Parliament to legislate over them as requirements vary region by region.” (Anonymous contributor to Scottish Youth Parliament survey)

Devolution in the context of the Union

- It is worth remembering that the concept of Union, originally advanced “to end wasteful competition between two neighbours”, has always been popular in Scotland; it was only when it became clear that the Scottish Parliament would not be retained that there were riots in the streets. The Scottish Parliament today would be much more powerful, particularly in financial terms, if it had never been abolished at the time of the Union. Abolition of the post of Secretary of State for Scotland is “long overdue”. (David Steel)
- The main British political parties accept devolution, but have tried to prevent it altering the UK-level constitution – and the political sensitivity is not so much about Scotland enjoying local autonomy but about its continuing influence at the centre. One option is “to tie Scotland back into a reconstructed centre, by imposing framework laws or other limits on Scottish autonomy” which would be “reduced to the management of policy within limits” – a system of “co-ordinate federalism”. The alternative is to re-think the UK as a union of self-governing nations, but this requires rethinking Scotland’s role at the centre, including its representation at Westminster: “Westminster cannot pretend to be the Parliament of a unitary state and the centre of an evolving confederation at the same time”. (Prof Michael Keating)
- It is important to uphold the Claim of Right and the sovereignty of the Scottish people. (Cllr D Alexander)
- The Scotland Act is “one of the most important pieces of legislation to have affected the Scottish legal system since the European Communities Act of 1972 ... In tandem with the Human Rights Act 1998, the Act provides much of the framework of what approaches a form of written constitution”. By requiring lawyers to consider issues of the Parliament’s legislative competence, it “introduced a new way of thinking for Scottish lawyers”. (Law Society of Scotland)
- Scotland joined the Union as an equal partner but is not treated as such; Scotland could govern itself while remaining part of the UK, by revoking the Union of Parliaments but retaining the Union of the Crowns. However, some mutually agreed matters should remain reserved and be run by a Grand Committee. This would also solve the West Lothian Question. (Alex)

The West Lothian / English Question and the case for federalism

- The Scotland Act “placed Scotland in a constitutionally privileged position ... Scottish voters are in the happy position of being able to vote for one set of representatives to deal with their domestic concerns, while sending another set of representatives to Westminster able to act on the basis of completely different standards and pressures on matters which have little or no impact on the day to day lives of their constituents, but which often have a profound effect on the lives of their English neighbours. This is power without responsibility and has no place in a democracy ... If the powers of the Scottish Parliament are to be enhanced, the voting powers of Scottish Westminster MPs must be drastically curtailed.” (James Matthews)
- “The Devolution Acts have had a profound effect on the constitution of the UK and the experience of government by all UK citizens, 85% of whom live in England. ... The threat to the Union has been created by asymmetrical devolution. This has left the UK

Parliament a hybrid body serving the UK in reserved matters and England in the domestic matters now devolved to the Scottish Parliament.” There is a growing English nationalism which the major parties are ignoring, while their defence of the Union relies more on an appeal to sentiment than detailed reasoning. “Nothing can be a greater threat to the wellbeing, even the continuation, of the Union than what is being done to England and ... the sense of grievance it is producing. ... For devolution to succeed and progress in Scotland, it must be extended to England”. An English Parliament “will solve the West Lothian Question. It will end the injustice ...” (Campaign for an English Parliament)

- The West Lothian Question is “for English politicians to resolve for England”. It is certainly not solved by moving powers back to Westminster; and there is a strong case for “following the logic of devolution through at UK level and making the House of Commons the unicameral English Parliament and the House of Lords the unicameral Union Parliament.” (AJ Parrott)
- “Enhanced powers for the Scottish Parliament will simply increase the democratic deficit in England that has resulted from the asymmetric devolution ‘settlement’. ‘Settlement’ implies an agreement between two parties, but unlike the Scottish people the English were never consulted.” Labour and Lib Dem MPs continue to interfere in English affairs, while SNP and Conservative members exercise a self-denying ordinance. “In England the Scots are becoming viewed as a pampered clique by virtue of their privileged constitutional status and an overly generous Barnett provision”. To preserve the Union, a way needs to be found to reduce English grievance without “inadvertently fanning the Scottish nationalist fire” – which probably requires the creation of an English parliament. “The Acts of Union were a bilateral process and it would be unfair for the Scottish people to renegotiate terms (again) without the English being consulted (again).” (Gareth Young)
- “The greater the autonomy given to any particular part of the UK such as Scotland, the greater the anomaly created for those in other parts to whom a similar degree of devolution does not extend, namely those in England and (to a lesser extent) Wales.” The West Lothian Question makes Scottish MPs unaccountable to their electorates, while making people in England and Wales subject to laws not supported by those they have elected. This problem is made more acute when UK ministers (including the Prime Minister) represent Scottish seats. There should be no extension of devolution in Scotland “until the position in England has been remedied” – which could be done in various ways, not necessarily involving an English parliament. (Christopher Vine)

Consideration of a federal settlement for the UK:

- The House of Commons should act as the English Parliament and the House of Lords as the federal UK Parliament (Anon)
- A federal constitution for the UK is required. (Dr M A Fazal)
- Federalism has many successful precedents around the world; England would need to be subdivided to ensure reasonable equity among the federating units. (Tim Flinn)
- Perhaps a British Confederation? (James Scott)
- Devolution was “a positive step forward and the most that could be agreed at the time” but it contains “inherent instabilities” and is “not sustainable in the long run”. “The constitutional relationship between England and Scotland must be developed or it will collapse. This development must be based on a big idea, not a long list of detailed legislative adjustments ... In my view a British form of federalism is needed” giving each government and parliament “its own defined role, backed by constitutional guarantees”. There are counter-arguments to the various objections to

federalism, including that the asymmetry of size between England and the other nations would make the system unstable: "This is a very odd objection to federalism, because it applies equally strongly to the former unitary structure ... and it was the experience of English supremacy in a centralised state that eventually won Scotland over to the idea of devolution". (Christopher Mason)

C: Experience of Devolution

The points listed below were mostly provided directly in response to Q1 (set out below), but equivalent points made in other submissions are also included.

General comments

Q1: In general, how successful have the new structures created by devolution been – both in terms of delivering effective government in devolved areas, and in providing effective parliamentary scrutiny and oversight?

- Devolution has been "generally but not uniformly successful in terms of considerably increasing the degree of democratic oversight". (Prof Norman Bonney)
- The Parliament has passed some "much-needed legislation" that would have been crowded out of Westminster's legislative agenda; and its structures provide "a welcome degree of flexibility to allow for a more coherent and effective approach to governance". The Sewel/LCM process has also been "deployed in a useful way". (CBI Scotland no.2)
- Devolution has worked well, increasing accountability and access and operating without serious administrative or political failures. However, there has been less policy innovation than had been hoped, and "very little reform of the central British state to take account of devolution". Intergovernmental mechanisms are "under-developed". (Prof Michael Keating)
- A "significant step in the right direction"; the new concordat with local government "could never have happened" under the pre-devolution arrangements. (Cllr David Alexander)
- Devolution has enabled closer engagement with Ministers and the Parliament – a "vastly improved channel of communication". (Association of Chief Police Officers in Scotland)
- Early fears that devolution would concentrate power at national level in Scotland, and would not allow it to trickle down to local level, have been realised. The Macintosh Commission saw value in community councils, but many local authorities have marginalised them or promoted competing alternatives. "Devolution is delivering for the Big Players like the political parties, the MSPs and local government, but the little players are being ignored". (Association of Scottish Community Councils)
- Benefits include easier access to policy makers and Ministers, and better EU representation; but problems include inexperienced politicians not always producing good legislation, too much consultation and too much legislation generated too quickly. (Scottish Rural Property and Business Association)
- The committees have played an invaluable scrutiny role; "the proximity of the Parliament and its open nature" has created better relationships with elected representatives. There is also greater scrutiny of Scottish public agencies. (Scottish Environment Protection Agency)
- "Devolution has served the planning system well" – planning has a higher profile in the Scottish Parliament than it did previously. (Royal Town Planning Institute in Scotland)

- Devolution has “in many respects ... aided the cause of heritage and the environment” through greater access to decision-makers and more opportunities for engagement in legislation. (National Trust for Scotland)
- Devolution has brought politics closer to the people, freeing the Scotland Office to focus on reserved issues. The Parliament’s committee system has been effective in scrutinising legislation and undertaking inquiries. (Glasgow City Council)
- Devolution “has undoubtedly been a force for positive change” and has “delivered positive outcomes for small businesses, such as reform of planning law, investment in transport infrastructure and a cut in non-domestic rates.” (Federation of Small Businesses, Scotland)
- Devolution “has been proved a success” but “is a dynamic process and not just an event”. (UNISON Scotland)
- Devolution has led to “a very significant increase in Scotland-specific legislation”, generated by a process that is “more direct and straightforward” than at Westminster. The Parliament’s committees have “increased opportunities for effective engagement in the legislative and inquiry processes”. (City of Edinburgh Council)
- The new structures “have generally been effective”, providing “a high level of accountability, transparency and democracy”. (North Lanarkshire Council)
- “In general, devolution has been a success story for Scottish agriculture. ... There is a need for Scottish-specific policies and devolution has created a structure which makes regional variation in legislation and implementation possible.” Access to MSPs, Ministers and officials has been “consistently excellent”. (NFU Scotland)
- The “far more stringent” rules on MSPs’ conduct, compared with that of MPs, is a good thing and helps to secure public confidence. (West Dunbartonshire Council)
- The devolved institutions “have, overall, been successful”, with an increased focus on Scottish issues and improved Parliamentary oversight, which in turn has “created a culture of Government that is responsive to Parliament and therefore the Scottish people”. (University of Abertay)
- The new structures “allow policy development which is aligned to Scottish circumstances”. (University and College Union, Scotland)
- Devolution has given equalities campaigners “a previously unavailable opportunity to raise issues and recommend action”, both through legislative change and improved knowledge and awareness. (Stonewall Scotland)
- Devolution has raised sport up the political agenda, leading to national sport strategies, greater Parliamentary debate and scrutiny and innovative legislation, particularly on giving a right of access to the countryside for sport – a clear example of a better result than would have been possible pre-devolution. Other benefits include a dedicated Minister, better funding and programmes (such as Active Schools) that are particularly relevant to Scottish communities. But some of the raised profile and investment may be attributable to a general UK trend rather than to devolution; and there is sometimes uncertainty about whether UK Government funding announcements will apply to Scotland. (SportScotland)
- Devolution has “significantly improved representation on devolved matters for local people”; the Parliament is “more open and willing to listen”, and there is greater “policy and legislative capacity”. (Scottish Episcopal Church)

- Devolution represents “a considerable improvement” and, despite some scepticism generated by the initial inexperience of MSPs, things are now improving all the time. (Road Haulage Association Scotland)
- There is “no doubt whatsoever that the new structures created by devolution have been extremely successful”. (Thompsons Scotland)
- The creation of a single strategic body for funding universities and colleges would have been more difficult to achieve under pre-devolution arrangements; there has also been more parliamentary scrutiny since devolution. Arguably, “the overall impact of devolution has been to create an environment within which more inventive, distinctive approaches to policy making have been allowed to develop.” (Scottish Funding Council)
- Devolution has “enhanced the level of dialogue with Ministers and legislators”, and some of the policy divergences, such as differing student support arrangements, have been welcomed by Scottish students. (Glasgow Caledonian University)
- “The new structures have been significantly more effective than what preceded them in translating the needs and concerns of Scotland’s people into legislation and policy” – although party political control over Committee membership has “restricted wider accountability”. The main benefits are in better engagement of stakeholders, the opportunity to address issues such as land reform that had been frustrated by the lack of Parliamentary time at Westminster; and the development of distinctive policies such as free personal care. (Church of Scotland no.2)
- “As far as education policy is concerned, ... the effectiveness of policy delivery and Parliamentary scrutiny ... have been significantly enhanced”. (Educational Institute of Scotland)
- “Devolution has resulted in certain Scottish legislative reforms being more expeditiously achieved” – for example, in housing, health, mental health, agricultural holdings and land law. (Faculty of Advocates)
- Prior to devolution, law reform was “haphazard and patchy” because of the difficulty of securing Parliamentary time for more than one major Scotland-specific Bill each year; while other legislation was given too much of a UK focus, without adequate consideration of how it affected Scots law. Since devolution, the Parliament has passed legislation, and undertaken significant inquiries, on a wide range of areas. (Law Society of Scotland)
- Devolution has been “generally effective” providing “adequate opportunities for communication ... at both political and official levels”, with more trust and improved partnership working between councils and national bodies. MSPs’ local knowledge has contributed to more informed and efficient dialogue. (SOLACE Scotland)
- “The creation by political devolution of a more responsive and effective Scottish political system has generated a more robust and energetic Scottish civil society” – as demonstrated by the large increase in the policy and parliamentary staff now employed by the sector in Scotland. (Scottish Council for Voluntary Organisations no.2)
- Devolution has “revolutionised” the relationship with politicians and civil servants, making the work of the organisation simpler, more cost effective and more efficient. (Youthlink Scotland)
- Prior to devolution, the Scottish Police Federation was not always consulted on legislation affecting Scotland but it is now “fully consulted” and regularly gives evidence to Scottish Parliament committees (Scottish Police Federation)

- Devolution has seen “improved working and interaction between government and the Scottish public”. It has enabled local priorities to be addressed “in a specifically Scottish way” through institutions that are more geographically accessible. But there is “still a very real lack of knowledge and confidence” about how devolution works – knowledge and information needs to be more widely disseminated, and terminology needs to be made more inclusive. (Council of Ethnic Minority Voluntary Organisations)
- Since 1999, there has been “a sea change in terms of consultation, communication and cooperation”, bringing the EIS and its members closer to the decision-making process. (Educational Institute of Scotland)
- The devolved institutions have taken a constructive interest in architecture and the built environment; “the scale of administration in Scotland can permit better integrated and ‘joined up’ government.” (Architecture and Design Scotland)
- The devolved structures “have taken some time to bed down”. The primary concern of business is that devolution is “used to create a positive framework for business growth and competitiveness” – and there is not yet “any definitive evidence” on whether devolution has made a positive contribution, and further changes should not be made until “there is sufficient evidence that the current arrangements are either flawed or that changes are needed to make the system work more effectively”. (Institute of Directors in Scotland)
- Experience of devolution has “generally been a positive one”, enabling many UK measures to be better adapted to Scottish circumstances. A unified UK approach is beneficial in some matters, such as navigational safety and security. (British Ports Association)
- Devolution “has been a success for Scotland”, and should now be strengthened. (Labour Group, West Lothian Council)
- Devolution has permitted more effective debate and scrutiny ... initiative introduced in Scotland are now cited as best practice for elsewhere in the UK”. (South Ayrshire Council)
- Devolved structures for higher education have on the whole been effective, partly because of the approach taken by Scottish Ministers and partly because “geographically Scotland represents a unit large enough to get economies of scale but small enough to get close to decision making”. The Scottish Funding Council has developed an approach to encouraging research collaboration that has enabled Scotland to “punch above its weight”. However, devolved policies, particularly on the student contribution to higher education, have made it increasingly difficult for Scottish universities to compete at UK level. (Robert Gordon University)
- Overall, devolution “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.” But it is important not just to consider the case for more powers, but also how existing powers can best be used. (Royal Society of Edinburgh)
- Access to key Government decision makers, particularly at ministerial level, is more straightforward than it was hitherto.” The ban on smoking in public places “demonstrates ... the benefit of an Executive/Government which is close to local issues, understands them and is able to act unilaterally”. Current policy on tackling alcohol misuse is another example. (Royal College of Physicians and Surgeons of Glasgow)
- The Parliament has made good use of consultation procedures, “bringing governance closer to the people”, and budgetary scrutiny has also “greatly improved”. (Anonymous)

- Devolution has enabled QMS to gain additional functions, and protect the distinctive “Scotch Beef” brand; the Scottish Government’s agriculture and rural department “is much more closely linked to the industry in Scotland than its Defra counterpart”. (Quality Meat Scotland)
- In a SYP survey, 80.8% of respondents felt that the Scottish Parliament makes better decisions for Scotland than the UK Parliament, and an exactly similar proportion wanted the Parliament to have more powers. (Scottish Youth Parliament)
- Devolution has enabled legislation geared to Scottish needs to be brought forward on a reasonable timescale – whereas at Westminster, they could wait for 5 years or more to find space in the legislative timetable. It has brought SNH much closer to Ministers, thus facilitating dialogue about policy priorities, legislative change and SNH’s potential role. But devolution “adds a layer of complication” for bodies with UK-wide remits, and creates a risk that Scottish bodies pay insufficient attention to the needs of people elsewhere in the UK. (Scottish Natural Heritage)
- “Current devolved arrangements have produced a more informed debate, and probably a quicker decision making process, than would have been possible under the previous constitutional arrangements”. (Comhairle nan Eilean Siar)
- Prior to devolution, Scottish child and family policy was “inadequately served by the Westminster Parliament”, with the Children (Scotland) Act put “on the back burner” and enacted six years after the equivalent Act for England and Wales. Devolution had encouraged better stakeholder involvement and provided additional capacity for legislation. (Children in Scotland)
- The geographical proximity of Ministers and the Parliament “undoubtedly makes them more accessible, and allows a much more informed and inclusive approach to the issues ... from the point of view of National Park Authority business, the devolved arrangements make much more sense”. (Cairngorms National Park Authority)
- “Any objective analysis of Scottish public policy since 1999 would demonstrate that devolution has had a positive impact on the lives of those who live and work in Scotland”. (Scottish Labour Party)
- Devolution has improved access to Ministers and parliamentarians and improved scrutiny and accountability, although it is now more difficult to access UK-level resources for research and analysis in relation to health and social care. (NHS Tayside)
- Devolution “has been generally seen as an advance”, but there are concerns about a “lack of robustness and transparency in the budgeting process” and about restrictions on scrutiny of major national planning projects. (Scottish Association for Public Transport)
- Devolution structures have enabled “more effective design and assessment of public policy in Scotland” and have been “fairly successful” in allowing major policy to be decided in Scotland by representatives of Scottish opinion. Initial expectations were unreasonably high, but the institutions are maturing and have improved visibility and accountability. (Scottish Council for Development and Industry)
- Devolution has not lived up to expectations – should it be retained? (Jim Craigen)
- Greater devolution could “extend the potential for disharmony and potential costly conflict” – instead what is needed are “proposals to strengthen and cement effective working relationships”. (Institute of Directors in Scotland)

Operation of the Parliament (committees, scrutiny of legislation, petitions etc.)

- The committee system “has proved an important means of securing informed debate and consideration of complex issues” – both in relation to legislation and inquiries.
- The committee system “has not only provided effective scrutiny and oversight of Scottish Government’s proposals and delivery ... but has been a good example of participatory Government”. (Comhairle nan Eilean Siar)
- The committee system “is comprehensive and active, providing effective scrutiny and oversight”. (SOLACE Scotland)
- The committee structure “works relatively well as a ‘check’ on the Executive/ Government”, but there is “insufficient scrutiny of EU legislation”. (NFU Scotland)
- Party political control has contributed to “the failure of the Scottish Parliament committees to emerge as the cross-party policy-making bodies that were envisaged”. (Scottish Episcopal Church)
- Concern about the quality of Scottish Parliament legislation – Scottish charity legislation threatens the charitable status of many Scottish colleges, and there have been other instances of unintended consequences requiring to be corrected by later statutory instrument. (Association of Scotland’s Colleges)
- The committees have been “one of the main successes of devolution” and have improved accountability and transparency, but some MSPs “still do not have the basic skills and knowledge to scrutinise Bills and Government effectively”, and while they mostly do “an excellent job” in conducting inquiries, the impact on Government policy is limited. (Scottish Council for Development and Industry)
- The procedures adopted for scrutiny of Bills, particularly in committee, effectively limit the Parliament’s legislative capacity, and this may be encouraging the over-use of the Sewel Convention to process Scottish legislation through the Westminster route instead. This is made worse by the Scottish Government’s tendency to substantially amend Bills at Stages 2 and 3 to give effect to policy which should have been reflected in the Bill at introduction. (Iain Jamieson)
- Bills are sometimes amended at Stage 3 so that significant provisions avoid the thorough scrutiny of earlier stages. (Andrew Bradford)
- Amendments should not be permitted at the final stage, just before the Bill is passed – there is insufficient notice and there is not enough time to debate them properly. If necessary, there should be more amending stages earlier in the process, with sufficient time available for amendments to be properly considered. (Scottish Rural Property and Business Association)
- Information in Financial Memorandums accompanying Bills is of mixed quality, sometimes “not properly considered or presented” (Scottish Police Federation)
- The Parliament is clearly willing to “discuss, debate and expend public resources on issues that are not within its formal competence”, e.g. on the Iraq war. The current First Minister “must have exceeded the powers available to him ... by writing to foreign governments about nuclear weapons policy”. (Prof N Bonney)
- Contra Bonney: Debate by the Parliament on any matter doesn’t involve “venturing beyond its powers” – only seeking to legislate on reserved matters would do that. To seek to restrict Parliamentary debate to reserved issues would be a denial of freedom of expression. (AJ Parrott)

- The petition system “aids public discourse of issues” even if it is “remains an unlikely route for bringing about change”. (Catholic Parliamentary Office)
- The Parliament should continue to consider regularly its adherence to its founding principles. First Minister’s Question Time is not necessarily an effective way of holding the First Minister to account, and “a more structured calendar of appearances before committees” by Ministers might be preferable. In a unicameral Parliament, pre-legislative consultation is important, and “the Parliament’s capability as a legislator could be improved ... by having a further revising stage”, perhaps involving splitting the existing Stage 3 into two. Post-legislative scrutiny is also important to “to ensure that legislation meets the needs for which it was enacted”. Provision is needed for hybrid bills, and EU scrutiny could be improved and made more transparent. (Law Society of Scotland)
- Equality was one of the Parliament’s founding principles and it needs to be given greater prominence. In particular, more needs to be done to “equality proof” the Scottish budget, particularly through the creation of a Budget Office in the Parliament to coordinate and strengthen budget scrutiny by committees, and the application of equality impact assessments to the Scottish Government’s spending proposals, agencies funded by the Scottish Government, proposals to introduce direct taxation, and proposals to alter the Parliament’s funding arrangements. A Gender Equality Commissioner should also be created to act as an equality ombudsman. (Scottish Women’s Budget Group)

Examples

Q2: Can you give examples of where devolution has produced results that better serve the people of Scotland than would have been likely or possible under pre-devolution arrangements?

- “Access to policy-makers and opportunities to influence and help shape the public policy agenda ... are undoubtedly superior now compared to that which existed before devolution”. (CBI Scotland)
- “The list is endless” and includes the abolition of student tuition fees, the phased abolition of prescription charges, proposed changes to right-to-buy legislation, the local government concordat, free personal care and the national bus concession scheme. Equally important is the impact of devolved policy on the rest of the UK. (Cllr David Alexander)
- The Parliament has a good record in environmental legislation. The Water Environment and Water Services Act 2003 has been praised at EU level as an exemplar of effective implementation of the directive. The ambitious emission-reduction target proposed for the Scottish Climate Change Bill is influencing thinking at UK level. Positive changes have also resulted from the strength of the Parliament’s petitions system. (Scottish Environment Protection Agency)
- The Land Reform (Scotland) Act 2003 implements “a far-sighted and more inclusive policy than exists elsewhere in the United Kingdom. Other examples of progressive legislation include the National Parks (Scotland) Act 2000, the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and the Nature Conservation (Scotland) Act 2004. But Scotland’s historic environment legislation is piecemeal, complex, incomplete and difficult to understand, and Scotland is falling behind compared with the rest of the UK. (National Trust for Scotland)

- Scottish solutions to Scottish problems include the ban on smoking in public places, and by providing free nationwide concessionary travel, free central heating and free personal care – some of which have been later copied by Westminster for the rest of the UK. (Glasgow City Council)
- The Parliament itself; an invigorated political culture; and distinctive Scottish policies – including abolition of health trusts and a partnership model for the NHS, free personal care, the smoking ban and a more positive approach to immigration and asylum. (UNISON Scotland no.2)
- The ban on smoking in public places “might not have been achieved on a UK-wide basis”, while “it is certain that without a Scottish Parliament there would have been no free personal care in Scotland”; and there are other Acts that would probably not have been given the time required at Westminster. (City of Edinburgh Council)
- “Few if any” of the current tram or rail projects would have gained attention or approval in London. (AJ Parrott)
- Considerable extra investment in health and social services, and the free personal care legislation. (North Lanarkshire Council)
- Numerous examples including effective handling of the 2001 FMD outbreak, the 2001 Forward Strategy for Agriculture, implementation of CAP reforms in 2003 and FMD emergency aid in 2007. (NFU Scotland)
- Free personal care and the scrapping of the student endowment are examples of spending that suits Scottish priorities. (West Dunbartonshire Council)
- There has been a level of engagement with the university sector that previously did not happen, while policies such as the removal of up-front student fees would not have been possible prior to devolution. Other examples are concessions secured by the university sector during consultation on the FOI legislation; and a university-sponsored petition on national standards for information literacy. (University of Abertay)
- Devolution has brought decision making closer, improved access to politicians and provided more time for Parliamentary scrutiny. The abolition of undergraduate tuition fees and the reintroduction of bursaries are examples of where devolution has made a difference, while the legislation to merge the further and higher education funding councils was something that would not have found time at Westminster. (University and College Union, Scotland)
- The inclusion of sexual orientation in the Scotland Act’s definition of equal opportunities has been vital to enabling Scottish Parliament legislation to take proper account of lesbian, gay, bisexual and (sometimes) transgender issues. (Stonewall Scotland)
- Devolution has enabled distinctive Scottish approaches to student tuition fees, personal care for the elderly, land reform, warrant sales, smoking in public places, immigration (Fresh Talent).
- More direct contact with Ministers, MSPs and civil servants; better awareness in government; specific Scottish policies and Parliamentary inquiries. (Road Haulage Association Scotland)
- Scottish policy has differed in relation to free personal care, the abolition of undergraduate tuition fees and changes in health care; land reform has progressed more quickly than it could have done at Westminster; and the Parliament has led the UK on the ban on smoking in public places. There are, however, doubts as to how popular some of these measures are, and how affordable in the long term. (Royal Society of Edinburgh)

- Policies on care for the elderly and student tuition fees have been welcomed, but the long term costs and implications need to be considered. (Anonymous)
- New legislation and policies to protect asbestos victims, successfully pursued via the petitions system and Scottish Parliament committees. (Thompsons Scotland)
- The “right of responsible access” provided in Scottish Parliament legislation is more suitable to Scotland than the “access to open land” provided in England and Wales. There are also appropriate differences in the aims of National Parks in Scotland; in the procedures for protecting Sites of Special Scientific Interest; and in the implementation of the Strategic Environmental Assessment and Environmental Liability Directive. “Such divergences of approach create a real opportunity to compare and contrast experience in different parts of the UK to see if lessons can be drawn about their relative merits” – but it is a risk of devolution that too little effort will be made to undertake such comparative assessment. Various agencies with cross-border remits have restructured to contribute effectively on devolved issues, while devolution has not hindered policy and strategy from being developed on a GB or UK basis where that is appropriate. (Scottish Natural Heritage)
- Agriculture payments; health (free personal care, smoking ban); student tuition fees; responsive support for infrastructure projects. (Scottish Borders Council)
- “Devolution has provided far greater scope for Scottish-specific legislation”, but the volume dealt with has inhibited a strategic approach. Distinctive approaches on issues such as care for the elderly and tuition fees are “highly valued” but there are risks that moving away from a level UK playing field will undermine Scottish competitiveness. (Scottish Council for Development and Industry)

D: Particular Features of the Scotland Act (Other than specific reserved matters)

Listed below are points made about the merits (or otherwise) of key structural features of the Act – but excluding points specifically about the reserved/devolved interface (which are covered in a later section). Thus, for example, points about whether the Parliament’s electoral system should be changed are included here, but points about whether it should be the Scottish or UK Parliament that decides are included later.

Q3: Are there any particular features of the 1998 Act that you think should be changed or reconsidered, on the basis of experience since 1999?

The number of MSPs & the electoral system for the Parliament

- The Parliament “has too many members”. (Cllr Len Scoullar)
- The 1998 originally provided for a reduction in the number of MSPs in line with the reduction in the number of MPs, but this was reversed. A Deloitte Touche report in 2004 suggested that the Parliament employed more people than the parliaments of larger, independent states. Given that both Scottish MPs and MSPs are responsible for roughly equal amounts of public expenditure in Scotland, the number of MSPs should now be reduced to around the same as the current number of Scottish MPs (59). (Prof N Bonney)
- *Contra Bonney*: The number of MSPs is consistent with practice in other similarly-sized countries (Finland, Denmark, Norway etc.) – “what is wrong in the UK is not that the Scottish Parliament is too big but that the system retained at Westminster is no longer coherent”. (AJ Parrott)

- A reduction in the number of MSPs “would fundamentally alter the principles on which the Scottish Parliament was established”. (UNISON Scotland no.2)
- The current number serves the people well and no change is necessary. (West Dunbartonshire Council)
- The number should be maintained at 129 as a reduction “would adversely affect the capacity of the Scottish Parliament, particularly its committees, to transact business effectively”. Future decisions on the number should be for the Parliament to take, in consultation with the UK Parliament and with the electorate. (Scottish Council for Development and Industry)
- “The Parliament should have the power to direct the Boundary Commission, change the number of MSPs and change the electoral system.” The number of MSPs should be in a fixed ratio to the size of the electorate. (AJ Parrott)
- Change the voting system for the Parliament to STV and consider reducing the number of MSPs. (Scottish Borders Council)
- The electoral system should be used to reflect the proportion who don’t vote (or use their vote to abstain) – with this number reflected in a reduction in the number of MSPs (Jim Craigen)
- The rules that the Boundary Commission is required to apply make it inevitable that Scotland’s Westminster and Holyrood boundaries will not fit tidily together – this lack of co-terminosity causes public confusion and presents practical difficulties for parties and electoral administrators. (Boundary Commission for Scotland)
- The Electoral Commission (through the Gould Report) and the Parliament are being ignored by the UK Government in relation to measures to address the problems encountered with the May 2007 Scottish Parliament election. (James Caldwell)
- Present electoral arrangements “have been set up to suit the political parties, not the electorate”. Most MSPs are elected using the “discredited” first-past-the-post system, while the rest are elected under a list system that is “about as undemocratic as it could be”, given the role of the parties in choosing the candidates and ranking them in order; the regions are also too large to enable list MSPs to be held to account. The answer is a larger number of smaller constituencies to ensure local accountability, plus proportional representation to ensure that all MSPs have majority approval. (Euan Colam)
- The electoral system was “the outcome of long and detailed discussions, and is underpinned by fundamental principles ... it should not be easily challenged or changed without careful and democratic scrutiny”. (UNISON Scotland no.2)
- The current electoral system has succeeded in creating “a strong, diverse legislature where a range of views are represented and have influence” without preventing stable and effective administrations being created, either on a coalition or minority basis. But it has also created problems relating to the two types of MSP (exemplified by recent disagreement about whether there should be differential allowances to reflect constituency responsibilities). The system also has inherent problems, with the FPTP element capable of producing results that the AMS element is unable to correct – for example, “if just 23 voters in Cunninghame North had voted Labour instead of SNP on 3 May 2007 ... Labour would have been the largest party in the Scottish Parliament, despite having polled fewer votes across the country”. The FPTP element also encourages parties to engage the electorate only in marginal seats. STV would solve these problems, giving

all MSPs equal status, balancing proportionality with constituency links, and giving voters real choice. There is also no reason why control of electoral administration should not be devolved. (Electoral Reform Society Scotland)

- The Parliament's current electoral system (AMS) "addresses one problem of FPTP, that of disproportionality; but it both leaves intact other problems, and creates new ones. AMS creates a different class of MSPs, who can be seen as having less mandate, but who are meant to have the same role, and have the same voting rights at Holyrood. It takes power from the voters, as some MSPs are elected without being chosen by them. It corrects proportionality only roughly and regionally, and it still allows a single vote to be ineffective, giving little remedy for the syndrome of "my vote won't count". (Christopher Kavanagh)
- The current electoral system is fairly well understood, simple, and relatively easy to explain, but has "inadvertently created two categories of MSPs" with constituency MSPs following the tradition of local representation, leaving regional MSPs uncertain of their role. Changing to STV "would minimise confusion for electors" and accord with the Gould report recommendation about "putting the voter first". (Association of Electoral Administrators)
- The Parliament's electoral system is "one of its greatest strengths", but the regional vote should be changed so it is the voter and not the party who chooses the order of the candidates. (AJ Parrott)
- The AMS system has generally worked well, "although there are still tensions between the roles of constituency and regional MSPs" and the system is capable of producing disproportionate results. "The proportional nature of the Parliament has also meant that the 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." (Royal Society of Edinburgh)
- "The success of STV in local elections" should lead to its introduction for the Parliament "thus ending the awkward regional list system and the two-tier membership of the Parliament. (David Steel)
- Current methods for electing Scottish MPs, MSPs and MEPs have created many cross-boundary issues and challenges in ensuring voters understand the different systems used – resulting in an overall system of governance that is unnecessarily complex. At the same time, the Parliament is able to legislate for new electoral systems – e.g. for National Park authorities or Health Boards – without necessarily conforming to electoral best practice. (SOLACE Scotland)
- The additional member system "leads to a duplication of work". (Cllr Len Scoullar)
- The electoral system should be changed to a version of STV electing 6 MSPs elected per constituency. AMS, while a big improvement on first-past-the-post, creates two types of MSP and gives too much power to the political parties. It would also simplify the overall system if the Scottish Parliament and local authorities were elected by the same method. A 6-MSP/constituency version of STV would also give small parties a similar chance of securing seats – they would need a higher proportion of the vote, but in a smaller area. (Gordon West)
- The number of MSPs and the electoral system were considered by the Arbuthnott Commission and need not be re-opened. (Prof Michael Keating)

Role of the Law Officers

- There should be a review of the position of the Lord Advocate, who is at the same time a member of a political administration, legal adviser to that administration, and the head of the system of criminal prosecutions and investigation of deaths. Experience from supporting a proposed Member's Bill on corporate homicide, which was frustrated by the Lord Advocate's advice that it would be outside the Parliament's competence, suggested that political influence had been brought to bear. Other examples where there may have been a muddling of roles include the views taken on the legislative competence of Executive Bills, decisions not to prosecute on arms flights into Prestwick and delays in taking a view on Hepatitis-C deaths. A separate issue is that the method of appointment of the Lord Advocate is not subject to oversight by the Commissioner for Public Appointments – suggesting that the Lord Advocate "is there by reason of political patronage". Even if the various decisions were all correctly and conscientiously arrived at, they will "always be tainted with the suspicion of bias or influence", thus devaluing the role and influence of the Lord Advocate. (Thompsons Scotland)
- Role of the Lord Advocate – under the Scotland Act, the Lord Advocate is both a member of the Executive and independent head of the system of criminal prosecution and investigation of deaths. Decisions taken in the latter capacity, including prosecution decisions, could raise "devolution issues" which would fall to be decided either in the Scottish courts or ultimately by the Judicial Committee of the Privy Council. However, it is relatively arbitrary which would occur, and there are differences in how the issues are likely to be considered in the two forums. "The facility provided by section 57(2) of the Scotland Act, to challenge by way of devolution minute virtually any act of a prosecutor, has led to a plethora of disputed issues, with consequential delays to the holding of trials and to the hearing and completion of appeals against conviction". Possible solutions include excluding the Lord Advocate's prosecution role from the scope of section 57(2); transferring that role to a Director of Public Prosecutions; or providing a general right of criminal appeal to the UK Supreme Court. (Judiciary in the Court of Session)
- The Advocate General for Scotland plays a "necessary role" in overseeing observance of the devolution settlement, and ensuring that the UK Government's interest can be represented in court proceedings on devolution issues. (Faculty of Advocates)

The unicameral nature of the Parliament (lack of a second chamber)

- A unicameral system is simpler and easy for the public to understand. (West Dunbartonshire Council)
- The lack of a second chamber is not an issue – unicameralism is common in devolved or federated legislatures; "proportional representation already limits the opportunity for majority rule". (Prof Michael Keating)
- The Parliament "does not suffer" from the lack of a 2nd chamber – with the "accessible and effective" committee structure the main mechanism used to achieve checks and balances. (UNISON Scotland no.2)
- The committee structure is crucial and while it permits detailed consideration of legislation, there is concern about its independence from Executive control – "voting tends to break down, for understandable reasons, along party lines". Scrutiny "could be improved by the presence of a more independent second chamber or effective equivalent". (Catholic Parliamentary Office)

- Unicameralism is perfectly satisfactory in a pluralist legislature elected by PR, since “the requirement to argue every issue on its merits automatically provides checks and balances”. However, “formal provision must be made for the occasion when one party can command a majority” in the Parliament. (AJ Parrott)
- Unicameralism is simple, avoids duplication and allows elected governments to pursue their policy agendas; but bicameralism is much more common in advanced democracies and can better represent social diversity, allows for a division of political labour, and provides checks and scrutiny of government. The Scotland Act was meant to compensate for the lack of a second chamber with the PR element and a strong role for committees, but both have “yielded to the pressure of political party interests, with the result that there is almost no independent representation, or disinterested checking of government policy”. A compromise might be “the creation by statute of a Senatorial Committee”, with around 40 members drawn from “leading national constituencies: arts, business, education, faiths, law, medicine, and trade unions” and appointed, for fixed terms of 8 or 12 years, by a joint parliamentary committee. Their role would be to scrutinise legislation (but without the power to initiate it or vote it down) and the conduct of MSPs. (Professor John Haldane)
- *Contra Haldane*: Most countries of similar size, particularly in northern Europe, in fact have unicameral systems, and appear to function effectively; it is mainly the first-past-the-post electoral system in Westminster that makes a second chamber appropriate there. The idea of creating a non-elected “senate” raises too many difficult questions about membership, method of appointment and purpose. (AJ Parrott)
- There is a case for a senate or 2nd chamber of around 24 people to ensure legislation is fit to become law. (Andrew Bradford)
- A second chamber to review legislation is required, particularly given that the committee stages are often rushed, with “insufficient time allowed for a full and robust examination of the issues and proposed amendments”. (Scottish Rural Property and Business Association)
- One option would be to bring in non-elected members chosen by all-party nominations, to contribute to scrutiny of proposed legislation. (Scottish Episcopal Church)
- Provision should be made for the creation of an elected upper chamber “with delaying and double check powers” – which could operate across all the devolved institutions and the House of Commons. (Anonymous)
- “Consideration should be given to the need for a ‘revising system’ for legislation.” (Scottish Borders Council)

Other features or effects of the Scotland Act

- **Convention rights** – there is an anomaly in relation to time limits for bringing claims for breach of Convention rights, since the House of Lords ruled that the one-year limit under the Human Rights Act doesn’t apply to claims made under the Scotland Act that Scottish Ministers have acted incompatibly with ECHR. (Law Society of Scotland)
- **Transfer of functions**: A faster process for transferring functions to Scottish Ministers may be helpful. (Scottish Environment Protection Agency)

Local government:

- Despite some improvements made through local government legislation and reviews, there is now an opportunity to “re-examine the constitutional position of local government and bring forward formal recognition of the local government tier in Scotland’s constitutional hierarchy”. (North Lanarkshire Council)
- Fixing local government should be a greater priority than amending the Parliament’s powers. The system of 32 local authorities and the “cumbersome” system of community planning devised to “make up for its deficiencies” are “not fit for purpose”. (Prof N Bonney)
- **Implementation of EU legislation:** “There has been considerable confusion over the legal implications of the requirement within the Scotland Act that all EU legislation must be implemented in full.” The European Commission and the Scottish Government’s EU division have confirmed there is no more onerous obligation on Scotland than any other part of the EU, but other officials have expressed different views – for example by preventing Scotland benefiting from the Beef Assurance Scheme – a Brussels-approved derogation from the rule otherwise preventing all cattle over 30 months old at slaughter from entering the food chain (the OTM rule). “This resulted in the ludicrous position of cattle leaving farms on a Scottish island to be killed in an English abattoir then carcasses coming back north in order to get round the legal problem”. (NFU Scotland)
- **Accountability of judges** (section 23(7)(a), which exempts judges from being required to give evidence to the Parliament): This is too broad and could prevent Parliamentary accountability for court administration under legislation currently in progress. (Iain Jamieson)
- **Westminster’s continuing right to legislate for Scotland** (s.28(7)): The Sewel Convention, although now well-established, does not have the force of law and could be broken at any time; there is therefore a case statutory entrenchment of the requirement for Scottish Parliament consent to Westminster legislating on devolved matters. (Iain Jamieson, Prof Michael Keating)
- **Amendment of the devolved/reserved boundary** (s.30, which enables Schedules 4 and 5 to be amended by Order in Council subject to approval by both the UK and Scottish Parliaments) – the fact that only 9 such Orders have been made may suggest an inappropriate reluctance to use this power. (Iain Jamieson)
- **Statements on legislative competence** (s.31(2) which requires the Presiding Officer to make a statement on the legislative competence of every Bill introduced): This provision could be deleted, given doubts about the independence of the legal advice on which the PO relies and the lack of transparency in that process, the possible inhibiting effect on subsequent Parliamentary scrutiny of the Bill’s competence, and the lack of procedures to prevent amendments that would subsequently take the Bill outside competence. (Iain Jamieson)
- **Role of Law Officers in relation to legislative competence** (s.33, which gives certain Law Officers the right to refer a Bill they consider to be outside legislative competence to the Judicial Committee of the Privy Council): This should be repealed on the grounds that no such reference has so far been made and would in any case be difficult for the JCPC to decide as a hypothetical case and without prior consideration by lower courts. (Iain Jamieson)

- **Members' interests** (s.39) – this should now be deleted as it has been superseded by Scottish Parliament legislation, it is too inflexible to keep pace with developments in this area and it is in any case “inappropriate and demeaning” for Westminster to seek to enforce standards in this area. Similar considerations apply to s.91 (maladministration). (Iain Jamieson)
- **Implementation of EU directives** (s.57(1), which gives the UK Government a facility to implement EU directives on devolved matters where the Scottish Government agrees, or is unwilling to do so itself) – there is no scope for the Parliament to scrutinise any legislation made under this provision, and its use should be limited to a fall-back when agreement cannot be reached. The meaning of “act” in s.57(2) should also be clarified. (Iain Jamieson)
- **Damages: human rights** (s.100, which limits awards of damages in cases where a breach of human rights is alleged) – a House of Lords ruling has cast doubt on the meaning of this section, and clarification is therefore proposed. (Iain Jamieson)
- **Subordinate legislation in consequence of devolved legislation** (s.104, which enables UK Ministers to make subordinate legislation in consequence of devolved legislation): This power could be used to amend devolved legislation itself, without the consent of the Parliament – and should therefore be limited to amending legislation which could not be amended by devolved legislation. (Iain Jamieson)

E: The Devolved/Reserved Boundary

Comments on further devolution

Q4: Do you believe the people of Scotland would be better served if any matters currently reserved to Westminster were now devolved to the Scottish Parliament?

General comments

- Yes – devolution of all powers. (Cllr David Alexander)
- Most items in the reserved list should be deleted “leaving only those matters essential for a single country such as defence, foreign affairs etc.” – most of the rest are not essential “to preserve the Union”. (Gordon West)
- Everything should now be devolved other than constitutional issues, defence, control of weapons of mass destruction and time zones and summer time. (Cllr Dick Walsh)
- On the principle that small states can respond more quickly and keep government closer to the people, the number of reserved issues should be minimised – foreign affairs (beyond the EU), defence and perhaps a few other functions, with Scotland paying an agreed share of the costs of these reserved functions. (AJ Parrott)
- The 1920 Government of Ireland Act cited only a limited list of reserved powers (the Crown, defence of the realm, coinage, foreign affairs, treason etc.), everything else being transferred. These powers have not been reduced by more recent legislation. The Scotland Act reserves to Westminster considerably more powers of a ‘domestic’ nature. ... I find this rather insulting to Scotland which has a long history as a self-governing kingdom and has maintained important institutions of statehood since 1707; Northern Ireland has no history as a geo-political entity with any indigenous institutions of government.” (Anne Kerr)

- While Scotland is part of the UK, the following should be reserved: foreign affairs; defence; data protection; betting, gaming and lotteries; competition; consumer protection; telecommunications; research councils and the funding of scientific research; regulation of the professions; health and safety; abortion, xenotransplantation and embryology, equal opportunities and time zones and summer time. Everything else should be devolved, including taxation, elections, firearms, sea fishing, Post Office operations, control of WMD and the right to hold constitutional referendums. (West Dunbartonshire Council)
- The following should be devolved: the civil service; taxation; misuse of drugs; data protection; Scottish Parliament elections, and the local government franchise; firearms; immigration and nationality; betting, gaming and lotteries; regulation of sea fishing; consumer protection; telecommunications; the Post Office; Research Councils and funding of scientific research; energy; transport; the marine environment and marine transport; Social Security; employment and industrial relations; health and safety; broadcasting; equal opportunities; control of weapons of mass destruction; time zones and summer time. (Stanley Grant)
- It is “paramount” to continue to reserve overall economic and financial policy, defence and foreign affairs, but there could be benefits in devolving immigration in the context of attracting skilled labour, regulation of sea fishing, transport and broadcasting. (Anonymous)
- EU matters and sea fishing should be devolved; energy should be reserved. (Scottish Borders Council)
- The following could be considered for devolution: elections to the Parliament; data protection; betting, gaming and lotteries; consumer protection; telecommunications; the marine environment and marine transport; regulation of sea fishing; employment and industrial relations; and broadcasting. (Comhairle nan Eilean Siar)
- Employment law; industrial relations legislation; health and safety at work; and equal opportunities legislation and the relevant enforcement agencies – should now be devolved. (Educational Institute of Scotland)
- “A parliament has the responsibility of legislating in accord with the moral traditions of the society it serves” and there is a difference between “Scottish welfare communitarianism and English liberal individualism”. Current draft Westminster legislation on human fertilisation and embryology demonstrates the problem – these are profound issues, with implications for many devolved matters, but the Scottish Parliament is given no say. More generally, “it is hard to resist the conclusion that the current division of powers partly reflects resistance to the possibility that the Scots might express a different set of values and priorities; that they might show themselves to be morally autonomous. But unless that possibility can be accommodated then devolution becomes a mere instrument of UK politics, which is not all how its advocates described it, nor how the Scottish people received it.” (Professor John Haldane)
- “The division of matters devolved and matters reserved is always likely to be contentious; nevertheless the current division of responsibilities should remain”. (South Ayrshire Council)
- The extent of devolved powers is currently about right. “Whilst CBI Scotland would not necessarily be concerned if some further powers were to be devolved, principally on matters of home affairs, we would be very concerned and strongly oppose the devolution of those matters that affect business and currently provide a level playing field and single market for business in the United Kingdom, for example, macroeconomic policy, company law and regulation, employment law, health & safety law, etc. (CBI Scotland)

- There should be no further devolution until there is evidence of improved outcomes (e.g. health) from the use of existing powers. (Prof N Bonney)

Comments on particular functions currently reserved

The headings that follow are in two subsets – general reservations in Part I of Schedule 5 (the constitution, the Crown Estate, foreign affairs, civil service); then the specific reservations in Part II. The latter are listed alphabetically (rather than in the order of the Schedule).

The constitution

- “There should be no doubt as to the right of the Scottish Parliament to hold a referendum on independence”, although changes to the powers of the Scottish Parliament/Government should require agreement between Westminster and Holyrood. (AJ Parrott)
- Constitutional change in Scotland should “primarily be the concern of the Scottish Parliament”. The Constitutional Convention recommendation that the constitution should be reserved was inconsistent with its own Claim of Right, asserting ‘the sovereign right of the Scottish people to determine the form of government best suited to their needs’.” (Canon Kenyon Wright)

The Crown Estate

- Para 2(3) of Part I of Schedule 5 (which reserves the management of the Crown Estate, but not the Crown property rights and interests which are held by the Crown Estate) should be repealed to enable the Crown Estate to be made more accountable and ensure its Scottish assets are managed in Scotland’s interests. Because the Crown Estate is responsible for administration of the seabed, the current reservations “cuts across an integrated marine management system in Scotland, separates the costs of regulation from the public income charged by the [Crown Estate] for use of the seabed and creates an unnecessary extra layer of administration”. (Highland Council)
- The position of the Crown Estate should be reviewed, given the “crucial importance” of its management of the foreshore and seabed. (Shetland Islands Council)

Foreign affairs:

- Malawi is an example of where Scotland has developed its own approach while UK retains formal responsibility. This does not appear to need legislative change. (Church of Scotland no.2)
- Current arrangements “do not sufficiently address the concerns of a large proportion of the Scottish public with regard to international development, overseas aid and international solidarity. Key international development matters ... should have a specific Scottish perspective and be directly handled by the Scottish Parliament and the Scottish Government”. Ideally this would involve Scottish Government officials working within the UK missions to the UN, EU (international development assistance) and Commonwealth Secretariat, but if the UK departments were unwilling, Scotland should seek UN Consultative Status recognition and post staff directly to the UN. (Caledonia Centre for Social Development)
- “Scotland, and the visual arts in Scotland, would benefit from a devolved agency for international cultural relations. The current arrangements, organised through the British Council in London, do not serve the needs of a small nation” – and the collaboration between Denmark, Finland, Norway and Sweden offers a better model. What is needed is a Scottish arts body able to “fund Scottish artists with Scottish money”, promote

Scotland as a place for artists to live and work, promote Scottish culture globally and undertake cultural exchange with other nations. (Scottish Artists Union)

Civil Service:

- There should be a Scottish Civil Service as “the present situation unfairly divides the loyalty of civil servants.” (AJ Parrott)
- The existence of a separate Civil Service, as in NI, is in my view fundamental both in principle and in the context of anticipated new financial relationships with Whitehall. It is important that Scottish civil servants’ allegiance should be to the Holyrood Parliament – particularly so, as its political complexion can differ from that of the Parliament at Westminster, with resulting tensions under a single structure, with the apex of the pyramid in Whitehall.” (Anne Kerr)
- The accountability of those who work for the Scottish Government should not be compromised by a structure headed in Whitehall”. (Church of Scotland no.2)
- Defence – Scotland should have an input, with the option of adopting a purely defensive approach, as distinct from the UK’s more pro-active stance, along the lines of the Nordic states in NATO. (G McCormick)

Abortion

- Devolution opposed on grounds it could lead to “cross-border trafficking”. Similar concerns apply to embryology. (Church of Scotland, Scottish Episcopal Church)
- Devolution could “lead to the unacceptable possibility of women having to travel to different parts of the UK to secure safe, regulated abortion services within the law.” (UNISON Scotland no.2)

Accounting and auditing standards

- arguably, the legislative framework could be devolved, but this would “go against the trend for international harmonisation” – so is “not something we would wish to see”. Audit regulation should also remain reserved, as devolution would add bureaucracy for accountancy firms and undermine their competitiveness. (Institute of Chartered Accountants of Scotland)

Broadcasting

- Should be devolved (radio, TV, film – including tax incentives for filming in Scotland). (Scottish Green Party)
- “Current powers over broadcasting should be devolved, not to narrow the perspective to parochial concerns but to ensure adequate reflection of Scottish perspectives on a wider world.” (Church of Scotland)
- “Broadcasting would be better controlled by Holyrood. I know I am not alone in feeling disgruntled about having to pay the license fee for broadcasting which predominantly concentrates on English news.” (Ruthie Allan)
- The aim should be to give fuller and better coverage of Scottish national and international cultural and political matters. (Prof Douglas Gifford, University of Glasgow)
- Broadcasting should be regulated by the Scottish Parliament: “The present situation of the English BBC News masquerading as British News must be corrected.” (AJ Parrott)
- Sick of watching “main” news dominated by English cricket, NHS, education stories – we need a “Scottish Six”. (David Macphail)

- Could be devolved – but this “would not necessarily entail the break-up of the BBC” – or “it could become a concurrent competence, with the UK setting only broad guidelines” (Prof Michael Keating)
- “Scotland has a distinctive culture that should be reflected in broadcast media” – so general support for devolution, subject to further consideration of the regulatory function of Ofcom and oversight of the BBC. (UNISON Scotland no.2)
- Some devolution may be appropriate to respect “the distinctive cultural life and ambitions of Scotland”. (Scottish Episcopal Church)
- UK regulatory bodies such as Ofcom, the BBC and the Competition Commission should report jointly to the UK and the three devolved administrations. (David Hutchison)
- Ofcom is not accountable under the Communications Act 2003 to the Scottish Parliament for its regulatory functions, but its activities impact on devolved matters such as culture, broadband and digital inclusion. Ofcom has an agreed protocol with the Scottish Government and Scotland Office on liaison and consultation. It regularly engages with Scottish Government activities and Scottish Parliament inquiries, and undertakes its own Scotland-specific activities. (Ofcom)
- The Scottish Parliament should have power to direct Ofcom and the BBC Trust, and more far-reaching devolution should not be ruled out. (STUC no.2)
- No view on whether broadcasting should be devolved – but if it is, “this should include the transfer of the UK’s obligations under Article 11 of the European Charter for Regional or Minority Languages and the power to legislate to allocate broadcasting capacity on the electromagnetic spectrum. The devolution of obligations must carry with it the grant of the means to fulfil those obligations.” (MG Alba)
- There is a case for “a tiered approach to communication responsibilities (including broadcasting and wireless broadband) based on the principles of devolution and subsidiarity”. Each nation would be responsible for terrestrial communication services for reception and transmission internally, while voluntary broadcasting trusts would oversee wireless communication requirement that benefit primarily local audiences and subscribers. Mobile phones would be a shared responsibility. Surplus spectrum could be leased by nations and local trusts, partly to provide revenue to support national and local services. Satellite services would continue to operate internationally, and the regulatory structure would conform to European principles. (Institute of Local Television no.2)

Company law

- there would be “little practical purpose in devolving company law given the limited capacity to vary it” (given that much of it is governed by EU legislation). (Institute of Chartered Accountants of Scotland)

Competition

- Support for devolution of “competition policy in respect of provision of public services”. (UNISON Scotland no.2)
- “There would not be significant merit” in a devolved Competition Authority “unless there was clear evidence that it would be more effective than the current structure”. However, an OFT enforcement team in Scotland would be beneficial. (Scottish Competition Law Forum)
- UK policy does not need to take account of territorial impact, and a Scottish policy or commission could add to regulation at UK level, or there could even be shared Scottish/EU competence. (Prof Michael Keating)

Consumer protection

- Devolution could make this more responsive to local conditions; it is in any case enforced by local government. There are “no reasons to keep this matter reserved”. (UNISON Scotland no.2)
- While it is appropriate that most consumer protection is reserved to complete the UK single market, the regulation of the sale and supply of goods could be devolved “without upsetting the public policy objective of maintaining equal consumer redress across the UK”. (Law Society of Scotland)
- Consumer protection should continue to be reserved, partly as a matter of economic necessity and the interdependence of the UK economy, but also because European legislation would make divergences “somewhat problematic”. (North Lanarkshire Council)

Control of medicines and misuse of drugs

- This should be devolved for consistency with the general devolution of health and criminal law. (UNISON Scotland no.2)
- Agree with UNISON that this is worth considering, and would require devolution of pharmacist regulation. (Community Pharmacy Scotland)

Data protection

- should be devolved for consistency with FOI. (UNISON Scotland no.2)

Elections

- The administration of Scottish Parliament elections and the voting age should be devolved. (UNISON Scotland no.2)
- “The power to regulate Scottish elections (including the voting age) should reside in Scotland where it is more likely to be effectively exercised”. The Parliament should have the power “to determine for itself the number of MSPs and the configuration of Law Officers required for it to function effectively”. (Church of Scotland no.2, Scottish Episcopal Church)
- The Parliament should have “full legislative and administrative control over its own elections, with the exception that the franchise for voting entitlement should remain a reserved matter”. The right to vote accrues from UK citizenship and should be consistent across the UK, including the voting age for local elections. There is a case for an independent body being given responsibility for issues such as ballot paper design. (Royal Society of Edinburgh)
- Case for not devolving responsibility for the electoral system, on the grounds that MSPs are not disinterested – an example being the way the major parties supported a 3 or 4-member/ward system of STV for local elections “knowing that this system would be favourable for them and this despite the advice of political scientists”. (Prof N Bonney)
- The Parliament has the power to introduce new statutory elections (e.g. for National Park Authorities and Health Boards) but without any obligation to conform to established good practice in election practice or electoral registration. (Association of Electoral Administrators)

Employment law and industrial relations law

- Most recent developments in this area have come from the EU and giving the Scottish Parliament responsibility for implementation would enable it to “take account of Scotland’s economic circumstances and industrial relations culture”. (Educational Institute of Scotland)
- There are benefits in retaining a single UK labour market, so the reservation should remain, but with some possible exceptions, e.g. functions of job centres in promoting employment. (UNISON Scotland no.2)

Energy

- Energy should all be devolved (strategy, infrastructure, research, promotion of renewables). (Scottish Green Party)
- Energy, including oil and gas, should be devolved: “It is a disgrace that London has prevented Scotland doing business with Norway on energy issues yet fails fundamentally to take action in Scotland’s interest”. (AJ Parrott)
- The current reservation of energy policy constrains Scotland’s ability to develop its own climate change strategy, and “more could be achieved with further devolution of powers”. (Church of Scotland no.2)
- Aspects of energy policy should be devolved, ensuring clarity about responsibilities to provide certainty for those directly involved in the sector. (Scottish Council for Development and Industry)
- Devolution of energy regulation might assist in developing understanding of the needs of small and rural communities – particularly by allowing them to develop renewable energy without being subject to higher transmission costs. There is also potential for devolving control over oil and gas in Scottish waters. (Shetland Islands Council)
- Anomalies in the present division – including the apparent ability of the Scottish Government/Parliament to block new nuclear plants in Scotland through the planning system, and the way in which a diversion of funding from renewables to nuclear at UK level would have an impact on Scottish funding (through Barnett consequentials). One solution would be reservation of all energy policy including approval of power stations; but better would be to devolve energy regulation (while leaving management of offshore oil and gas reserved). (Prof Michael Keating)
- Devolution would facilitate a Scottish energy strategy to reflect the fact that Scotland’s energy industry is structured differently to the rest of the UK. There are “concerns over discriminatory arrangements by UK regulators” and the current split of responsibilities also generates some confusion. But the scope for divergence is limited by the UK market for energy and requirements of EU legislation. (UNISON Scotland no.2)
- There may be a case for devolving energy policy to Scotland, to assist delivery of distinctive Scottish emission targets and provide opportunities for renewable energy and energy conservation. But overall emission and energy efficiency standards, in a transport context, should be set at UK/EU level. (Scottish Association for Public Transport)
- “Fuel poverty is a particular issue in Scotland, and the case can be made that devolved regulation of energy companies could allow more direct government action on energy pricing, social tariffs and a fairer system of charging for consumers using meters. Additionally, increased powers over energy regulation may well open up opportunities to create local or national community endowments, based on the profits from energy production in Scotland.” (Scottish Council for Voluntary Organisations no.2)

Equal opportunities

- Scottish legislation “does not always dovetail well” with the Disability Discrimination Act, which applies uniform duties across Great Britain. An example was wheelchair spaces on trains and the conflict with space for bicycles – and the conflicting advice received from different agencies. Education, health and social care, and sport and leisure are devolved, but have an impact on disability issues, which is reserved – an “artificial split” which inhibits the creation of coherent and effective policy. Consideration should now be given to devolving equal opportunities and antidiscrimination legislation. (Council of Ethnic Minority Voluntary Organisations)
- There may be advantages in having the same legal protections across the UK, and to an extent across Europe. However, there are also different demographics in Scotland, and some different issues – e.g. concerning sectarianism, and equalities in rural areas, which may sometimes require a different response. ... There are also difficulties with disability being reserved when areas that are central to disability (transport, education and health for example) are devolved. (Scottish Council for Voluntary Organisations no.2)
- Scotland has its own Parliament, legal system, penal system and education system, and many EIS concerns – such as to uphold comprehensive education, embed equalities in the curriculum, etc. – would be better supported by the full devolution of equalities responsibility. (Educational Institute of Scotland)
- “Scotland’s demographics are different to England and we have different equality concerns (e.g. sectarianism)” – hence devolution, although noting the connection with employment law, which should remain reserved. (UNISON Scotland no.2)
- There are different equalities structures in Scotland – e.g. a Children’s Commissioner – and devolution would “provide greater opportunities to match the structure with appropriate legislation”. (City of Edinburgh Council)
- The fact that equalities legislation is reserved has not prevented the Parliament legislating to increase equality in devolved areas. It is unclear whether Scotland could develop a different approach to equality and diversity; can reserved legislation on equality and diversity be made to work in a Scottish context? On the one hand, “Scotland’s size, connectedness and the interplay of equalities issues here” points to greater devolution; but there are also doubts about “Scotland’s ability as a nation to cope with equality conflicts such as often occur between sexual orientation and faith”. There are advantages to having the same legal protections against discrimination across the UK, but devolution might enable legislation more suitable to a Scottish context. (Stonewall Scotland)
- Support for devolution in principle, while recognising a much less certain case for devolving employment law, which is closely related. One option would be to provide the Equalities and Human Right Commission with “stronger and more autonomous enforcement powers” in Scotland. (STUC no.2)
- The limited devolved powers have been well used to create “very significant legislative levers for the promotion and embedding of an equalities culture across all levels of government and public bodies”. There is now a case for undertaking research and reviewing practice to see if there is a case for devolving more equalities responsibility to the Parliament. (Scottish Women’s Budget Group)
- Discrimination law should be devolved, because of its close interrelations with devolved issues such as incapacity, mental health and vulnerability. (Law Society of Scotland)

Firearms

- Case for devolving – Scottish rules “would certainly be more restrictive” so would not create a weak-spot in the overall UK position. (Prof Michael Keating)
- Should be devolved as criminal law is devolved. (UNISON Scotland, David Macphail)
- There is a need for a Scotland-only solution in relation to drink-driving and firearms, whether this is achieved through further devolution of powers or some other mechanism. (Association of Chief Police Officers in Scotland)

Food labelling

- EU rules allow only at Member State level, thus preventing a “Scotch beef” label to be applied (County of origin labelling) or a Scottish “health stamp” to avoid the stigma associated with the UK following BSE. (Quality Meat Scotland)

Health and safety and welfare at work

- Devolution would be “a logical move”, although it is accepted that much of this currently-reserved area is implemented by devolved supervisory agencies and enforced by Scottish courts. (Educational Institute of Scotland)
- Staged devolution favoured to improve outcomes, noting that Northern Ireland, where health and safety is devolved, employs more than twice as many inspectors per capita. (UNISON Scotland no.2)
- Health and safety should continue to be reserved, partly as a matter of economic necessity and the interdependence of the UK economy, but also because European legislation would make divergences “somewhat problematic”. (North Lanarkshire Council)
- No great support for devolving health and safety in general, but stronger support for devolving safety regulation and enforcement. (STUC no.2)
- Health and safety should be devolved – the profile of industry is different in Scotland; there are separate courts and legal officers to enforce the legislation; and it is not obvious why uniformity is more important in this context than in other matters that are already devolved. There should also be a separate Health and Safety Commission for Scotland. (Thompsons Scotland)
- “Lack of freedom to raise excise duty or make change under health and safety legislation may be impeding enforcement measures” to support policies to tackle smoking and alcohol misuse. (Royal College of Physicians of Edinburgh)

Health protection

- separate responsibility for aspects of health protection pre-dates devolution. “In theory, devolution could have created major barriers to effective coordination between countries, but in practice this has not occurred.” Good working relationships and memorandums of understanding are already in place, and further improvements can be achieved within existing legislative and structural arrangements. (Health Protection Agency)

Human rights

- Schedule 4, para 1(2)(f), protects the Human Rights Act from modification by devolved legislation. But this may be too restrictive and should be amended to enable the Parliament to make provision on human rights which adds to the ECHR. (Iain Jamieson)

Immigration and asylum

- “Ultimate responsibility must remain with the UK Government”, but Fresh Talent and the concordat on failed asylum seekers show that some flexibility is possible. “A revised settlement should ensure extended space for this, with implementation of UK policy in Scotland reflecting Scottish priorities.” (Church of Scotland no.2)
- There should be “some separate immigration controls including the use of Scottish residence requirements to enable economic policy to be “given greater focus”. Asylum powers could also be devolved to enable policy to match public opinion in Scotland, and because of the implications for social work and education. (UNISON Scotland no.2)
- “Consideration could be given to increased responsibility for the Parliament in relation to immigration and nationality (especially in the context of attracting skilled labour to Scotland at a time of forecast indigenous population decline) ... Work Permit schemes such as the Workers Registration Scheme, currently administered through the Department for Work and Pensions, could potentially be better targeted to the needs of business if they were handled at Scottish level.” (Institute of Directors in Scotland)
- “Since most of the services to support inward migrants are provided by local authorities, devolving immigration matters so that they could be considered in conjunction with local authority issues would allow for greater accountability and promote a ‘joined up’ agenda.” (City of Edinburgh Council)
- The Fresh Talent initiative, at least for a time, gave Scotland a competitive advantage that was “one of the success stories of devolution” – although it has now been rolled up into a new UK-wide immigration system. There is “a strong argument” for further devolution of immigration – Scotland’s population is declining and ageing, making it vital to attract young, economically active migrants. (University of Abertay)
- There is a complex mix of devolved and reserved responsibilities in the field of asylum, and many of the services and policy areas that affect asylum seekers and refugees are not listed in the Concordat between the Home Office and Scottish Executive. There is evidence that confusion about the interface among service providers is a barrier to their work – and clear guidance is therefore required. There is also evidence of disputes between UK and Scottish authorities about their respective responsibilities leaving vulnerable people in need and of devolution being used as an “excuse” for not implementing UK-wide duties to protect children. The UK Government has taken a broad view of reserved responsibilities – for example by claiming that the Scottish authorities have no role in relation to educating children detained in Dungavel detention centre, despite other legal opinion suggesting the matter is, at least, unclear. There is a need for clarity, with doubts resolved in favour of a narrow interpretation; there may also be a case for some executive devolution to give Scottish Ministers a role within a UK framework. (Scottish Refugee Council)
- Scotland should have greater flexibility to attract non-EU migrant workers. (Scottish Council for Development and Industry)

Insolvency law

- the current split of responsibilities “does not work particularly well”, particularly with liquidation where primary legislative responsibility is reserved but subordinate legislative responsibility is devolved, and where Scottish regulations are “lagging behind”. It was appropriate to devolve personal insolvency, as the law and procedures in Scotland are different, but corporate insolvency procedures are similar throughout Great Britain, and it

would therefore “make sense in terms of policy to return the responsibility for the framing of corporate insolvency Regulations back to Westminster where the expertise ... lies”. (Institute of Chartered Accountants in Scotland)

Intellectual property

- an exception should be added to make clear that the Parliament, in amending the substantive law of fixed security, can make consequential amendments to UK statutes on patents, trademarks etc. (Law Society of Scotland)

Lotteries (betting, gaming)

- Could be devolved – “National Lottery funding has been diverted from Scotland and there seems no reason why it should be a UK-wide responsibility”. (Prof Michael Keating)
- The current division of responsibility works well, and further devolution would probably make no significant difference to the way funds are distributed to sport. (SportScotland)
- Worth considering a Scottish National Lottery, or the subdivision of the existing lottery to enable Scottish revenue to be channelled back into Scottish good causes. This could “create a new funding stream for arts projects in Scotland”, increase lottery participation and combat the perception of English subsidy. (Scottish Artists Union)
- The Big Lottery Fund “is only partially devolved in structure, and remains centralised in policy-making, and constrained from fully matching its funding priorities to Scottish needs”. While there is a good case for regulation of the National Lottery remaining reserved, “the distribution of Lottery funds should be further devolved”. (Scottish Council for Voluntary Organisations no.2)

Marine environment and marine transport

- Together with the regulation of sea fishing, particularly in an EU context, this could warrant some greater devolution. (Institute of Directors in Scotland)
- International shipping might be reserved but Scottish domestic sea transport should be devolved. (AJ Parrott)
- The current 12 nautical mile devolved/reserved boundary “is unworkable because it will add complexity and will lead to conflict and/or inconsistency in several important areas”; Scotland should have the ability to legislate out to 200 nautical miles. (Royal Society of Edinburgh)
- Financial assistance for shipping services which either start or end outside Scotland is reserved – but it could be advantageous for the Scottish Government to be able to support such routes. (Shetland Islands Council)
- The current division has led to a lack of harmonisation in policies for the development of renewable energy, for example with the UK Government identifying development zones for offshore wind farms without reference to Scottish Government policy closer to shore. More effective joint policy making is required – particularly to facilitate development of the electricity grid transmission system both on land and at sea. Ofgem’s system of charging electricity generators for use of the grid “appeared to be inadequately sensitive” to the case for exploiting renewable energy in northern Scotland. (Scottish Natural Heritage)
- Maritime policy should be devolved, including marine spatial planning up to 200 nautical miles, enforcement of pollution regulations and establishment of marine national parks. (Scottish Green Party)

- The principal right to control marine policy should be in Scotland. (G McCormick)
- There is a case for devolving policy relating to the marine environment, including marine spatial planning up to 200 nautical miles from land. (Scottish Environment Protection Agency)

Nuclear weapons / weapons of mass destruction

- There should be an exception to the reservation of control of weapons of mass destruction to enable the Parliament to prohibit them on Scottish soil, without devolving control over existing WMD. (Scottish CND)
- Ultimate responsibility could not be devolved within a UK context but there is a need to reflect different views in particular parts of the UK. (Church of Scotland no.2)
- Scotland is directly obliged to uphold international law and obligations which make current policies – such as maintaining nuclear weapons at Faslane and allowing US military flights to use Scottish airports – illegal, and this should be made explicit in the Scotland Act. (Angie Zelter)
- The logic of reserving defence does not apply to nuclear weapons – whose questionable role is “implicitly acknowledged by the Scotland Act’s separation of weapons of mass destruction from defence”. The Scottish Government “is in a uniquely difficult position” – opposed to nuclear weapons, but with all of the UK’s nuclear weapons based in Scotland. (Edinburgh Peace and Justice Centre)
- Devolution might be desirable, given the degree of political opposition to Trident in Scotland, but it would be difficult to separate control of WMD from defence. (UNISON Scotland no.2)

Pensions

- clarification is needed of the extent of the reservation, particularly in relation to the Scots law of trusts. (Law Society of Scotland)

Pharmaceuticals regulation

- the potential for devolving pharmaceutical regulation should be explored. There is precedent for this in Northern Ireland; diverging health policies are already being pursued; and “as things stand, patient safety could potentially be compromised because of the need to apply irrelevant ‘one size fits all’ standards”. (Community Pharmacy Scotland)

Post Office

- “Scotland should run its own postal services (like the Isle of Man, Guernsey and Jersey) to meet Scottish needs, particularly in rural areas.” (AJ Parrott)

Regulation of energy companies

- the Scottish Government should be able to regulate energy companies in relation to social tariffs, as a tool in tackling fuel poverty, alongside its existing powers to subsidise central heating and insulation. (Scottish Federation of Housing Associations)

Regulation of the health professions

- clarification is needed of which professions this now covers. (Law Society of Scotland)

Regulation of the legal profession

- the view has been taken that regulation of the legal profession is split between devolved and reserved responsibilities, depending on whether the lawyers in question are giving advice on devolved or reserved matters. The Act should be amended to make clear that the Parliament has competence to regulate all aspects of the legal profession. (Law Society of Scotland)

Regulation of the medical and dental professions, and postgraduate training

- This should not be devolved, although there is a need for some flexibility of implementation in Scotland. (Royal College of Physicians and Surgeons of Glasgow)
- While it is tempting to think that regulation of doctors and postgraduate medical education should be devolved to support implementation of appropriate (different) policy in Scotland, such “fragmentation of standards” would not be in the best interests of patients. “At a time when post graduate medical education is undergoing great change, it is critical that Scottish solutions remain fixed firmly within a UK regulatory and training system.” There is evidence that even minor differences in regime have led to trainees moving south of the border. (Royal College of Physicians of Edinburgh)

Regulators

- with economic regulators (Ofgem, Postcomm, Ofcom, OFT), direct high-level Scottish representation is needed. More generally, consideration should be given to what model has proved most effective – devolution of the regulatory function (e.g. SEPA, SNH), Scottish implementation within a UK-wide regulatory framework (e.g. Food Standards), or uniform UK approach (e.g. Postcomm). (Scottish Council for Development and Industry)

Research Councils

- The Act reserves the research councils but not scientific research as such. Because funding of research councils falls largely to Government departments (and hence the Scottish Government), research is “in effect a concurrent competence”. This is a good thing – there is “a strong case” for keeping UK-wide research councils to give “the critical mass needed in modern science” but also to have a multiplicity of funding sources for research. (Prof Michael Keating)
- “As higher and further education funding is devolved it would be consistent to devolve these powers as well.” (UNISON Scotland no.2)
- As a direct and indirect consequence of devolution, “applied research in Scotland is showing signs of becoming significantly more limited in both scope and ambition” and this could result in Scotland losing international competitiveness, reputation and value. Following recent structural reforms of health research at UK level, Scotland’s eligibility for health research funding and its ability to compete now appear to be compromised; in addition, Scotland’s share of increased health research funding comes through Barnett consequential and so is not ring-fenced. (Professor Adrian Grant)
- Should remain reserved – “research is a global activity and Scottish universities compete well for research at UK and European levels”. (University and College Union, Scotland)
- Research Councils should remain at UK level, reflecting the “critical mass required to fund modern scientific research”. Scotland benefits from being part of a competitive and open system that is large enough to maintain research diversity and has enough funds to support major projects and facilities; “an attempt to devolve research council functions would be a seriously retrograde step”. (Royal Society of Edinburgh)

- “Competition for funding from the UK Research Councils has helped to maintain and improve the quality of research in Scotland’s universities – by ensuring that they have been able to compete, and be measured, against the best in the UK.” (Scottish Funding Council)
- The Research Councils “sit within a UK framework which provides an essential international benchmark for Scottish research, and they operate on a scale which allows Scottish universities to participate in prestigious collaborations with wider UK and international networks.” (Glasgow Caledonian University)
- “Anything less than a level playing field for Scottish universities would very quickly erode our ability to compete on the UK and international scene. To be completely blunt, the vision of a small Scottish MRC is so frightening to our star researchers that a big brain drain might be created within few months if such a vision does become a reality.” (Professor Anna Dominiczak)

Social Security

- The rationale for the current reservation of social security and benefits is that “risks are pooled over a wide area and ... the nations and regions are secured against asymmetrical shocks”. But this “creates a division between economic development and training policies on the one hand, and welfare provision on the other, at a time when policy tends to stress the link between the two”; and devolving welfare would facilitate an active labour market policy, with incentives to get people into work. On balance, there is a case for either devolving social security benefits or at least the administration of social security (while leaving levels of benefits and funding reserved). (Prof Michael Keating)
- “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.” Council tax benefit should be devolved, to make it the responsibility of the same level of government as council tax itself “as without this connection it would seem difficult to ever reform or replace council tax.” A similar argument suggests the devolution of housing benefit, given that housing is devolved. (Royal Society of Edinburgh)
- Clarification of “social security purposes” is needed to make clear that (as generally accepted) the Parliament can legislate about legal aid, or exemption from prescription or other charges. (Law Society of Scotland)

Taxation

- there may be a need to “revisit the definitions” in Schedule 5 as “it is not clear ... whether any form of income tax, which has traditionally been a national tax, could qualify as a ‘local tax’”. (Institute of Chartered Accountants of Scotland)

Tax credits and the national minimum wage

- should be devolved to assist the Scottish Government in developing robust housing and other social policies. (Scottish Federation of Housing Associations)

Transport

- The Act devolved road transport, but not rail or air. Rail has already been partially devolved and this could now be completed, with cross-border connections dealt with by co-operation. Airports policy could also be devolved – it is “a rare example of a field that was devolved in the 1978 Act and reserved in that of 1998”. (Professor Michael Keating)

- Transport should be fully devolved, with the Scottish Government required to work with Westminster to secure an integrated national transport network. (Scottish Green Party)

Universities

- Universities are wholly devolved, which allows them to be linked to the rest of the education sector and to economic development and social inclusion – which is “entirely appropriate”. Significant policy differences have emerged, including on student funding, but these are “entirely legitimate” and where anomalies arise, these should be resolved as matters of policy, rather than as constitutional problems. (Prof Michael Keating)
- “Any constitutional arrangement must be cognisant of the fact that while universities are a key element of the Scottish economy and contribute to our local communities in Scotland, we also operate in a European and international context in terms of our teaching and research ... it is important that Scottish universities retain their connection to the UK education brand, which is internationally recognised as delivering teaching and research of the highest quality.” (Glasgow Caledonian University)

Welfare benefits

- The reservation of welfare benefits “has caused some tensions with efforts in Scotland to tackle worklessness” such as “Workforce Plus”. “Problems can be experienced when UK national policies are implemented in Scotland but fail to take account of local circumstances, structures and in this case, the Scottish approach to employability”. While devolution of welfare benefits would “result in inequity and different jurisdictions” north and south of the border, better integration of policy is needed, plus perhaps some flexibility about how UK policy is applied in local contexts. (North Lanarkshire Council – very similar points made by SOLACE Scotland)
- Devolution of welfare benefits (including Housing Benefit) would help enable the Scottish Government to develop more joined-up social policies. An example concerns recent cuts in Housing Association Grant, the main capital subsidy for housing associations, which will push up rents, thus leading to greater UK expenditure through Housing Benefit – an outcome likely to be more expensive to the taxpayer in the longer term. (Scottish Federation of Housing Associations)

Welfare to work policy

- should be devolved in order to allow more flexibility in rules and procedures; to facilitate policy innovation; to enable greater employer engagement; and to permit greater coordination between employability schemes, training schemes and recruitment initiatives. The Scottish Government could also be given a share of Treasury savings from more effective measures, in order to provide an incentive. (Professor Ivan Turok)

Comments on further reservation

Q5: Do you believe the people of Scotland would be better served if any matters currently devolved to the Scottish Parliament were now reserved to Westminster?

- No (Cllr David Alexander, Scottish Environment Protection Agency, West Dunbartonshire Council, University of Abertay, Anonymous, Cllr Dick Walsh)
- No, but it remains in the interests of Scotland to remain part of the UK with issues “which are necessarily of strategic importance at the UK level”, such as defence, to continue to be dealt with by the UK Parliament. (Glasgow City Council)

- No – contrary to recent suggestions that all UK national security issues should be returned to Westminster, experience following the Glasgow airport attack in June 2007 showed that counter-terrorism and emergency planning “worked well under the current setup”. (UNISON Scotland no.2)
- No – “the lack of true modern democracy in London, the peripheral geographical position of Scotland and the relative size of Scotland to England all act to marginalise Scotland in any business conducted at Westminster”. (AJ Parrott)
- “With justification, personal insolvency was devolved to Holyrood because of the very different law and procedures in Scotland. However corporate insolvency procedures are similar both in Scotland and England and Wales. We believe therefore that it would make sense in terms of policy to return the responsibility for the framing of corporate insolvency Regulations back to Westminster where the expertise for corporate insolvency lies, thereby saving time, money and effort in Scotland.” (Institute of Chartered Accountant of Scotland)

Comments on shared/concurrent competence

Q6: Irrespective of which particular matters are reserved and which others are therefore devolved, do you support the reserved/devolved distinction as the best way to define the respective responsibilities of the UK Parliament and the Scottish Parliament? Would there be merit in an intermediate category, involving some form of shared or concurrent competence, with suitable checks and balances to avoid conflict?

- Concurrent competence involves both levels able to act, and hence a need for rules on when the higher level takes precedence, sets parameters for the lower level, or waives its right to take precedence. Shared competence involves both levels being able to act but having specified roles and a need to work together – this is likely to involve the higher level setting a strategy and the lower level fleshing out the detail. With a few exceptions, the Scotland Act avoids both; “Scotland is fortunate to have what, in international comparison, is a rather clear division of competences and it would be a pity to lose this”. If a category of concurrent competence is introduced, this should be done “very sparingly” so as not to “complicate the settlement and give rise to conflict and litigation”. “Overlapping competences are an inescapable reality”; checks and balances are necessary to prevent excessive power at any level of government, but this is quite different from the avoidance of conflict. (Prof Michael Keating)
- “Clarity of responsibility is of the utmost importance in constitutional settlements involving devolution of powers. It is therefore difficult to envisage how such an intermediate category may operate.” (SOLACE Scotland)
- “The reserved/devolved distinction provides a welcome and far greater degree of clarity and certainty than would be the case under a more opaque system involving yet more categories as suggested in the question.” (CBI Scotland no.2)
- The current distinction has largely been successful, and an intermediate category “could have the potential to create confusion and could lead to conflict between governing parties”. (Glasgow City Council)
- “In practice, sharing of competences involving negotiation and cooperation will happen anyway ... even where the legal distinction is very clear. A further category may only serve to confuse.” (UNISON Scotland no.2)
- “There would be no merit in introducing an intermediate category”. (Scottish Borders Council)

- “Arguably, the creation of an intermediate category could lead to confusion and a lack of leadership.” (NFU Scotland)
- The current conceptual framework “allows distinctions to be made clear and provides flexibility for future adjustment in either direction ... We do not see any merit in creating an intermediate category ... [which] could be potentially destabilising for the governance of Scotland and the business prospects for growth and prosperity.” (Institute of Directors in Scotland)
- “Responsibilities should be as clearly and simply defined as possible ... sharing of competences clouds the issue of who is responsible and who is accountable and must be avoided”. (AJ Parrott)
- The current distinction creates “grey areas” where there is uncertainty over what is reserved and what devolved. The creation of an intermediate category “would only muddy such waters further” – it is better coordination, for example through the JMC, that is needed. (University of Abertay)
- “Adding another category would just add to confusion ... a clean split is much more preferable.” (Road Haulage Association Scotland)
- “An intermediate category would complicate relations between Westminster and Holyrood, without bringing about any effective change”. (Anonymous)
- “Conflicts will be an inevitable part of any system of devolved government” which relies on lists of devolved or reserved matters. Measures that can be characterised both as devolved and reserved will always arise, but the Scotland Act provides the mechanism for the “orderly resolution” of such “border disputes” through the courts. An intermediate category would simply create a new boundary which would give rise to similar disputes. (Faculty of Advocates)
- It is difficult to see how devolution could be managed other than by the reserved/devolved distinction, given the importance of clarity of responsibility; but there could be merit in shared competence for constitutional matters “which naturally affect both Scotland and the United Kingdom”. (Comhairle nan Eilean Siar)
- “We are not persuaded that a legislative solution ... would offer the answer, which could better be found in effective intergovernmental structures”. The Sewel Convention can enable sensible solutions to be achieved, but can be abused “to avoid difficult debate in Scotland”. (Church of Scotland no.2)
- The devolved/reserved split is “helpful and largely non-problematic”, but a degree of flexibility could also be very helpful. (City of Edinburgh Council)
- An intermediate category could have merit, perhaps linked to the JMC, but it “must avoid becoming an obstacle for legislation or a parking place for difficult issues which need decisions”. (Scottish Council for Development and Industry)
- There “would be some merit in examining the potential for creating an intermediate category of shared jurisdiction”. This has the potential to avoid rather than create conflict, but would probably require changes to the arrangements for settling jurisdictional disputes. The Sewel Convention system “can be sometimes misunderstood”. (North Lanarkshire Council)
- So long as the UK structure continues, “it would be helpful if some areas, such as international development, were partially devolved in some manner.” (West Dunbartonshire Council)

- “An intermediate category may help to clarify and strengthen the communications between the two governments”. (University and College Union, Scotland)
- Shared responsibility for equality and diversity matters could be useful, by allowing UK legislation to be adapted to the Scottish context but without scope for it being watered down. (Stonewall Scotland)
- Shared or concurrent competence “may be part of the solution, but it is hard to speculate on what would or would not work at this stage”; and there may also be a need for “better intergovernmental working within specific departments”. (Scottish Episcopal Church)
- There are already areas where both Parliaments and Governments have overlapping responsibilities – e.g. on climate change. To supplement the existing Sewel Convention, there may be a case for developing a mechanism enabling Westminster to enable the Scottish Parliament to legislate on a specific issue – where that is a particular priority for Scotland and where the UK Government has no plans to introduce legislation of its own. (Royal Society of Edinburgh)
- Candidates for shared or concurrent competence include climate change and coastal and marine affairs. Arrangements for action on climate change appear to be well coordinated, but there is a need for better enabling provisions in the UK Marine Bill, together with intergovernmental agreement on UK seas, in order to promote “an ecosystem approach to marine management which transcends political boundaries”. Another area where joint working could be improved is the work of the research councils and the funding of Scottish based research. (Royal Town Planning Institute in Scotland)
- Conflict is inevitable when powers are shared between two parliaments, unless one is wholly subservient; only independence can resolve the situation. (Cllr David Alexander)
- More needs to be done to raise awareness of the current reserved/devolved boundary, which is not widely understood. (Scottish Environment Protection Agency)

The devolved/reserved boundary – problematic interfaces

Animal health and funding:

- Animal health is devolved but the budget was retained under DEFRA control, leaving the Scottish Government in the difficult position of deciding on policy but unable to allocate spending directly. Cuts in central budgets now threaten to undermine Scotland’s animal health and welfare strategy. It is therefore “essential that the devolved administrations are allocated their proportionate share of the budget held at UK level.” (NFU Scotland)
- The current split of responsibilities “is not conducive to finding Scottish centric solutions rapidly, as is often required in these circumstances”. (Quality Meat Scotland)

Charity law

- It is right that charity law was devolved, and that a separate Scottish regulator has been created, but there are complexities and burdens created for charities operating across the UK. In particular, it is anomalous that entitlement to charitable tax reliefs is determined solely by reference to the English law definition. It would help therefore “if a charity operating across the UK could opt to be subject to one regulator”. (Institute of Chartered Accountants in Scotland)
- “Charity law is (and should be) a devolved issue. However, tax powers being reserved, HMRC uses the slightly different definitions of public benefit under the English charity legislation, which means that not all Scottish charities will necessarily be guaranteed

charitable tax reliefs. It is also possible that a charity removed from OSCR's list may continue to enjoy charity tax breaks from HMRC ... this anomaly needs to be addressed." (Scottish Council for Voluntary Organisations no.2)

Children

- early years services are devolved, but in practice, reserved matters "impinge on Scotland's ability to act", for example by preventing a "stronger supply subsidy approach" to funding. UK-wide initiatives, such as Treasury funding of the Sure Start programme, have often not been properly consulted on in Scotland. There have also been adverse impacts on information and statistics about Scotland, where UK-wide data either cannot be accurately disaggregated or Scottish data cannot be accurately compared because of differing definitions and methods. (Children in Scotland)
- **Climate change** is devolved, but most of the levers to address it lie at UK or EU level; **food standards** are devolved but **consumer protection** and the Food Standards Agency are reserved. Either devolved matters should be moved back to the UK level or other modifications should be made to provide a "better fit". The Scotland Act implies that in cases of conflict the UK level takes precedence, but this could be made more explicit. There are examples of constructive handling of problem areas – e.g. devolution of some executive control over railways, flexibility in immigration policy and proposed limited devolution of airgun legislation. (CBI Scotland)
- Most **consumer protection** legislation is reserved, but some is devolved and other devolved areas of law impact on consumer protection and business regulation. "This complicated set-up has led to a feeling that Trading Standards has too many 'masters'. ... it is vital that the Scottish and UK Governments (whatever their political affiliation) work together to achieve the best solutions for Scottish consumers and businesses. (Trading Standards Institute, Scottish Branch)
- **Data protection and privacy** are reserved, while freedom of information is devolved. However, one of the FOI exemptions relates to personal data – which requires the Scottish FOI Commissioner to determine matters of data protection. (Scottish Information Commissioner)

The economy

- Devolved administrations rightly wish to tackle poverty, deprivation and inequality but lack the main instruments for doing so – **income support/social protection, personal taxation and labour market policy**. In relation to labour markets, levels of expenditure and programmes such as the New Deal are handled at Westminster but the Scottish Government is responsible for vocational training and economic development. (Scottish Council for Voluntary Organisations)
- **Education and training** are devolved, but **employment and benefits** are generally UK-led.
- The Education and Skills Bill at Westminster contained provisions on data sharing, and a legislative consent motion was needed to give Scottish Ministers a role in this in Scotland. Case for reviewing whether an extension of devolved powers is now merited. (Association of Scotland's Colleges)
- "Frequent and blanket changes in delivery arrangements, short term and reducing resource packages, the overt politicisation of brand and context of new schemes have hindered stability of many services and reduced the effectiveness of some interventions". (Scottish Council for Voluntary Organisations no.2)

Energy

- the current division of powers is likely to cause continuing intergovernmental conflict, with implications for stability of energy supply, sustainability and affordability. “An over-emphasis on Scottish self-sufficiency or failure to utilise economies of scale could be damaging to the Scottish energy system”, and a better approach would encourage interdependency within UK, European and global markets. (Royal Society of Edinburgh)

Equalities

- equal opportunities are reserved but family law is devolved – leading to protracted debate on e.g. adoption. (Stonewall)

Electoral law and administration

- there is a complex mix of devolved and reserved. (Electoral Commission)

Environmental regulation

- there are some issues where “it is sensible from the viewpoint of good administration and efficiency for there to be a single administrator” for the UK or Great Britain – often an existing body from one of the relevant countries. That single administrator can then delegate local enforcement to national bodies under a memorandum of understanding. However, in seeking to implement this model in some cases – e.g. the REACH regulation on chemicals, or the Renewable Fuel Transport Obligation – “devolution has posed a political barrier which has proved impossible to overcome”, barriers “which have no bearing on the undoubted success of devolution”. (Environment Agency)

Food labelling and trading

- the lack of devolution gives Scotland little ability to influence UK priorities on Export Health Certificates, and prevents Country of Origin Labelling being adapted to take advantage of the market premium for Scotch Beef. (Quality Meat Scotland)

Harbours

- clarification required on whether the Harbours Act 1964 is devolved and whether it overrides the Harbour Act 1847. (British Ports Association)

Immigration

- Scottish Ministers are responsible for **social work, education and the child hearing system**, but (arguably) not in Dungavel where children are sometimes held as failed asylum seekers. (Youthlink Scotland).

Insolvency

- current split does not work well and is leaving Scotland at odds with England on important issues, especially liquidation. (legislatively reserved, but with regulation devolved) (Institute of Chartered Accountants in Scotland)
- Responsibility for **international shipping** lies with the UK Department for Transport, but responsibility for **ports and harbours** is devolved. This is unhelpful since the Scottish Government has not felt it appropriate to encourage potential operators to land in Scotland. Devolving powers regarding international shipping with a landing in Scotland would “allow a champion at national level”. (South-East Scotland Transport Partnership)

Marine environment

- the current division of responsibilities is complex and confusing, with the Scottish Government responsible for nature conservation and the marine historic environment up to 12 nautical miles and the UK Government from 12 to 200; and with the Scottish Government responsible for fisheries, and the UK Government responsible for shipping, from 0 to 200 nautical miles. In addition, the devolution settlement with regard to climate change is a complex mixture of devolved and reserved responsibilities. There is merit in looking again at the division of responsibilities for environment and heritage where at present these are partially devolved and partially reserved. (National Trust for Scotland)

Planning powers

- “should reside with Holyrood but should not be used to frustrate policies of the UK Government that are being delivered in the interests of the UK as a whole”. (Anonymous contributor to Scottish Youth Parliament survey)

Skills

- “the framework of sector skills councils, the process of development of national occupational standards, and other related functions which fall under the remit of the Department of Innovation, Universities and Skills (DIUS), have not fully extended to the Scottish sector”. (Scottish Council for Voluntary Organisations no.2)
- **Social care policy** (devolved) and **social security** (reserved) – effective outcomes requires close coordination; but devolution is not necessarily the right answer – “there may be strong counter arguments in terms of UK equity, operational considerations or other issues”. (City of Edinburgh Council)

Student funding and benefits

- “the interaction between the Scottish student funding system and the UK-wide benefits system has become increasingly complex”. Students are often unaware of the implications of their course choices for their benefit entitlement, while it is more complex and time-consuming for college support officers to help them secure the support they need. (Association of Scotland’s Colleges)

Taxation

- examples of problematic interfaces between devolved Scots law and reserved taxation policy include the UK Stamp Duty Land Tax which “ignored Scots property law and conveyancing practice”; charity law, which requires Scottish charities wishing to claim tax relief to meet an English charity law test for that purpose, although otherwise subject to Scots charity law; and a proposal to introduce Planning Gain Supplement, which would have caused problems as it was inextricably linked to devolved planning and housing policy. (Law Society of Scotland)

Taxation and borrowing

- uncertainty about the legality of the Local Income Tax and Scottish Futures Trust is unhelpful. (Scottish Council for Voluntary Organisations)

Transport

- the current split of responsibilities is “particularly complicated – and to some extent ... arbitrary”. The “rather haphazard” boundary reflected various views of different advisers to Ministers at the time of devolution, with their different views on the merits of devolution, including the strength of opinion in the Department for Transport. There should now be a tidying-up exercise based on a presumption of devolution unless there

is an exceptional reason for reservation. The outcome should involve devolution of the power to set speed limits, commercial drivers' hours and conditions; regulation of driving instruction and HGV operators; conditions for the carriage of goods on international road transport services, remaining road safety powers; and regulation of the carriage of dangerous goods. (Road Haulage Association Scotland)

- **Transport infrastructure charging** (devolved) and **taxation** (reserved) – in reality this division has “worked against effective and transparent decision taking”, since the amount of financial control in Scotland is too small to make a meaningful difference, and revenues would not accrue directly to Scotland. The complex structure for rail responsibilities and the differences between road and rail have inhibited policies to promote modal shifts. (Scottish Association for Public Transport)

Universities and research funding

- “there is a worrying lack of clarity” about the relationship between Scottish universities and UK research councils and whether the former “will continue to enjoy the same access as other UK universities to UK research funding”. (University of Abertay)

Interpretation of the devolved/reserved boundary

- The division of competences “broadly follows the responsibilities of the old Scottish Office”, but sometimes it is the policy field that is specified, sometimes the aim of the policy and sometimes a specific institution. There may be a case for resolving some of the confusion that arises, to avoid litigation. (Prof Michael Keating)
- The Scotland Act provides for conflicts of competence to be resolved by the courts, and ultimately the Judicial Committee of the Privy Council – this has not happened, which has saved expensive litigation, but left the boundaries unresolved. (Royal Society of Edinburgh)
- “There is a substantial debate about how the reservations in Schedule 5 should be construed, especially in the light of the guidance given in section 101 of the Act.” The courts ultimately must make the decision whether to construe reservations broadly or narrowly. Some reservations are described in very specific terms; others refer to “the subject matter” of named enactments as they were in force on 1 July 1999. Key to the issue of construction is the section 29 “purpose test” – a statutory reflection of an existing “canon of interpretation”; but while there is case law from the early 20th century from Commonwealth constitutions, the courts have not yet ruled on how the purpose test in the Scotland Act is to be applied. (Law Society of Scotland)
- **Section 29** – the various provisions “are so fraught with different interpretations and opinions that they lend themselves easily to an interpretation, no matter how tenuous, which serves a political objective”. This also undermines openness and transparency. “The definitions require to be clearer and an open, expeditious parliamentary procedure in place for resolving matters.” (Thompsons Scotland)
- **Section 29(3)**, which sets out the “purpose” test for assessing whether Scottish Parliament legislation relates to a reserved matter: It is unclear how this test is to be applied – what is meant by “the purpose” of a provision; can this be ascertained by reference only to a list of reserved matters and not also a list of devolved matters, and so on. “In the absence of any court decision, ... different views can be held upon what is the purpose of a provision with almost equal validity”; the purpose test does “not provide a stable enough foundation upon which to build the future constitution of Scotland”, and if it is to remain, it should be clarified. (Iain Jamieson)

- **Section 29(4)**, which governs the extent to which devolved legislation may amend Scots private law or Scots criminal law: By adding an additional competence hurdle in such cases, this achieves the opposite of what it is often thought to achieve, and is too high a hurdle; on one interpretation, it “would make devolution almost unworkable”, and should be deleted or even replaced with a contrary presumption that any provision relating to Scots private law or Scots criminal law is devolved. (Iain Jamieson)
- **Schedule 4**, paras 2 and 3, which further define the law on reserved matters: These provisions should be deleted as they add unnecessary complexity to earlier provision in s.29 and are too restrictive. (Iain Jamieson)
- **Schedule 5**, which lists the various reserved matters: It is unclear how these matters are to be construed – liberally or literally – particularly in the absence of a corresponding list of devolved matters. The varying ways in which reserved matters are defined is problematic, particularly where this is by reference to specific enactments which may have been amended or repealed since 1998, as is the inclusion of exceptions in some cases but not in others. Some statutory clarification is needed to avoid the Scottish Parliament feeling unable to legislate to the full extent of its powers and having to rely on Westminster to finish the job. Uncertainty about the boundaries on e.g. Dungavel, MoD premises and nuclear power stations create “black holes where Scots law made by the Scottish Parliament no longer applies and where the Scottish Parliament cannot do a coherent legislative job”. There may be a case for statutory across-the-board exceptions to reservations for key devolved areas such as planning, education and child care. (Iain Jamieson)

F: Financial Accountability

Comments on status quo (block grant and Barnett)

Q7: Do you support the current financial arrangements for devolution, where the Scottish Parliament receives a block grant (based on the Barnett formula) to spend on devolved services as it chooses, but (apart from the power to vary the basic rate of income tax by up to 3p in the pound, and devolved control over local taxation) has no responsibility for raising revenue from Scottish taxpayers to pay for those devolved services?

- The existing (block and Barnett) system is administratively simple and provides stability and predictability. (Prof N Bonney)
- The effect of the Barnett system, where the Scottish block is calculated after UK Departmental spending limits have been set, is “that a UK picture is taken”. There is no doubt that Scotland has benefited from the current arrangements, and change could result in higher taxes in Scotland. “Variable levels of taxation across the UK could potentially be destabilising and weaken the UK economy as a whole.” (Institute of Directors in Scotland)
- “The need to retain the Barnett Formula and regard its temporary additional funding as a “windfall” is supported by the Council of CBI Scotland.” (CBI Scotland)
- “The semi-detached nature of unionism in the UK might be stretched to breaking point” if tax-varying powers or control of tax revenues were introduced. (Jim Craigen)
- The youth sector has been disadvantaged where funding streams have been deemed to relate to devolved matters, as the Scottish share then gets added to the block grant and

the Scottish Government is then free to spend it on other priorities, whereas UK-distributed funds are more likely to be targeted to the sector. Changing Barnett could reduce the funds available to the youth sector. (Youthlink Scotland)

- The EIS “remains to be persuaded that any alteration to the current financial arrangements ... would be justified at this time”. It may be too soon to make such major changes, which could adversely affect resources for education. (Educational Institute of Scotland)
- Barnett provides “a degree of certainty” in funding, but “there is no transparent link between need and grant received”. Change to the system would “present considerable risk to Scotland’s finances”, and tax-varying powers would then be needed to maintain funding at adequate levels. (SOLACE Scotland)
- “A benefit of block funding is that the Scottish Parliament is free to determine how the grant should be spent, based on locally determined priorities. Continuation of block funding is necessary to reflect the relative needs” of different parts of the UK. “A disadvantage of block funding is that the total amount of funding is constrained by the UK government.” (North Lanarkshire Council)
- The Barnett formula “has contributed to the stability and therefore success of devolution in its first decade” and “has worked reasonably well and should not be replaced in haste without a better alternative”. But the result is the Parliament “is not transparently or directly accountable to the tax payers who fund it”. The Barnett squeeze “would ultimately penalise allocations to the Scottish Parliament to the benefit of rich regions of England”. In the long term, the basis for distribution should be need, not population, taking account not just of GDP and poverty, but also Scotland’s geography, sparsity of population and infrastructure requirements. (UNISON Scotland no.2)
- The current system creates “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”. Some rebalancing is required. (Royal Society of Edinburgh)
- “There is currently a missing link between raising money, formulating policy to spend that money and spending that money.” (Anonymous contributor to Scottish Youth Parliament survey)
- Scotland’s public services are too important to be linked to the level of public spending in England. For instance, if the UK Government were to privatise the NHS, Scotland would be severely pressurised to do so too, as the block grant would be slashed.” (Anonymous contributor to Scottish Youth Parliament survey)
- This system prevents the Scottish Parliament or Government using “economic levers to react to specific Scottish economic and social problems – and therefore runs counter to the entire purpose of devolution itself. Most notably, it inhibits Scotland developing a competitive economic edge, which is a severe disadvantage in a competitive global economy.” It has also inhibited much-needed debate on the sort of economy Scotland needs – e.g. high tax, high spending or low tax/regulation and low public spending? (University of Abertay)
- “The people of England see that Scotland enjoys much greater benefits without initiating its current 3% tax raising powers. ... No proud nation can be satisfied by relying on undue financial aid.” (Campaign for an English Parliament)
- “No self-respecting parliament [can] exist permanently on a grant from another parliament”. The current system produces stability and predictability, but lacks transparency, accountability and most of “the fiscal tools which could be used to make life better for people in Scotland”. (Tavish Scott MSP)

- The current impasse between the UK and Scottish Governments over Council Tax Benefit is “unacceptable”. (Scottish Episcopal Church)
- The “pettiness” of the UK Government seeking to withdraw Council Tax benefit if it implements a local income tax demonstrates the problem with the current system – “there must be no block grant for Westminster to cynically manipulate”. (AJ Parrott)
- The block grant system “is a recipe for fiscal irresponsibility and has encouraged a kind of populist ‘free gift scheme’ approach to policy”. The Scottish Parliament should be responsible for raising the money it spends. (David Hutchison)
- Scotland’s higher level of public spending is perceived (rightly) by the English as a “giant subsidy”, and whatever the situation with North Sea oil, is not sustainable. (James Matthews)
- The current arrangements are unsatisfactory; Barnett “is not understood”, “does not do what is claimed for it” and recent bypassing and manipulation has “rendered it obsolete”. The formula delivers a share based on population (roughly 10%), lower than the share (12.2%) required to maintain historic spending levels – the so-called Barnett squeeze. However, the paradox is that the spending discrepancy with England has risen since Barnett was introduced. From 2003-07 Scotland received a £3 billion windfall in consequential from the UK Government’s 1% increase in National Insurance Contributions – and was unable to spend it all – whereas the recent attempt to deny Scotland a Barnett consequential from £1.2 billion of English prison building expenditure demonstrates the extent to which the system is open to political manipulation. GERS is methodologically flawed and claims about English taxpayers subsidising Scotland “are not sustainable by any evidence”. The current system “does not provide adequate powers over the levers necessary to influence events”. (DR Mayer)
- The current system “creates a divorce between raising money and spending it, violating basic principles of accountability”; the balance between taxation and spending is “one of the central decisions in a modern democracy” and its absence contributes to poor turnout at Scottish Parliament elections and “a tendency still to credit or blame London for devolved policy outcomes”. The Barnett formula is open to political manipulation and creates an unjustified sense of grievance in England; it also seems likely that Westminster “will soon tire of being responsible for the unpopular task of raising money, while the Scottish Government gets the gratifying task of spending it, and can blame London if there is not enough to go round”. (Prof Michael Keating)
- “The Barnett system leaves the devolved administrations’ finances completely entangled with UK Government public finance” – forcing them to interact on matters that are internal to each. This doesn’t eliminate bargaining over finances, but merely displaces it to lower-level disputes about “Barnett consequential”, where the final arbiter, the UK Government, has a vested interest in the outcome. It also means that the Scottish Parliament’s spending autonomy is not as great as it first appears – if England radically changed the way it funds the health service, Scotland would in practice have little choice but to follow suit. To the doubtful extent the Barnett system allocates spending according to need, it does so in a way that is “indirect, probably inefficient, and impossible to demonstrate clearly”, thus failing to achieve either transparency or legitimacy. Even its advantages – stability, the spending autonomy it provides and simplicity – are “administrative rather than economic or political. Preferring Barnett as an option in the long term is to put the bureaucratic cart before the economic or political horses.” (Alan Trench)
- “The lack of revenue-raising or borrowing powers undermines the Scottish Parliament’s autonomy and accountability. Tax rates cannot be set at levels appropriate to Scotland. So there is no way of creating a more attractive fiscal framework in Scotland to boost economic growth.” (Reform Scotland)

- Barnett is inappropriate in an agricultural context – in Scotland, agriculture accounts for 20% of the UK output, whereas Barnett would apportion only around 10% of UK budgets. (NFU Scotland)
- The current arrangements have “inherent structural weaknesses”: the UK Government can announce measures without considering their disruptive effects in Scotland; the Scottish Government’s lack of accountability for raising the money it spends “has given rise to a very unhealthy form of politics”, with parties competing with promises about how they will spend money raised elsewhere; and the West Lothian Question remains unresolved. (Christopher Mason)
- “Basing spending in one part of the UK on spending in another ought to end, as it undermines devolved decision-making and has nothing to do with need”. (Richard Lindsay)
- Identifiable public spending in Scotland is 22% higher than in England, amounting to a cumulative £102 billion since 1985-86. “Such spending gaps are impossible to justify”, and reform of Barnett is essential. Scotland’s spending advantage originated in 1888 with the “Goschen proportions” but Scotland’s relatively slower population growth since has boosted its per capita spending; and Barnett has been annually adjusted for population only since 1997. In principle, Barnett should lead to convergence, but the so-called squeeze has not happened. Even allocating Scotland a proportional (83%) share of North Sea oil revenues would not close the spending gap. (Taxpayers’ Alliance)
- Current arrangements “do not provide sufficient incentive or discipline on the Parliament regarding spending decisions due to its lack of responsibility for raising substantial revenue”. They are unsustainable in the long term, but “there is a lack of credible alternative arrangements at present” and a comprehensive review is needed to provide the necessary data and analysis. (Scottish Council for Development and Industry)
- The current situation is “untenable” and creates tensions; the Parliament should be responsible for all revenues raised in Scotland, thus improving accountability and improving Scotland’s financial position. (Cllr David Alexander)

Comments on a needs-based alternative to Barnett

- The real problem is not so much devolving taxation as in a system of fiscal equalization with the aim of providing equivalent services across all regions, taking account of their resources and needs. This is extremely complex and can create perverse incentives: it can encourage poorer regions to favour higher taxes on the grounds that wealthier regions will then raise more and have to share some of it with them, and does not give the poorer regions incentives to develop their own economies for fear of corresponding loss of subsidy from the centre. An objective assessment of needs is particularly difficult and is as much about political choices as objective facts, given that different regions provide different levels and types of service. In the UK, one particular problem is North Sea oil and whether it is appropriate to regard some or all of it as Scotland’s (rather than the whole UK’s) resource; another is whether the centre should compensate regions which opt out of centrally-funded programmes – as in the UK Government’s refusal to pass on to Scotland savings on attendance allowance when free personal care was introduced, or council tax benefits if that tax is replaced by a local income tax. (Prof Michael Keating / Royal Society of Edinburgh)
- There are various mechanisms that can be used to fund sub-national units – own taxes, conditional grants, unconditional grants and equalization grants. Own taxes don’t address inequalities, while conditional and unconditional grants limit the autonomy or the accountability of regional administrations. “Equalisation grants, by contrast, if done right, can maximise autonomy while emphasising system-wide solidarity and risk-sharing.”

However, assessing “need” is “inherently problematic and contentious” and risks creating incentives to remain poor; it can also generate volatility of funding and administrative complexity. (Alan Trench)

- There is no “right answer” to the question of the size of the block grant: the Barnett formula is “simply a pragmatic solution”. It would now be possible, with political will, to repeat the needs assessment carried out in 1978-79, and the result “might provide a better basis ... to make informed judgments on levels of expenditure and to explain them publicly. It would certainly be more transparent than the present Barnett formula arrangements”. (Alastair Balls)
- The STUC found no support for full fiscal autonomy, with most affiliates believing that some replacement for the current arrangements was needed in the longer terms, but “that an immediate move away from the Barnett Formula would be disadvantageous”. Any future block-grant arrangement should have “a needs-based component”. (STUC no.2)
- The block allocation should be “supported by a clearly defined formula ... based on need”. (Glasgow City Council)
- Barnett has been “the source of tension in Anglo-Scot relations”, and should be extended or amended to reflect social, economic, geographical and other divergences between Scotland and the rest of the UK. (Anonymous)
- Tax should be “fair and equal throughout the British Isles” and based on salary; revenues should be distributed fairly, but not necessarily equally – i.e. recognising differential needs. (Anonymous contributor to Scottish Youth Parliament survey)
- A needs-based formula could reduce intergovernmental conflict arising from the current application of the Barnett formula where the UK Government appears to be able to determine what spending should be included or excluded” – an example being the exclusion of Olympic funding. But if it could not be shown that a needs-based system would be fairer, then it would be no more acceptable than Barnett. (North Lanarkshire Council)
- The result of a needs assessment would probably not be much different from what Barnett already provides. (Christopher Vine)
- “If the Barnett formula were to be abandoned – which would not be in Scotland’s financial interest – detailed attention would require to be given to devising a method of allocation which properly addressed the needs of both Scotland’s areas of deprivation, and its rural and remote communities.” (NHS Tayside)
- Needs-based formulae at local government level are “hotly disputed. They may employ complex statistical analyses, but what counts as need is ultimately subjective” and vulnerable to political manipulation.” (Taxpayers’ Alliance)
- If a needs assessment was undertaken, “Scotland would undoubtedly be one of the losers, adding another perceived grievance to the Scottish Nationalists’ already comprehensive list”. (James Matthews)

Comments on the existing 3p tax-varying power (the Scottish Variable Rate)

- The fact this power has not so far been used is a reason for suggesting that further tax-raising powers are not needed. (Prof N Bonney)

- Contra Bonney: failure so far to use this power is “more to do with a perception that any such use would be countered, ‘punished’ by manipulation of the present funding arrangements from London”. (AJ Parrott)
- The 3p tax-varying power “can be disregarded because, were it to be implemented, the cost of administration would be relatively prohibitive, and the Chancellor would be likely to reflect the resulting increase or decrease in his exchequer tax-take in calculating the block grant”. (DR Mayer)
- The existing power has not been used “for good reason – the revenue it would generate is relatively small, and as it can only be applied to income earned at the basic rate, the burden would be regressive and unfair”. The tax-varying power should be enhanced to enable the Parliament to set the basic rate of income tax at any level, to vary higher rates of income tax, and to tax unearned income. (UNISON Scotland no.2)
- Using the tax-varying power could be problematic – it could be expensive to collect, and it would be difficult to separate out personal taxes from the benefit system (tax credits and means-tested benefits). Increased taxation can also lead to tax avoidance or even tax arbitrage. (Institute of Chartered Accountants of Scotland)
- The current tax-varying power does not give enough scope to respond to Scotland’s economic needs. (West Dunbartonshire Council)
- That the existing power has not proved attractive may reflect “the potential for tax flight and the redistributive limitations”. (STUC no.2)
- Using the tax-varying power would require HMRC to change its systems, and there could be timing difficulties unless the Scottish and UK Parliaments synchronised the announcement and implementation of new tax legislation. The total extra cost of using the power, for government and employers, could be £28 million or more. While income tax was the obvious base to use, it needs to be tied to Capital Gains Tax to inhibit tax-avoidance. An alternative to varying the rate of income tax would have been a surcharge on the actual tax paid. (Chartered Institute of Taxation)

Comments on assignment of taxation

- Assigned taxation is the weakest way to share tax responsibilities between the levels of government – it would create a connection between Scotland’s economic performance and the funds available, “but would not amount to devolution”. Such a system was tried in Northern Ireland, but the “imperial contribution” became negative during recession; and a similar idea was resisted for the current Northern Ireland Act for fear that the UK might in future abandon the province to its own resources. (Prof Michael Keating – similar points made by the Royal Society of Edinburgh)
- Giving the nations and regions of the UK tax retention powers or assigned revenues, with reduced block grants based on a needs assessment, is what is known as fiscal federalism. This is “a glorified Barnett formula” and would be “a worse scenario than the present one”. Assessing the breakdown of revenues would be very complex, and needs-assessment would be subject to continual review and controversy about what factors should be taken into account. In view of these and other difficulties, fiscal federalism “is a non-starter”. (DR Mayer)
- Arguably, at present, the Executive can act and the Parliament can legislate in ways that damage the economy “with almost total financial impunity”. Assignment of some revenues could help to address this, by linking economic performance to revenues – although there is no evidence that MSPs’ behaviour would change. It is also unclear what the impact would be on the block grant – if that were adjusted in consequence of

changes in revenue, the incentive to be responsible would be undermined; the block grant system also offers more protection to Scotland against recession or economic shock. Business would “require to be convinced of the merits” of moving to a system assigned revenues. (CBI Scotland)

- It would be possible to move to a system of assigned revenues – but it is doubtful the effort would be worthwhile. (UNISON Scotland no.2)
- Assignment of tax revenues may help to link resources generated to spending levels, but would not directly enable the amounts of tax raised to be varied, and there could be “potential conflict over which taxes are assigned, e.g. taxes from North Sea oil.” (North Lanarkshire Council)
- In a SYP survey, 59.2% of respondents felt that money raised in Scotland should be spent in Scotland, compared with only 16.7% who wanted it to get its money from Westminster. However, options relating to greater fiscal autonomy were more popular than both. (Scottish Youth Parliament)
- “A UK-wide system with allocation of revenues” would, on balance, be the easiest means of allocating taxes to Scotland, and would fit with EU policy towards harmonisation of tax systems in order to reduce the scope for tax avoidance and cross-border tax competition. (Chartered Institute of Taxation)
- The only solution likely to be accepted as fair would involve all tax revenues raised in Scotland going directly to the Scottish Government, who would then pay a block grant to Westminster for a share of reserved expenditure. This would not require tax-varying powers, though these would also be welcome. There should be no reduction in Scotland’s share of resources from ending reliance on Barnett. (Gordon West)

Comments on Greater Tax-Raising Powers / Fiscal Autonomy

Q8: Do you believe that the Scottish Parliament should be responsible for raising a greater proportion of its income by having increased taxation powers? If so, which taxes should be devolved (e.g. VAT, Income Tax, Corporation Tax, Excise Duties etc) and should there be corresponding changes to the existing funding arrangements from the UK Government?

- Giving the Parliament fiscal powers “is both desirable and inevitable”. Full fiscal autonomy would involve all the main taxes being raised in Scotland, which would then pay a negotiated sum to London for common services – such a system works effectively in the Basque Country. Fiscal devolution is another option – with Scotland able to vary the rates, coverage and deductions of certain taxes either completely or in part. But there are EU limits on varying VAT rates and differential corporation tax would also be likely to violate EU competition and regional policy provisions – so personal income tax is “the prime candidate for devolution”, perhaps on the Canadian model which (apart from Quebec) has a single federal collection system but allows provinces to depart from the federal rate and provide additional allowances. Smaller taxes such as vehicle registration, stamp duty and excise duties could also be devolved. Experience suggests that the practical problems from tax variations are minor, and that the system self-regulates in any case. (Prof Michael Keating)
- “In a Scottish context, the case for extensive devolution of personal income tax is a strong one”, and would account for just over a third of Scottish Government spending. But it would be difficult to devolve other major sources of revenue – corporation tax, because it “is hard to calculate, raises difficult issue of principle if disaggregated, and is subject to European Union legal rules” requiring uniformity; National Insurance, which is

closely tied to welfare state structures; or VAT, which is also subject to EU rules on uniformity. Various small taxes could be devolved, but “they raise comparatively small amounts of revenue and their attraction is likely to be more as levers of economic policy rather than as ways to fund public services”. (Alan Trench)

- “The real solution to the ‘Barnett problem’ lies not with some revamped formula, or even any of those complex needs assessments. The real solution is fiscal decentralisation. Alongside the devolution of spending authority, Westminster must finally devolve some of its tax raising powers. In that way, those that benefit from higher local spending would also be required to pay for it.” This would be fairer and would increase local accountability. (Taxpayers’ Alliance)
- “The Scottish economy would benefit from us having the ability to vary rates of tax in line with the assessed needs of businesses etc., to retain the proceeds of all taxation, and to match that against a rational level of public services; under the present ... arrangements, no matter how the Scottish private sector works its socks off, the tax proceeds from the increase in growth are shipped off to the UK exchequer”. “Fiscal autonomy would restore the essential link between the voter and the politician and make the politicians answerable and accountable for both the expenditure and the tax raised to cover it” – thus delivering proper financial accountability. There would be a need for a Scottish treasury, and control over interest rates would have to be considered; there would also be a need for proper costing of reserved services, and a fair system for apportioning North Sea revenues. There is no reason to suppose that fiscal autonomy is a step too far towards independence; indeed it is necessary to justify the term Home Rule. (DR Mayer)
- Scotland’s main asset base is oil and “the national asset base needs to be reviewed as a prerequisite for the implementation of a devolved fiscal system. ... The overall approach should be to devolve as many taxation powers as possible in order to a) increase the relationship between raising and spending revenue, thus encouraging more effective and responsible economic management; and b) give the devolved institutions as many economic levers as possible to boost the Scottish economy.” The most important taxation powers are full control of income tax and control over corporation tax. Piecemeal devolution of economic powers would cause confusion and complexity, so the ideal is for Scotland to raise all the revenue it spends and for Barnett to be scrapped. Without involving independence, this would require a system for Scotland to pay the UK Government for its share of UK-level expenditure, such as on defence and foreign affairs. (University of Abertay)
- Given its remote and sparsely-populated island and rural areas, and the impact of climate change, the Parliament should have greater flexibility to raise revenues to assist with the cost of service delivery. (Cllr Dick Walsh)
- Scotland should raise all its own taxes including oil, and agree a formula to pay a share of UK costs of defence and the Crown. (G McCormick)
- Scotland should totally control its own finances and resources. (Alex)
- Full fiscal autonomy, with Scotland making an annual payment to Westminster to cover non-devolved matters such as defence and foreign affairs (David Macphail)
- Budget management, especially for capital programmes and where dealing with the intrinsically unexpected, would be greatly improved by greater flexibility, especially in relation to multi-annuality. (Scottish Environment Protection Agency)
- Consideration of how there could be some further devolution of tax and benefits to “allow distinctive approaches, without penalising Scotland’s overall share of resources when changes here mean a need for different targeting of benefits paid elsewhere in the UK”. (Church of Scotland)

- Devolution of fiscal control “could bring very real benefits” in terms of accountability and appropriateness of targeting, but this could also result in “a massive cut” in resources, particularly for the voluntary sector. (Council of Ethnic Minority Voluntary Organisations)
- Fiscal autonomy would address some problems of the current system (lack of transparency and accountability, dependence on English spending decisions) but would probably not bring any practical benefits. A Barnett-style formula (or reverse version) would still be needed under partial or full fiscal autonomy. Power over Corporation Tax and excise duties should not be devolved, as EU competition law would make it “difficult if not impossible” to vary rates within the UK. However, Council Tax benefit and Housing Benefit should be devolved – both are “vital” to securing appropriate outcomes in areas already devolved. (UNISON Scotland no.2)
- Scotland should be responsible for raising its own revenue (with the possible exception of Excise Duties) to spend on devolved services – with reserved services paid for by a reverse Barnett formula based on share of population, and with “the benefit of remaining in the Union made clear with a redistributive mechanism that supports the poorer countries/entities of the Union.” (AJ Parrott)
- The Barnett system, by determining the Scottish budget by reference to English spending decisions, provides a justification for the practice of Scottish MPs to vote on English-only issues. This justification would be removed if Scotland raised its own taxes to pay for devolved spending. (Gareth Young)
- With full fiscal autonomy (all monies raised in Scotland spent in Scotland) there would be no need for a block grant. (West Dunbartonshire Council)
- Greater tax-raising powers will make necessary “a more transparent and formalised framework for exchanging views and managing differences over fiscal matters than currently exists”. (Scottish Episcopal Church)
- Scotland should have the ability to offer tax-breaks or VAT-exemption for artists to alleviate the tax burden on their relatively modest incomes, or provide pension assistance, and so “galvanise Scotland’s cultural powerhouse”. (Scottish Artists Union)
- The way forward is fiscal federalism rather than full fiscal autonomy. This would give the Scottish Parliament responsibility for all taxes not reserved to the UK – which might include income tax, corporation tax, stamp duty and environmental taxation. The Parliament should have the power to vary the tax rate and tax base for devolved taxes, and to abolish existing such taxes or create new ones subject to criteria and guidance provided by a central federal body. The administration and collection of taxes would remain at UK level, with revenues for “devolved” taxes automatically allocated to Scotland and for “reserved” taxes to the UK Government. There would also need to be a needs-based equalization formula for grant funding across the UK, so that all areas benefit from the Union; current expenditure levels would be used as a base point to provide initial stability of public finances. (Tavish Scott MSP)
- “There is a case for the Scottish Parliament having greater tax powers such as on VAT and fuel duty. This would enhance the armoury available to Scottish Ministers to help the economy grow in Scotland.” (Road Haulage Association Scotland)
- Devolution of Corporation Tax opposed by STUC partly because of “anticipated increased EU scrutiny and regulation of Corporation Tax” and pressure for harmonisation, and partly because a lower Scottish rate “would undermine social cohesion and sustainable economic development”. Devolution of VAT also opposed as rates are largely controlled at EU level and any variation would give rise to “significant ‘border’ and other complications”. However, there is scope in principle for devolution of Council Tax Benefit

and Housing Benefit, given their close links to local taxation and housing, both already devolved – but recognising the complications, given that the benefit system is reserved. (STUC no.2)

- Fiscal autonomy is “a superficially attractive option, but if it is to be regarded by both sides as fair it would need to involve a comprehensive attribution of assets, incomes and facilities between the nations of the Union. The magnitude, difficulties and implications of such a task are daunting.” (James Matthews)
- Devolution of tax powers would require either separate Scottish bodies to collect them, or cooperation from UK bodies to undertake collection on Scotland’s behalf. Significant differences in taxation in Scotland could prompt wealthier and more mobile individuals to re-locate. (City of Edinburgh Council)
- Assignment of taxes is insufficient to promote responsibility, and some tax-varying powers are therefore appropriate. But these need to be “based on activity that necessarily takes place within Scotland” in order to promote stability and minimise cross-border tax avoidance. “Therefore, increasing the ability to vary income tax may not be the best solution” – and this also applies to VAT, capital gains tax and corporation tax. Instead, the Scottish Parliament should have full control over revenue from the exploitation of offshore resources and from the land and foreshore owned by the Crown Estate. (Richard Lindsay)
- “Greater latitude in setting rates of tax within the context of overall UK economic and financial policies” would help Scotland create a fiscal environment attractive to enterprising individuals and businesses. (Anonymous)
- In a SYP survey, 69.2% of respondents felt that the Scottish Parliament should be able to decide how much tax people in Scotland pay, while 63.3% wanted Scotland to be completely responsible for its own finances. (Scottish Youth Parliament)
- “A substantial move towards fiscal autonomy would better enable the Scottish Parliament and Government to respond to Scottish concerns and give effect to distinctive priorities.” The Parliament “should have the main responsibility for the tax/benefit system, including the balance between direct and indirect taxation” and the ability to “target benefits in new ways”. (Church of Scotland no.2)
- “The principle we should be expounding is that we should raise what we need to spend in Scotland for devolved services, while continuing to contribute our share to our common UK purposes”. (David Steel)
- The Scottish Parliament is now ready for greater fiscal powers, and I believe for full fiscal autonomy, making a carefully calibrated precept to the UK Government for services rendered.” This was considered by the Constitutional Convention but was thought, at the time, to be “a step too far”. (Canon Kenyon Wright)
- “The weakest element in the relationship between Scotland and England is the fiscal one and if it is not addressed, it could destroy the Union. ... The Scottish Parliament should have sufficient fiscal and borrowing powers to enable it to meet the full cost of the public services for which it is responsible”. (Christopher Mason)
- The UK Government should retain full control over National Insurance revenues together with income from other small taxes such as TV licences, passport fees and the National Lottery Tax. Revenue from income tax, North Sea oil and VAT should be assigned on a 60:40 devolved:reserved basis – a split that is “logical because it matches the respective spending responsibilities of Holyrood and Westminster”. All other taxes would be fully devolved. This would give both Westminster and Holyrood sufficient flexibility to meet their spending needs, while making them “properly accountable to their electorates for

the financial decisions they take. For the first time, it would create a link in Scotland between economic performance and the revenues accruing to the Scottish Government. This would change the whole nature of the debate in Scotland for the better. Further, it would give the Scottish Government the fiscal tools to improve the growth rate of the Scottish economy. It would also provide far greater clarity on which level of government was raising which taxes and what services those taxes were paying for." However, it would also involve giving the Scottish Government most of the powers of the Treasury and HMRC, and require the establishment of a new body to represent the interests of people in England – the lack of which is "the Achilles' heel of the current constitutional settlement". (Reform Scotland)

- There should be "a move to partial fiscal autonomy" through borrowing powers and the power to raise additional taxes, but without supporting changes that would "restrict, destabilise or cut public spending". (UNISON Scotland no.2)
- There would be some additional complexity for government in assessing the Scottish tax liability of taxpayers with obligations both in Scotland and elsewhere in the UK, and greater bureaucracy and cost for employers, pension providers and financial institutions. There are problems in identifying Scottish taxpayers in some cases, and this could "impose significant further burdens" on financial institutions who need to assess tax liability. Devolution of power over taxation does not necessarily increase public accountability; most people, particularly non-taxpayers, are much more interested in how money is spent than in how it is raised. (Chartered Institute of Taxation)
- There is "no scope to apply a different standard rate" of VAT, and hence no purpose in devolving control of VAT. A separate Scottish VAT system would in any case add greatly to administrative costs. Devolving control of National Insurance Contributions would be complex and bring additional costs. (Chartered Institute of Taxation)
- Fiscal autonomy "is likely to lead to further constitutional instability, particularly when the oil does start to run dry" – although this is unlikely for at least 20 years "which is as far as anyone can reasonably think ahead". (Christopher Vine)
- Variance of income tax would be "potentially disastrous for business and economy in Scotland". (Cllr Len Scoullar)
- Further devolution of tax-varying powers "could lead to confusion, 'cross-border' issues and possible tax avoidance". (South Ayrshire Council)
- The argument that the Parliament should be given tax-raising powers – on the principle that it encourages an institution to spend money more responsibly if it is also responsible for raising that money – is "generally asserted and rarely justified". The task of spending a £30 billion budget is a major challenge and the Parliament should demonstrate its competence at it before being given additional powers. More research is needed to establish whether existing spending has been effective in improving outcomes. (Prof N Bonney)
- "The Local Government Finance Review Committee found no evidence that tax-raising powers were essential for enhanced local accountability. ... There are likely to be issues with devolving VAT because of EU rules and Corporation Tax because of inter-country competition." (North Lanarkshire Council)
- The 1976 Layfield Committee recognised "that any body responsible for raising revenues will be incentivised to challenge (and be challenged on) spending more closely", and the recent Howatt Review of the Scottish Executive concluded that there was need for improved scrutiny and "a challenge function" within government. It is not enough to rely on tax raising powers in order to improve challenge. MSPs are accountable to the

electorate for their spending of public money; and the extension of the Treasury's "Whole of Government Accounts" approach would also be beneficial. (Chartered Institute of Public Finance and Accountancy)

- "For business to benefit from the granting of increased tax and borrowing powers to the Parliament, the additional substantial administrative costs and cross-border risks to the UK single market would need to be more than offset by lower taxes in Scotland. There is no evidence that lower taxes would be affordable. In fact, the opposite is true and is likely to remain so for the foreseeable future. Moreover, the likely uncertainties surrounding Scotland's future funding would add to the risks for business." Giving the Parliament tax-powers as a political means to enhance self-determination would be costly, and "would not be supported by CBI Scotland on business and economic grounds". There could be scope to devolve quite easily and inexpensively stamp duty, inheritance tax, capital gains tax, insurance premium tax, landfill tax and the aggregates levy, and (with more difficulty and expensively) fuel, tobacco, alcohol and betting and gaming duties. But the overall yield of these taxes is so low that the benefits of devolving them must be doubtful. Income tax is the prime candidate, given its yield, but the disadvantages are a "possible impact on cross-border mobility of labour", the need for employers to operate separate PAYE systems; the need to segregate National Insurance and income tax deductions; expensive bureaucracy for the self-employed and small businesses; issues of tax on share dividends and interest on bonds; and the impact on the financial services industry. Similar cost problems would arise with devolution of corporation tax, where businesses would need to account separately for Scottish profits; intra-group transfer pricing between operations north and south of the border would become a significant issue; and there would be scope for tax avoidance by shifting higher-profit operations to where tax rates were lower. Issues of tax avoidance and administrative costs would also arise if VAT was devolved. Finally, there is the risk that devolved tax-reductions in Scotland would lead to pressure to reduce the block grant accordingly, potentially leading to pressure for annual negotiations on funding. (CBI Scotland)
- FSB has not taken a view on fiscal autonomy, as the debate so far has "taken place at an intellectual, macro-economic level with little reference to specific proposals and how they would affect individual businesses". (Federation of Small Businesses, Scotland)

Comments on borrowing powers

- It is "vital" that the Parliament has borrowing powers, and "illogical" that it does not – these would enable better planning and more efficient investment, without having to rely on "discredited PFI methods". (UNISON Scotland no.2)
- It is inconsistent for local authorities to have borrowing powers but not the Scottish Government. Prudential borrowing "would enable the Scottish Government to borrow at levels sustained by revenue income and using rules negotiated with the UK Treasury" and "to promote traditional borrowing mechanisms as an alternative to PPP/PFI". (STUC no.2)
- There should be power to raise finances, to enable alternatives to PFI to be found. (Cllr D Alexander)
- It is an "anomaly" that local authorities can raise funds in the market but the Scottish Government cannot. (James Scott)
- The Scottish Parliament is unusual among devolved legislatures in its lack of borrowing powers, and this has caused problems when it has sought alternatives to PFI/PPP. Unlimited borrowing would probably be prohibited by EU rules, but the Scottish Parliament could be given the ability to balance borrowing and spending over time, subject to procedures for limiting overall public debt; or to allow revenue bonds to

finance capital projects, with capital changes the first call on revenues. (Prof Michael Keating / Royal Society of Edinburgh)

- It is “difficult to avoid the conclusion” that the current position, where local government has greater fiscal powers than national government, is “at least worthy of review”. The current administration has had to amend its manifesto proposal for a Scottish Futures Trust to conform to current limitations of the Scotland Act. There is a “prudential code” used to assess local authority borrowing, and “it would be vital, if borrowing powers were extended to the Scottish Government, that an equally robust mechanism were in place to enable effective Parliamentary scrutiny”. A system would also be needed to ensure security for lenders, and to take account of the impact on wider UK borrowing and on local authority borrowing. (Chartered Institute of Public Finance and Accountancy)
- The lack of borrowing powers “may appear to be unduly restrictive” and arguably the Scottish Government should have similar powers to local authorities. (Scottish Episcopal Church)
- The current limitations on borrowing “are unduly restrictive and inappropriate”. (Church of Scotland no.2)
- International comparisons show that “borrowing powers are wholly usual, and indeed necessary for a constituent-unit government to be able to manage its own finances effectively, as well as a tool of economic policy”. But it is important that borrowing powers are linked to income streams, and that sub-national governments borrow on their own account, and won’t automatically be bailed out by central government. (Alan Trench)
- Arguably, “it would be imprudent and difficult to justify” giving the Parliament additional borrowing powers, given the Parliament’s limited tax-varying power and Scotland’s large fiscal deficit. Borrowing by local authorities and other public bodies is already included in the devolved administrations’ budgets, so increased borrowing powers would, if used, result in reductions in the block grant. The Scottish Government already has the power under the Scotland Act to borrow (currently up to £500m) from the UK Government. (CBI Scotland)

General comments on financial accountability

- The test for any devolved tax powers is whether it can be administered in a practical manner, interacting with existing forms of taxation, and with the costs of collection proportionate to the amount collected, taking account of indirect costs on the whole economy as well as direct costs on agencies involved. (Institute of Chartered Accountants in Scotland)
- The aim should be transparency, simplicity and accountability in the tax system, with taxes raised close to the point of use. (Scottish Green Party)
- “There should be further consideration of fiscal devolution” – involving “a mix of assigned revenues and additional devolved revenue raising powers”, together with “a new equalization regime to take account of the outcome of a fundamental needs assessment for each of the nations and regions of the UK.” (Royal Society of Edinburgh)
- If further taxation powers are devolved, administrative powers should also be devolved to make tax-collection in Scotland “more reflective of local conditions”; and if they are not, the Scottish Government should ensure HMRC and the Treasury have access to Scots law expertise. (Law Society of Scotland)
- The Treasury has a discretionary power to determine whether elements of expenditure in Scotland are allocated to the Scottish budget, and uncertainty about such Treasury decisions makes Scottish Government planning difficult. (Scottish Council for Voluntary Organisations)

- Greater clarity is required on the financial consequences of the distinction between devolved and reserved matters – for example, whether Scotland is entitled to the amounts currently provided by the UK Government as reimbursement of Council Tax benefit if a local income tax replaces the Council Tax; whether additional payments by the Treasury changes to fund police pensions in England and Wales will result in equivalent increases for Scotland; and whether Scotland is entitled to Barnett consequentials to reflect extra spending on prisons in England and Wales which is not included in the Comprehensive Spending Review. (Chartered Institute of Public Finance and Accountancy)
- Concern that £34m allocated by the UK Government for disabled children and their families has been added to the block grant and then allocated by the Scottish Government to general local authority expenditure, rather than being spent as intended. (Tom Clarke MP)
- “It is almost obscene that a major oil-producing region like Scotland should have no control whatsoever over any of its oil wealth”. (James Scott)
- “The present arrangement ... has worked well so far. However it has inevitably led to complaints of unfairness arising from both sides of the border. There have also been suggestions that power to spend without the equivalent power to raise money inevitably leads to irresponsibility. For these reasons we feel that it is important that power to levy taxes either in part or in whole be given to the Scottish Parliament.” In calculating Scotland’s revenues, account must be taken of oil, to avoid misunderstandings and accusations of unfairness. (United Free Church of Scotland)
- “The question of finance has to be looked at on the basis of parity in the whole UK context. This would imply some recognised and accepted principle or formula to give it democratic legitimacy. The devolved administrations must not be characterised as permanent supplicants. ... On the question of what devolved administrations are perceived as costing English taxpayers, there is an astonishing silence in relation to the funds being poured into Northern Ireland. (Anne Kerr)

G: Intergovernmental Relations

Q9: How effective do you believe inter-governmental relations have been since 1998, including in the context of the respective roles of UK and Scottish Ministers in their dealings with the European Union?

General comments

- Intergovernmental relations have, “in the main ... been largely effective”. (North Lanarkshire Council)
- “Inter-government relations appear to have operated reasonably well since 1998.” (South Ayrshire Council)
- There is “significant room for improvement in intergovernmental relations”, which “have been less effective since 1998” particularly in relation to the EU. (Cllr Dick Walsh)
- Improved and constructive relationships are needed between Scottish and UK Governments and the EU – this requires political will, underpinned by concordats and arrangements for regular contact. (Scottish Association for Public Transport)

Comments on Scottish/UK relations

- "At an informal level, reasonably effective communication" between the UK and Scottish Governments "has taken place when required to ensure coordination and cooperation in decision-making". (South Ayrshire Council)
- The UK and Scottish Governments should adopt a principle of mutual respect and "not attempt to use their own powers to frustrate implementation of the other's legitimate policies". (CBI Scotland)
- The present administration is seen to "stand up" to Westminster, and although this is partly "political posturing", it is important that MSPs are seen to represent Scottish interests, even where this involves disagreement. Such interaction with the UK level can strengthen democracy and accountability. (Council of Ethnic Minority Voluntary Organisations)
- There are various examples of legislation passed by the UK Parliament where the impact on Scotland has not been fully considered – the "woeful development of Local Better Regulation Offices (LBRO) in Scotland is one example". The recent annual report of the Regulatory Review Group also highlighted the need for better communication and consideration of Scotland in UK legislation. (Federation of Small Businesses, Scotland)
- Communication between the UK and Scottish governments on sport policy could be improved – the Scottish viewpoint "can often not be canvassed before a UK policy is formed". (SportScotland)
- Inter-Government relations have generally been satisfactory" but significant issues such as renewable energy policy "could become detrimentally affected by non-communication between the devolved and UK Governments". A "more structured form of joint policy planning" is needed, perhaps with input from local authorities and other public bodies, and perhaps involving a joint Scottish/UK Parliamentary Committee. (Comhairle nan Eilean Siar)
- Better consultation with Scotland on reserved matters is required. "'Reserved' ... was never intended to mean that Scotland is overlooked or undermined in these areas of legislation and policymaking". (Children in Scotland)
- Communication in policy areas, such as renewable energy, which straddle reserved and devolved, need "greater structure and coherence". There is "a clear need for effective partnership working across the entire UK public sector, in order to ensure that opportunities for efficiencies are maximised". (SOLACE Scotland)
- In relation to social justice and tackling poverty, action has not always been joined-up between the two governments. (Church of Scotland)
- "Despite the potential for conflict between the Holyrood and Westminster Parliaments, particularly on matters at the interface between reserved and devolved issues, relations would appear to have remained relatively good." (Educational Institute of Scotland)
- There have been examples of poor communication and consultation – for example the UK Border Agency failed to consider the impact of a new system for determining asylum applications on the Scottish Legal Aid Board. Another problem is that UK legislation that improves the rights of asylum seekers or refugees is not always implemented promptly in Scotland; there should be a legal requirement to consult the devolved institutions about the impact of reserved legislation on devolved matters, perhaps with the Scotland Office acting as intermediary. (Scottish Refugee Council)

- Westminster continues to pass a significant amount of legislation affecting Scotland, but “less publicity, lack of proximity and perceived remoteness” means its role receives less prominence. The Sewel Convention has helped to “close the gap between the parliaments”, but more regular contact and exchange, including at Ministerial level, would be beneficial. (Law Society of Scotland)
- The Sewel Convention has enabled important additional responsibilities – e.g. aspects of rail and energy policy – to be devolved without changes to the Scotland Act. (UNISON Scotland no.2)
- The current arrangements for intergovernmental relations are non-statutory, and the legal status of the various agreements (the Memorandum of Understanding and supplementary agreements) is unclear. “It is important to ensure that good and effective relations between governments can continue even if goodwill should decline”, with more formal mechanisms such as the JMC taking over from informal personal relations. Concordats should be made for a fixed terms of perhaps five years, after which they would need to be renegotiated to reflect the circumstances of the time. (Scottish Episcopal Church)
- “New and robust intergovernmental structures need to be developed ... in partnership between the UK Government and devolved administrations, and their purpose and decision making structure enshrined in primary legislation.” (Royal Society of Edinburgh)
- A formal arena for discussing issues of relevance to the UK, whether devolved or reserved, is needed – the current practice of informal intergovernmental relations is not sustainable, and the JMC should meet regularly. (University of Abertay)
- Westminster “continues to interfere” in an unacceptable way, and the UK Government’s “obstructive and often antagonistic attitude is ... a major factor in the deteriorating relationship between the two Parliaments”. (Cllr David Alexander)
- A formal arena for discussing issues of relevance to the UK, whether devolved or reserved, is needed – the current practice of informal intergovernmental relations is not sustainable, and the JMC should meet regularly. (University of Abertay)
- “There may be merit in formulating a clear framework of communication between Edinburgh and London on policy areas of common interest.” (NHS Tayside)
- “Up to 2007, intergovernmental discussions were not transparent, and seemed to be treated at times as internal matters for one political party, with original structures in abeyance. We welcome renewal of these structures, but are concerned they may be used more for staged conflict than the resolution of conflict. (Church of Scotland no.2)
- The Memorandum of Understanding, concordats and Joint Ministerial Committee, which are both mechanisms for policy coordination and for conflict resolution, have been underused. There is a difficult balance to be struck in relation to policy coordination – all sides benefit from some discussion about the implications of policy initiatives at one level for the other, but too much emphasis on coordination risks undermining the purpose of devolution itself, by giving Westminster a basis for intervening whenever devolved policy would have “spillover effects” elsewhere. In terms of conflict resolution, the JMC could evolve into a serious and useful mechanism, in which the centre would not always prevail. (Prof Michael Keating / Royal Society of Edinburgh)
- Experience since May 2007 has been of “an astonishingly immature attitude in London to accepting the realities of devolution now that there is a different Scottish government”. (AJ Parrott)

Comments on Scottish representation at EU (and international) level

- Scotland's relations with Europe should be led by Holyrood. Scotland should have its own Olympic team. (David Macphail)
- The effectiveness of Scottish Ministers in EU negotiations has been "badly constrained ... by the misrepresentation of Scottish affairs" by UK officials. (Cllr Len Scoullar)
- Scottish Ministers have been excluded and are regarded by UK Ministers as "second-division material"; Scotland would be better served as a separate EU member state. (Cllr David Alexander)
- There is no benefit in Scotland being part of the UK in its relations with Europe. Denmark and Finland are of similar population but are better represented in the European Parliament and have their own seats in the Council of Ministers. "Devolution in the UK must somehow give Scotland its own voice in the EU ... Scottish Ministers should be allowed to cast 7 of the UK's votes in the Council." (AJ Parrott)
- The Secretary of State for Scotland currently "serves little or no purpose". The role should be reinvented as "a liaison officer between Westminster, Holyrood and Brussels" – taking advice from Scottish Ministers and reporting their priorities to Westminster, and then acting as part of a team of UK ministers in negotiations. (Keith Muir)
- Scottish Ministers should be able to deal directly with the EU and lead UK delegations on issues of particular relevance to Scotland. An "autonomous Scottish diplomatic service" would be needed to support a fully devolved economy or a devolved foreign policy; and the Scottish Government could be more involved at EU level. (University of Abertay)
- "Scottish Ministers should sit at the top table [in EU negotiations] alongside their Westminster counterparts when issues directly affecting Scotland are discussed, even when those issues relate to reserved matters." (West Dunbartonshire Council)
- There should be a "formally established right for the Scottish Government to represent the Scottish people on devolved issues within the EU and in wider international forums; to take responsibility for its share of international development assistance; and to intervene over issues such as access to clean water worldwide". (UNISON Scotland no.2)
- "It may be more appropriate for Scottish Ministers to have the authority to deal directly with the EU" in relation to fishing policy. At present, information from the Commission reaches Shetland via UKREP, the UK Government and the Scottish Government – and a shorter chain of communication would be helpful. (Shetland Islands Council)
- Intergovernmental relations have been "the most significant problem area since devolution". Structures and operations have been "shown to be inadequate on numerous occasions", with DEFRA showing "little or no consideration for the positions of the devolved administrations", e.g. in statements of its negotiating position on CAP reform. A particular problem is the dual role of UK Government Ministers – this worked best when the senior Minister took on the UK role, acting as "coordinator, and not sole creator, of UK policy", with a junior Minister representing English interests alongside Ministers from devolved administrations. The lack of a clear route for the Scottish Government to deal directly with Brussels caused unnecessary delays in resuming Scottish exports in the wake of FMD outbreaks in England. In some cases, Scottish Government officials have delayed consultation on EU proposals while waiting for UK consultation documents to be prepared. By seeking to avoid duplication and achieve appropriate consistency of approach, the result can be a lack of Scottish-specific focus and unnecessary delays in dialogue with industry. (NFU Scotland)

- Given that nearly 90% of environmental legislation originates in the EU, it is essential that agencies such as SEPA are properly consulted at an early stage in the process. "The extent and effectiveness of intergovernmental relations varies considerably" and depends in particular on whether Scotland is aiming for a different regime from the rest of the UK, or is participating in a consistent UK model. Closer links between MSPs and MEPs could also be encouraged. (Scottish Environment Protection Agency)
- In dealings with the EU, we have been concerned that current structures do not allow sufficient space for distinctive Scottish concerns to be raised, especially on matters (e.g. fishing) which are more important to the Scottish economy than to that of the UK as a whole." (Church of Scotland no.2)
- Despite helpful steps taken by the devolved institutions, voluntary organisations "still report frustration" in relation to Scottish input into EU negotiations given the need for formal Scottish Government contact with European institutions to be directed through UKREP. (Scottish Council for Voluntary Organisations no.2)
- In terms of EU representation, the UK has the whip hand, and previous administrations worked within those constraints so as to maximise influence. With politically divergent administrations, more formal mechanisms are needed. Other EU countries give their regions more of a direct role either in formulating the state position or in speaking for the state on matters within their competence. Options for the UK include a more formal JMC role in which the devolved administrations could note their dissent or even exercise a joint veto, thus giving Whitehall an incentive to compromise and increasing transparency and accountability. (Prof Michael Keating / Royal Society of Edinburgh)
- The recent resurrection of the JMC is welcome. The UK, as the Member State, should represent Scotland in the EU but "where a significant Scottish devolved interest is involved, it is vital that the Scottish Government should be fully involved" (CBI Scotland no.2)
- In the EU context "relationships have been relatively poor and even less effective with immediate and direct negative consequences for the business community in Scotland". (Institute of Directors in Scotland)
- Greater regularisation and formalisation is needed in relationship between the Scottish and European Parliaments, including opportunities for direct liaison between MSPs and MEPs. (Struan Stevenson MEP)
- "In terms of relationships with the European Union, the locus of Scottish Ministers has obviously not been very strong. ... It is difficult to see how Scottish Ministers can succeed in having a strong active presence at European level other than as part of a UK delegation." (Catholic Parliamentary Office)
- "Devolution may perhaps increase the risk of the UK Government paying inadequate attention to the Scottish dimension", particularly when representing a UK view at EU level. "It is ... vital that the UK representational responsibility is based on a full consultation with and understanding of the situation in Scotland." Good consultation is the norm, but does not always lead to due weight being put on the Scottish perspective – e.g. where the UK response to the European Commission on the Less Favoured Area Scheme did not make reference to some factors of crucial significance to marginal agriculture in Scotland. (Scottish Natural Heritage)
- To enable the Scottish Parliament and Government to engage more effectively in Europe, Scotland's views need to be fed in early through UKREP; transparent and robust procedures are needed to ensure the UK Government takes proper account of devolved concerns; Scottish MEPs should become advisory members of the Parliament's European and External Relations Committee, and that committee should have early and direct

access to information provided by EU institutions to the UK Government on policies affecting devolved matters; Scottish Ministers should be able to lead UK delegations on matters of particular interest, such as fishing; and there is a case for greater devolution of powers from the EU level – e.g. the management of fisheries could be devolved to Regional Advisory Councils (RACs). (George Lyon, Scottish Liberal Democrats)

- The Lisbon Treaty, if it comes into force, envisages a role for regional or sub-national parliaments in considering legislative proposals, and Scottish Parliament procedures would need to be adapted to give it a role within the tight time-limits provided. There will also be a need for a system for resolving disagreements between the Scottish and UK Parliaments on the position to be adopted. (Law Society of Scotland)
- “Westminster has far more ‘clout’ on the international stage than Holyrood does, so Westminster should represent the whole UK. We are stronger as a ‘united’ group of countries, surely!” (Anonymous contributor to Scottish Youth Parliament survey)

H: General/Miscellaneous Comments

The Commission itself and its remit

- Independence should be an option CSD considers; there should be a referendum at the end of the process. (Cllr D Alexander)
- “The Commission’s determination to exclude the right even to discuss the option of independence for Scotland is totally unacceptable”. (Councillor Peter Johnson, West Lothian Council)
- The limited remit and a membership made up of “avowed Unionists” undermines the credibility of the outcome. (David Macphail)
- There is a risk of the Commission just tinkering – perhaps a straight choice between reversing devolution and independence would be better. (Jim Craigen)
- The Commission should be reconciled and merged with the National Conversation. (Scottish Green Party)
- “It is a pity that the SNP is not represented” in the Commission. (David Steel)
- The “current heated, political nature of the discussion around Scotland’s future could prevent organizations from engaging in a more meaningful way ... A less polarised, more considered debate may enable civic Scotland to play its full role, thus broadening the range of contributions and increasing the depth and quality of the discussion.” (Federation of Small Businesses, Scotland)
- A Scottish Constitutional Convention should be recalled “with the aim of achieving the greatest possible consensus among political parties and civic society on the way forward”. (UNISON Scotland no.2)
- It is important to recognise that Scotland does not exist in isolation from the other nations and regions of the UK. Given devolution in Wales, Northern Ireland and London, and the National Conversation, it seems essential that there should be “an overall review of how the UK is currently governed [and] how it should be governed in future” – paying particular attention to England, to fiscal arrangements, and to how the various parts of the UK should best contribute to UK representation in the EU. The Commission should also consider whether its recommendations should be subject to a referendum. (Royal Society of Edinburgh)

- The Parliament's founding principles, including openness, accessibility, participation and accountability, should be maintained and strengthened in the Commission's recommendations. (United Free Church of Scotland)

Miscellaneous comments

Health

- Scotland has a strong track record in quality of care initiatives but devolution "failed to export these with any real success to England" – for example the Scottish Intercollegiate Guidelines Network is longer-established and more cost-efficient than NICE, but is comparatively under-resourced. The NHS in Scotland has developed its own data systems and IT, although compatibility throughout the UK is important to service delivery. Differences in devolved NHS policy can also lead to "postcode lotteries". (Royal College of Physicians of Edinburgh)

The term "Scottish Government"

- This term should not be used – it is inconsistent with legislation, ambiguous (as the UK Government is the "Scottish Government" in respect of reserved matters) and "indicative of a tendency for expansive ambitions" by the SNP administration. (Prof N Bonney)
- Contra Bonney: Scottish Government is a much clearer expression than Scottish Executive – and it is the duty of the media to distinguish it from the UK Government. If it is not consistent with the letter of the law, then the law should be changed to match the accepted usage and in line with common sense. (AJ Parrott)

Part 3: Oral evidence

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Introduction

- This summary includes the main points made in all oral evidence sessions up to 18 November 2008.
- Points from all evidence sessions have been included – it is worth noting that some of the oral evidence sessions refer back to previously submitted written submissions and comments should therefore be read alongside the written submissions.
- The selection of points included are necessarily subjective to some extent.
- The structure of this document follows the Commission's remit and its task group structure, and is similar to the structure of the summary of written evidence to allow for easy cross reference.
- Under the headings provided, the order of points is unrelated to the order in which submissions were received. Where possible the order reflects the nature of the points made – for example, ranging from views strongly in favour of a particular idea, through more ambivalent views, to outright opposition.
- Direct quotations are verbatim, but it should be borne in mind that selective quotation out of a wider context may inadvertently alter meaning. Other points are paraphrased in terms that aim to preserve the general meaning of points made.

List of oral witnesses

Public evidence sessions

Below is a list of those who gave public oral evidence, in chronological order. Official transcripts (and in some cases video recordings) are available on the Commission's website.

Institute of Chartered Accountants in Scotland (ICAS)
Henry McLeish
National Farmers Union Scotland (NFU Scotland)
Scottish Arts Council
Scottish Natural Heritage
Scottish Screen
Scottish Council Foundation
Graeme Pearson
Society of Local Authority Chief Executives (SOLACE)
Association of Chief Police Officers in Scotland (ACPOS)
Jack McConnell MSP
Royal Environmental Health Institute of Scotland
CBI Scotland
Scottish Funding Council
Scotland's Colleges
Scottish Trade Union Congress (STUC)
Church of Scotland
Scottish Environment Link
Sustainable Development Commission: Scotland
Scottish Fishermen's Federation
Veterans Scotland

Equalities and Human Rights Commission (EHRC)
 Consumer Focus Scotland
 Royal Society of Edinburgh (RSE)
 Institute of Directors Scotland (IoD Scotland)
 Chartered Institute of Public Finance and Accountancy (CIPFA)
 Oil and Gas UK
 Scottish Tourism Forum
 Scottish Council for Development and Industry (SCDI)
 General Teaching Council Scotland (GTCS)
 Law Society of Scotland (LSS)
 Council of Ethnic Minority Voluntary Organisations, Scotland (CEMVO Scotland)
 Health Protection Agency (HPA)
 Food Standards Agency (FSA)
 Office of Communications (OFCOM)
 UNISON
 Federation of Small Businesses (FSB)

Private oral evidence sessions

The following witnesses gave oral evidence in private, and in most cases an agreed note of the main points of the discussion is published on the Commission's website (or will be in due course).

Alan Trench (Edinburgh University)
 Blair Jenkins (Chair of the Scottish Broadcasting Commission)
 David Cairns MP (former Scotland Office Minister)
 George Reid (former Presiding Officer of the Scottish Parliament)
 Lord Grenfell (Chairman of the House of Lords EU Select Committee)
 Lord Sewel (former Scottish Office Minister, Chairman of the House of Lords EU Select Committee's sub-committee D (Environment and Agriculture))
 David Steel (Lord Steel of Aikwood) (former Presiding Officer of the Scottish Parliament)
 Professor Russel Griggs (Chair of Regulatory Review Group)
 Ross Finnie MSP (former Minister for Environment and Rural Development, Scottish Executive)
 Sir Iain Anderson (Chair of "lessons learned" inquiries into foot-and-mouth disease)
 Sir Jon Shortridge (former Permanent Secretary, Welsh Assembly Government)
 Sir Muir Russell (former Permanent Secretary, Scottish Executive)
 Tam Dalyell (former MP)
 Office of Fair Trading
 Professor Francois Vaillancourt (Université de Montréal, Canada and a consultant to the World Bank)
 Alan Morris (Chairman of the Australian Commonwealth Grants Commission)

A: Principles

The Principle of Devolution and its Connection with Subsidiarity

- In some instances, the devolved Government explicitly seeks to frustrate other UK (reserved) policies. This is demonstrated by the Christmas and New Year's Day Trading Bill which was ostensibly about opening hours (devolved) but actually to do with employment law (reserved). (CBI Scotland)
- Concerns not necessarily about where power lies, but how disputes are resolved and the two Governments work together. (CBI Scotland)

The Union

- The strength of the veterans' community comes from the fact that it is a UK community ... we have a camaraderie that transcends service, regiment, ship or whatever. That is part of the glue of the Union. (Veterans Scotland)

The West Lothian / English Question and the case for federalism

- "Any devolution settlement for Scotland has to be acceptable in principle to a majority of UK residents as a whole". (Scottish Council Foundation)
- Devolution not just about what's best for people of Scotland but how benefits can be brought to the citizens of the UK. (RSE)
- "it is my personal perception that people think that there is an element of subsidisation of another part of the UK. Unless the situation is explained clearly...the potential exists for it to be misunderstood". (CBI Scotland)

B: Experience of Devolution

General comments

- Excellent access to Scottish Ministers and party spokespersons. (NFU Scotland)
- "Devolution has been characterised by much greater access and openness...because of the proximity of policy makers and officials to the public community". (Scottish Council Foundation)
- Use of term "Scottish Executive" not particularly helpful – meant some people didn't really understand what sort of power had been devolved. (Graeme Pearson)
- "Accessibility has been very good at ministerial level and at official level". (SOLACE)
- More opportunities for interaction at senior levels but this can also be a negative thing in that it invites introspection. (ACPOS)
- Haven't met the Parliament's original high ideals of getting people fully acquainted with the legislation that affects them. (LSS)
- Accessibility and finding "Scottish solutions to Scottish problems" has been key to the success of devolution. (SCDI)
- "Devolution has allowed more parliamentary time to be spent on...issues than would otherwise have been the case". (CBI Scotland)
- Scottish Parliament very accessible and responsive. (FSB)
- The Parliament has exceeded all my expectations. It is easy to become caught up in the building, personalities and issues but, in less than 10 years, it has become a functioning Parliament that makes many good policy decisions and, in the main, spends money wisely. It is a powerful voice for Scotland on many issues, to the extent that many Labour MPs who go to London are concerned about the shift in media coverage. The Parliament has existed for only 10 years and is in its infancy. I am eternally optimistic that things will change. What a marvellous idea, although it took 100 years to get there. The parliamentarians, the civil servants and the whole apparatus have served the country well. If that is only the start, what could we achieve in the future? (Henry McLeish)

- There's definitely less free voting and free spirit expression than I think anybody would have expected. And I think if the Parliament has disappointed in terms of expectation, it's possibly because of those two factors. (Jack McConnell)
- My view had always been that after two terms of the Scottish Parliament there was a need to have a proper structured review of the settlement. ... If I had still been First Minister today I would have hoped that a Commission of this sort was meeting and preparing to give me some advice on where things would be taken forward. (Jack McConnell)
- The aspects that have worked best have been the Parliament's closeness to stakeholders and its culture of openness and participation. (Scottish Environment Link)
- Devolution has allowed us to consider different policy issues. (Sustainable Development Commission Scotland)
- Devolution has led to an increased recognition of the sector and the value that it brings to the Scottish economy. (Scottish Tourism Forum)
- We can respond to things quickly and get our messages to the Scottish Government quickly. We have found the accessibility of Ministers and MSPs to be excellent. ... Westminster is remote from us, but we believe that we have good access to it. (Scottish Tourism Forum)
- "We feel that the current balance in the settlement is about right". (CBI Scotland)
- There is clearly confusion about which powers are devolved and which reserved. (IoD Scotland)
- No reason for changing the current settlement. (Oil and Gas UK)

Operation of the Parliament (committees, scrutiny of legislation, petitions etc.)

- Hoped there would be more opportunity for member-driven debates. (Scottish Council Foundation)
- Took a while for committees to build up experience. May still be some way to go. (Graeme Pearson)
- No obvious way for Scottish Parliament to scrutinise Westminster legislation in which it has a clear interest (e.g. right to time off for training where UK Parliament will legislate as this is employment law but skills and training policy is devolved). (STUC)
- May be a lack of awareness that it is possible to challenge Acts of the Scottish Parliament on the grounds that they are outside its competence. (LSS)
- Process for issuing the Presiding Officer's certificate in relation to competence is not transparent. Would welcome an expanded explanation as to how he reached his conclusions. (LSS)
- Can see some merit in having some public, possibly independent body giving an opinion on the question of competence at a pre-legislative stage. (LSS)
- Should consider redesigning stage three of the Bill process to allow time for proper reflection on late amendments. (LSS) & (SCDI)
- Committee system may not have worked as well as was hoped, probably due to the sheer volume of legislation it has been required to deal with. (SCDI)

- Hasn't been much scope for committees to initiate legislation as was originally envisaged. (SCDI)
- From the start, when we on the consultative steering group set out the procedures for the Parliament, we decided to try to go beyond Westminster and join together the functions of bill committees and select committees, partly because of the smaller number of MSPs. I am no longer convinced that that works as well as we thought it might. (Henry McLeish)
- The system in Holyrood of combining the committees and the functions of Select and Bill committees in Westminster, combining them into one committee in Holyrood, I think probably has ... has probably made the consideration of Bills less partisan from time to time. But I think it's almost certainly made the scrutiny role, the investigative role, of the committees more partisan than it should be, or would be at Westminster. (Jack McConnell)
- I can think of many examples over the years of work done by Westminster Select Committees, for example the Scottish Select committee or maybe more recently John McFall's Treasury Select committee which has had I think quite a big role in informing the debates on financial services that have been taking place in the UK over the last eighteen months, or two years. I'm not sure I can think of similar examples in the Scottish Parliament after nine years and I think that's a matter of some regret. (Jack McConnell)
- I always thought that that was wrong and I, to this day if I had an opportunity in the Parliament, I would vote to change that and to create a cooling off period of a week or so as a general rule between the stage two and the stage three deliberations. Because I think there is a need for Ministers and the Parliament sometimes to be able to reflect on decisions that are sometimes made in the heat of debate. (Jack McConnell)
- I think there's an opportunity for the Parliament to do some quite serious post legislative scrutiny that would perhaps... we could learn from that experience and over time the Parliament would become very good at reviewing legislation as well as passing it. (Jack McConnell)
- I think the Scottish Parliament exists to deal with legislation and the government of the devolved matters in Scotland. And it should concentrate on that. But it should also be a vehicle for the expression of public opinion and political opinion and a contribution to national debate. (Jack McConnell)
- Would be useful to have an end of year budget report to explain decisions around spending and how any underspend has been arrived at. (IoD Scotland)
- It is beneficial for committees to see things on the ground, instead of just sitting around a table like this taking evidence. If committees go out to see what is happening in practice, they can bring that experience to bear, instead of just hearing about issues in a theoretical way. Our experience of the committee system has been overwhelmingly positive. It has been helpful not just at legislative and policy levels but in addressing and increasing understanding of specific issues and building consensus on how best to handle them. (Scottish Natural Heritage)
- I wish to raise a point about amendments, particularly those that are lodged at a late stage in a bill's passage. ... There is nothing that says what effect amendments will have. Organisations ... need very quick legal advice about how the amendments will affect them, following which, if necessary, we would have to bring any issues to the attention of the committee. (Scotland's Colleges)
- Enhanced the rights of the consumer because it has allowed much more access to decision makers. (Consumer Focus Scotland)

Examples of benefits brought by devolution

- Is decision making in Scotland closer to the people? Is it more accountable? Is it more reflective of Scottish aspirations? Is decision making better? I would say yes, by and large over that period. So if those were two of the main aspirations of devolution, the objectives for devolution, then I would say that they had been achieved. (Jack McConnell)
- Scotland had been restricted to perhaps one or two pieces of legislation a year at Westminster, because of the competing demands in the House of Commons and in the House of Lords, and there were a whole number of areas where legislation in Scotland needed to be modernised, needed to change, or there were aspirations amongst the Parliament's members for legislative proposals that people wanted to deal with early on and prove the Parliament had a worth. (Jack McConnell)
- We always had good relationships with Government but devolution has strengthened them, as there is now more of a two-way communicative process. (Royal Environmental Health Institute of Scotland)
- Public funding of Scotland's colleges has increased since devolution. That has brought a corresponding increase in scrutiny ... The funding system for the colleges in Scotland has been benchmarked as the most cost effective in the United Kingdom. That is a major achievement, of which Scotland should be proud. (Scotland's Colleges)
- What has worked well has been the creation of a visible devolved unit for Scottish fisheries. (Scottish Fishermen's Federation)

C: Particular Features of the Scotland Act (Other than Specific Reserved Matters)

Listed below are points made about the merits (or otherwise) of key structural features of the Act – but excluding points specifically about the reserved/devolved interface (which are covered in a later section). Thus, for example, points about whether the Parliament's electoral system should be changed are included here, but points about whether it should be the Scottish or UK Parliament that decides are included later.

Transfer of functions

- I think the section 30 orders system is a very, very good system. I think its significance in the overall scheme of things is not fully appreciated. I think the ability of Westminster, in the right circumstances and with agreement between Edinburgh and London, the ability to devolve additional responsibilities to government in Scotland is a flexible tool that has been very well used in the first eight years. (Jack McConnell)

Implementation of EU legislation:

- Scottish Government often say they cannot do something in a particular way because they are required to implement EU regulations fully. (NFU Scotland)

Westminster's continuing right to legislate for Scotland (s.28(7)):

- Parliament has to make such decisions and is well able to do so. The problem really arises when the decision to use the convention is made in the interest of avoiding a discussion. That is not what the convention was designed for. (Church of Scotland)

- **Implementation of EU directives** (s.57(1), which gives the UK Government a facility to implement EU directives on devolved matters where the Scottish Government agrees, or is unwilling to do so itself)
 - Another area, perhaps more important, is consistency in the approach to the application of European legislation such as the habitats directive. For good legal reasons, among other things, there is limited scope for inconsistencies between applying European legislation in Scotland and in England. Co-ordination of that has been and is important. (Scottish Natural Heritage)

D: The Devolved/Reserved Boundary

Comments on further devolution

General comments

- It is important to have the ability to legislate on areas with particular trends or outcomes in Scotland, even if legislation is not actually forthcoming. (ACPOS)

Comments on particular functions currently reserved

- The headings that follow are in two subsets – general reservations in Part I of Schedule 5 (the constitution, the Crown Estate, foreign affairs, civil service); then the specific reservations in Part II. The latter are listed alphabetically (rather than in the order of the Schedule).

The constitution

- We can see benefits of a UK unified civil service in terms of expertise but are not convinced it's absolutely necessary. (Unison)

Foreign affairs

- We managed over the last few years with the right policies and using the tools of devolution, and using the UK's foreign embassy structure and agencies, we managed to attract more people to come and live in Scotland than had ever been the case before and go from one of the lowest levels of foreign direct investment, after the electronics crash of 99/2000, to I think the highest region in the UK. By the time I left office in May 2007 we established a presence in China and the USA and elsewhere and made an impact in the European Union. (Jack McConnell)
- I'm not sure that it would be particularly helpful to anybody, least of all those countries that need international aid and want to support further development, I'm not sure that they would necessarily welcome the development of completely separate approaches inside the UK. I think having a UK wide approach but realising there's some added value that could come from the devolved government, I think is a good balance and it's possible to do that within the existing legislation. (Jack McConnell)
- Scotland's influence in various parts of the world, the way in which Scotland is regarded in various parts of the world, should be reflected in the UK's foreign policy. It would be helpful if the Scottish and UK governments could work together to establish what those elements might be so that they could maximise their benefit. (Church of Scotland)

Civil Service

- Superficial debate is emerging around having a separate Scottish civil service from Westminster. However, I am not convinced that there are merits in that approach, although it may happen as the settlement evolves. (Henry McLeish)
- What being part of the home civil service did allow was interchange with the rest of the service and the benefits of being part of a bigger service. (Jack McConnell)
- If there is a conflict, it should be clear where responsibility lies and where accountability is. (Church of Scotland)

Broadcasting

- We are comfortable that if recommendations of the Scottish Broadcasting Commission about allowing Scottish Parliament and Ministers a greater role in scrutiny are implemented then there's no need for further devolution. (STUC)
- Much of broadcasting crosses national and sub-national boundaries (e.g. spectrum and the digital switchover). It is very challenging in isolation. (OFCOM)
- OFCOM has regular engagement at ministerial level with both the Scottish Government and Scotland Office. (OFCOM)
- It is important to see specifically Scottish content. (OFCOM)
- Regulation is a different matter, and the broadcasting commission is an excellent example of that. We did not suggest that broadcasting be devolved. One of the reasons for that was that, given the situation with global regulation and European regulation, not a lot is done in London. (Henry McLeish)
- While I think probably the overall legislative framework should remain at the UK level, I think there needs to be a significant strengthening of the Scottish voice in broadcasting. And I... and partly because of the need for quality and quantity of Scottish broadcasting, but partly also because of the impact that that then has on other devolved responsibilities like culture and economic development in the creative industries, that would be one example where I think it would be better... a more shared responsibility would be a better reflection of the needs of Scotland at this time. (Jack McConnell)
- The challenge, as identified by the Scottish Broadcasting Commission, which published its report last week after investigating this matter in some depth, arises from the fact that Scotland operates in a United Kingdom broadcasting system. For us to have Scottish national control of any bit of that system would probably disadvantage us at a UK and a global level. ... That said, there is clearly a challenge to ensure that the bodies that are charged with ensuring that broadcasting works properly in Scotland. (Scottish Screen)
- The Broadcasting Commission also recommends that the new body that Scottish Screen and the Scottish Arts Council will be antecedents of—creative Scotland—should have an influence over the content aspect of broadcasting. We regard that as appropriate, partly because it will encourage and maintain the artistic ecology in Scotland that allows creative people to make a contribution. (Scottish Arts Council)
- There are two aspects, which I describe as the mirror and the projector. We must consider both how Scotland is represented to itself and how Scotland is projected or represented to the rest of the UK and the world. It is vital that Scotland in all its diversity is better represented, including in cultural programming. (Scottish Screen)

- What we need is more film production in Scotland, and there are many ways of achieving that. Yes, more money on the table would help. That could come through a tax credit system or some other tax incentive system, but the main attraction to companies seeking to do business in Scotland is the cash element and they do not really mind whether it comes through taxation or another source. Straight grants, use of lottery funds for equity investments and tax credits all just become part of a broad package. (Scottish Screen)
- We would like more broadcasting that looks at the world from a Scottish perspective. (Church of Scotland)

Company law

- It is helpful that the business environment in Scotland is similar to that of the rest of the UK in terms of attracting businesses to Scotland. (ICAS)

Competition

- If Scotland were a more expensive place to do business than the rest of the UK then it would affect investment decisions. (CBI Scotland)
- The major issues that we are engaged with are consumer protection and competition law, both of which are reserved to the UK Parliament. In our view, there is no reason why they should not continue to be reserved. (Consumer Focus Scotland)

Consumer protection

- This should be devolved. (Unison)
- Introduction of the Local Better Regulation Office is an English solution to a problem that does not exist north of the border. (CBI Scotland)
- "The Local Better Regulation Office...was set up by a UK Act of Parliament, but it was really designed for England and Wales". (SCDI)
- The issue in respect of the consumer interest is to find practical solutions, taking as a given the constitutional settlement. (Consumer Focus Scotland)

Control of medicines and misuse of drugs

- Control over drug policy makes no difference to how the police respond to drug abuse. (Graeme Pearson)
- It would be helpful to have the ability to legislate but would create problems if there were substantial differences in approach on either side of the border. (ACPOS)

Crime

- We would prefer to see more debate before committing to the pursuit of legislation to deal with the recovery and allocation of criminal assets. (ACPOS)

Elections

- The current system is overly complex – the current system of constituencies and the various ways in which people are elected to represent them should be revisited. (SOLACE)
- I think the conduct of elections in Scotland, and this would be the case for Wales and Northern Ireland too, does have an impact on the conduct of elections across the whole UK. And we shouldn't just go off and do our own thing in Scotland. We should recognise the responsibility that comes with that decision making power. (Jack McConnell)

- We are content with the status quo. However, ... if a decision is to be made about changing the system, the decision should reside in Scotland with the Scottish Parliament. (Church of Scotland)

Employment law and industrial relations law

- We can see that arguments could be advanced for moving aspects of employment policy into a Scottish context which fit quite well with what is happening with regard to employability and the skills environment. (Scottish Funding Council)

Energy

- The question of what sort of power generation capability to accept is arguably a matter for planning powers but we recognise this is an area that is genuinely cross-cutting. (RSE)
- Given that you have Scotland, the UK, Europe and the world, which I call different political spaces, what on earth would be the reason for saying, for example, that responsibility for energy regulation should be transferred to the Scottish Parliament? That would be a worthless gesture, because all the big decisions are part of a wider dialogue that often takes place out with the UK. (Henry McLeish)

Equal opportunities

- A case could be made for devolving responsibility for implementation and compliance without devolving responsibility for legislation. (STUC)
- The encouragement of equal opportunities that is stipulated in the Scotland Act 1998 is not embedded in Scottish policy. There seems to be less of an understanding of the implications of that stipulation than there is of the positive equalities duties. (EHRC)
- The implementation of the Equality Act 2006 during this year and next year will give us further opportunities through UK legislation to find ways of strengthening equality law without needing to devolve more powers to Scotland. (EHRC)
- The way in which we work has to reflect the current settlement. (EHRC)
- The strong link between equalities and employment should remain harnessed. (EHRC)

Firearms

- The Scottish Parliament could address public concern if it had responsibility for gun control but this might make things increasingly difficult to administer in a UK environment. (Graeme Pearson)
- Legislative powers for the Scottish Parliament might not actually lead to changes on the ground. (ACPOS)
- This should be devolved. (Unison)

Food labelling

- There is an advantage in efficiency terms for having some power to tweak advice to consumers on a UK basis. (FSA)
- If the Scottish Government reduced spending on food standards then FSA would prefer to divert money from elsewhere to maintain a UK wide set of standards. (FSA)

Health and safety and welfare at work

- “Scottish Government should have responsibility to direct enforcement in the context of a UK-wide legislative framework”. This could result in a different emphasis for health and safety inspectors in Scotland. (STUC)
- “We might try some different approaches in Scotland that might, for example, place a greater priority on health and safety”. (Unison)

Immigration and asylum

- I am not for a minute suggesting that immigration should become a devolved matter, but if the English population goes up and the Scottish population does not go up, as some people have suggested will happen, with the result that Scotland has an ageing population and a declining workforce, we might need to have a different code or a different points system from the UK. (Henry McLeish)
- This could be improved by allowing the Scottish Parliament to be responsible for identifying the occupations in which there are specifically Scottish shortages, rather than holding it to UK designation. ... There could be a permit to work that has a residency requirement attached to it, but a way would have to be found to enforce it. (Church of Scotland)

Insolvency law

- We feel very strongly that personal insolvency should remain devolved. (ICAS)
- Corporate insolvency should become reserved as there is little corporate insolvency experience in the Scottish civil service and while implementation of policy on corporate insolvency is devolved, Scotland is slipping behind England in that regard. (ICAS)

Marine environment and marine transport

- We would like fisheries and nature conservation to be joined up. (Scottish Environment Link)
- I am not sure whether a change in the devolution settlement would resolve that, because there would still be a multiplicity of organisations. (Sustainable Development Commission Scotland)

Nuclear weapons / weapons of mass destruction

- We can't think of a strong argument to separate from defence, even if not keen on the policy. (Unison)
- We cannot really conceive any way in which, within a continuing United Kingdom, powers over nuclear weapons could themselves be devolved. (Church of Scotland)

Post Office

- If the financing of post offices in Scotland was the responsibility of the Scottish Parliament, the debate would be more real. (Consumer Focus Scotland)
- Given the importance of post offices to the well being of Scotland's communities and their link with many other services that communities receive, it would make a great deal of sense to amend the Scotland Act 1998 so that the Scottish Government has responsibility for the subsidy. It would then have to make decisions on the priority of that compared with other issues that it faces. If we are to have a more joined-up government in Scotland, there is powerful case for that. (Consumer Focus Scotland)

Regulation of the medical and dental professions, and postgraduate training

- We can see advantages to devolving new areas of professional regulation. (STUC)

Research Councils

- The system of research funding has operated successfully in the UK for several decades. (Scottish Funding Council)
- There is potential for policy decisions being made by the Department for Innovation, Universities and Skills (which has UK responsibility for Research Councils) to not fully recognise the Scottish situation. (Scottish Funding Council)
- The system is not perfect but has the advantages of placing Scottish universities within a wider context with greater international reach. (Scottish Funding Council)
- "The ability of Scotland's research base to play as part of the UK is hugely beneficial because of the size and scale of the operation". (Scottish Funding Council)
- The continuation of broader support for Scottish universities from within the UK Research Council framework is vital. Arrangements seem to be working well. (RSE)

Skills

- It is difficult to conceive having separate skills councils in Scotland – would not be welcomed by business. (Scottish Funding Council)
- The UK skills strategy and the Scottish skills strategy tend to go in opposite directions instead of running parallel or converging. That, in particular, is causing colleges problems. ... Tension has arisen because we are dealing with a UK skills strategy covering four nations and with sector skills councils that are trying to impose a UK solution on a devolved matter. ... There has to be such a strategy. The economies within the British Isles are completely interlinked. (Scotland's Colleges)

Social Security

- We can see it would be desirable to "have the capacity to influence the levels of support that are available to students in way that meet Scottish circumstances". (Scottish Funding Council)
- We see benefit in bringing together areas (like housing benefit) where policy (on housing) rests with Holyrood but finance remains with London. (STUC)
- You can't reform council tax without control over council tax benefit. (Unison)
- Housing benefit should be devolved. (Unison)
- There are people in need who are not covered by the current benefits system, the capacity should be made available to make changes at the margins. (Church of Scotland)
- Given the size of the tax base, we think that supporting social benefits would cause taxpayers in Scotland quite a lot of problems. (Consumer Focus Scotland)

Universities

- The system of research funding has operated successfully in UK for several decades. (Scottish Funding Council)
- We are not convinced that any effect that the abolition of tuition fees might have on university funding in Scotland is a consequence of devolution – there were separate powers to do it previously. (Scottish Funding Council)

Welfare to work policy

- There can be some tensions as responsibility for welfare benefits lies with Westminster. This requires effective dialogue between agencies, governments and local government. (SOLACE)
- Welfare benefits, the workforce plus scheme and attendance allowance are issues that merit review. (SOLACE)

Comments on further reservation

- We have not detected any views for a return of powers to Westminster (although we are aware they exist). (STUC)
- So much of food safety legislation comes via Europe we cannot see a pressing need for re-reservation. (FSA)

Comments on shared/concurrent competence

- Legislation on corporate manslaughter, where the UK Parliament has responsibility for health and safety and company law, and the Scottish Parliament has responsibility for the judicial system, would benefit from some form of shared responsibility and closer working. (STUC)
- With a clear demarcation of responsibility there is inevitable debate along the borderline. Introducing a grey area of shared competency means there may be issues for which no one is deemed to be responsible. (RSE)
- Shared competence would involve a concept of exclusive competency for the Scottish Parliament which currently doesn't exist. (LSS)
- Fuel poverty is a useful example of where shared competency might work. (Unison)
- Housing benefit, along with some employment measures and European issues such as the greater emphasis on the environment and energy, as we have discussed, is an area that I hope the Commission will agree need not be either reserved or devolved. As the globe and Europe shift, perhaps the UK must shift. Perhaps we need more shared competences and shared powers. That would make much more sense, and would avoid the big drama between the politics of separation and the politics of status quo unionism. (Henry McLeish)
- I actually think the public would welcome politicians being forced, through shared competencies, to work together. I don't think the public would have any difficulty with that. (Jack McConnell)
- There would have to be some sort of rule whereby a [food] standard could not be drafted that would have a serious impact on the competitiveness of businesses the length and breadth of the UK. (Royal Environmental Health Institute of Scotland)

The devolved/reserved boundary – problematic interfaces

Animal health and funding

- The block grant does not include the animal health budget which remains with DEFRA even though responsibility for animal health is devolved. (NFU Scotland)

- Scotland has an excellent reputation for controlling animal diseases. (NFU Scotland)
- There are concerns about DEFRA's attitude towards EU proposals to pass costs of disease control to the farming industry. (NFU Scotland)

Charity law

- We have heard anecdotal evidence that charities that want to fund freely across the UK have to comply with more than one regulatory regime. There should be a way to operate across the UK if you are based and properly regulated in one part of the UK. (Scottish Funding Council)
- The tax regime that applies to charities is based on the English Charities Act: the list of charitable purposes in Scottish charities legislation is irrelevant from a tax law perspective. (LSS)
- Charity legislation should remain devolved but it might be useful if there were mutual recognition by regulators / tax authorities of charities operating under jurisdictions on either side of the Border. (ICAS)
- It is anomaly that Scottish charities are subject to HMRC following the English definition of charities for the purpose of tax relief. (ICAS)

Climate change

- It would be very difficult to come up with an answer as to whether or not climate change is an individual policy that can be devolved or reserved. (Scottish Environment Link)
- If there were only UK legislation on the issue, the Scottish Government could pass responsibility to the UK Government. (Sustainable Development Commission Scotland)

Crime

- We believe the existing system for counter-terrorism could be improved upon. Not by creating separate jurisdictions but by improving the allocation of funding for this work in Scotland and by increasing understanding of the Scottish dimension in the rest of the UK. (ACPOS)

Energy

- It is helpful for Scotland to "have more of a focus" in connecting energy and planning policy which is difficult under current settlement. (Scottish Council Foundation)
- "UK and Scottish governments need to get together to ensure that we have an economical and secure supply of energy to keep our economy going" It is not a question of moving the reserved / devolved boundary. (IoD Scotland)
- It is not practical for the generation and distribution of energy to be anything other than reserved. (IoD Scotland)

Equalities / family law

- It is out of kilter that Scotland should not have responsibility for equal opportunities. (LSS)
- The challenge might be that, over time and with greater devolved powers, a postcode veteranism might arise. We do not want that to happen. (Veterans Scotland)

- I think devolution was a recognition of the fact that there are differences. And so if a decision is kept reserved that may well be the best decision for it but it still needs to involve looking at how that impacts on communities in Scotland, whether there are differences that maybe need to be factored into that due to the distribution of the communities or anything else. (CEMVO Scotland)

Environmental regulation

- The important role of the Joint Nature Conservation Committee in co-ordinating the work of the various devolved environmental agencies is key to ensuring consistency, particularly with European legislation. (Scottish Environment Link)

Food labelling and trading

- If the legislation were changed in such a way that the regulating part of it was different, that would probably create some problems, especially from a business point of view. (Royal Environmental Health Institute of Scotland)

Immigration / social work, education and the child hearing system

- Scotland should have “a distinctive presence” in UK immigration policy to allow flexibility in tackling local labour market needs. (Scottish Council Foundation)
- Recently devised points system may not be adequate for Scotland’s needs – Scotland needs more of the right people and the challenges Scotland faces are different from those elsewhere in the UK. (IoD Scotland)
- “it is clear that there must be a mechanism by which powers on migration and how employers recruit from abroad could, to some extent, be devolved to Scotland”. (SCDI)

Marine environment

- The question is how the two Administrations can ensure that there is a logical framework to manage the marine environment sustainably ... we support what is called a regional seas basis for planning – joint planning across regional seas – which was recently piloted in the Irish Sea and involved the UK Government, all three devolved administrations and the Republic of Ireland. (Scottish Environment Link)
- Fishing in Scotland is devolved so decisions on marine nature conservation might not necessarily take full account of all stakeholders ... for that reason, we say that the additional devolution of marine nature conservation out to 200 nautical miles would make perfect logical common sense ... the devolution of marine nature conservation to match fisheries would make sense, but there needs to be an associated overlay that deals with the regional sea. That would also have an international context, given European legislation. (Scottish Fishermen’s Federation)

Social care policy / social security

- Good case for Scotland to have more control over welfare system to tackle local issues. (Scottish Council Foundation)

Student funding and benefits

- Can see it would be desirable to “have the capacity to influence the levels of support that are available to students in way that meet Scottish circumstances”. (Scottish Funding Council)

- Our submission raises the issue of having student support mechanisms put in place by the Scottish Government and a benefits system that is reserved to the UK. There is increasing evidence that problems are arising from that. Working out the funding that a student will receive is so complex that it is almost impossible for a potential student to work it out for themselves. ... It is clear that a more joined-up system would benefit students and society as a whole. (Scotland's Colleges)
- The courses that colleges run generally lead to employment within the local economy and are carefully tailored to that economy. As such, the only way we can resolve the differences is to devolve the benefits system. (Scotland's Colleges)

Time

- To have anything different to how we currently operate would cause problems. The current situation works well for how the UK does business. (Scottish Tourism Forum)

Transport

- The British Transport Police is a small organisation with specific remit. I'm not sure it would be sustainable to split and have a Scottish force. (Graeme Pearson)
- We have no clear view on how a devolved transport police might work in Scotland. (ACPOS)

Interpretation of the devolved/reserved boundary

- I have no appetite to reserve "global" or "cross-frontier" crime and prefer to have a Scottish response to organised crime. (Graeme Pearson)
- It is absolutely right that, at times, the UK should, if not question our priorities in Scotland, examine issues affecting legality and technicalities. (Henry McLeish)
- We in the environmental field operate very firmly within the European legislative context in much of what we do. To that extent, there is already a division between the high-level approach, which is by and large determined at European level, and the more detailed implementation. (Scottish Natural Heritage)
- On a day-to-day basis, it does not make a huge difference. No major issues have arisen in that respect. (Royal Environmental Institute for Scotland)

E: Financial Accountability

Comments on status quo (block grant and Barnett)

- Basically, we have a budget that is given by Westminster and we spend it, but what about its size and the incentives to be more effective as an economy and in spending? (Henry McLeish)
- The Barnett Formula is probably at the end of its useful life but we see no value in assigned revenues. (Unison)
- The Barnett Formula gives stability and predictability and it did have a basis historically in need. And therefore it shouldn't be ditched without some really quite serious consideration and... of the consequences of moving away from it. (Jack McConnell)
- We shouldn't think about Scotland's tax powers in isolation – this is a UK wide matter. (SCDI)

- A more transparent approach to budgeting across the whole UK would make the sort of decisions that are made about consequential either more understandable and therefore more acceptable, or they'll allow a proper challenge and dialogue to take place where they're wrong. (Jack McConnell)

Comments on a needs-based alternative to Barnett

- Any replacement for Barnett must be based on the best available assessment of need in Scotland. (STUC)
- It is important that clear principles in relation to equity and social provision are maintained. (STUC)
- "No single approach to taxation or fiscal issues will work on its own. ...It has to be a mixture, judging from experience elsewhere in the world". (RSE)

Comments on the existing 3p tax-varying power

- What benefit would accrue from having even greater flexibility with tax revenues (given the 3p power hasn't been used)? The key issue is to maintain stability. (SOLACE)
- Through the referendum, we imposed a tax measure that, on reflection, I do not think can ever be used, partly because it would put us at a competitive disadvantage compared with just across the wall in Newcastle. That is a strong constraint on any government—certainly it has been during the past decade. It is a power without context. (Henry McLeish)
- I'm not convinced it would be wise to use it, given the costs of putting in place the administrative structure to use it. But I don't think it's impossible now if it was to stay in place for another decade that the Scottish Parliament wouldn't use it at some point. Either to increase spending or to decrease spending. (Jack McConnell)
- Having differential tax rates in different parts of the UK would lead to greater bureaucracy and complexity. (CBI Scotland)
- We wouldn't necessarily want to see the tax varying power removed, but are not terribly keen to see it used. (IoD Scotland)
- There is a need to be allied with other powers in order for it to be strategically focused and delivered. (Church of Scotland)

Comments on assignment of taxation

- "Arguments for assigned revenues are compelling". It would require some sort of "topping-up" mechanism for times when Scotland was facing unusual pressures such as an economic downturn. The other side of coin is that Scotland might contribute more when it's doing better. (Scottish Council Foundation)
- It is perfectly doable to assign revenues like VAT and income tax. (ICAS)
- We are not convinced that assigning tax revenues makes a lot of difference. (CBI Scotland)
- There is no reason why hypothecation of taxes on oil and gas should cause problems for the industry. (Oil and GAS UK)

Comments on greater tax-raising powers / fiscal autonomy

- There could be tax competition between Scotland and the rest of the UK but this would need greater regional autonomy in England and Wales. (Scottish Council Foundation)
- We have ruled out the proposal of the Scottish Parliament having responsibility for corporation tax. (STUC)
- We are not opposed to the Scottish Parliament having the ability to raise its own taxes. (Unison)
- If the political will were there then Scotland could support its own tax system (following the example of the Republic of Ireland) but the process of any such change has to be considered carefully. (ICAS)
- How you then create inside a unitary taxation structure and seriously integrated economy like the UK a separate structure for tax raising in Scotland with some other formula to replace the Barnett Formula that would exchange money in one direction or the other, to either pay for reserved services or pay for the gap in devolved services, is I think a huge challenge. (Jack McConnell)
- You could have income tax in Scotland coming down by a couple of pence and VAT going up by one pence to compensate for it and that would make Scotland different from the rest of the UK. But it's not going to vary the overall tax take and therefore have an impact on the decisions of the Scottish Parliament and where it spends money. So I think it's really important to be very clear about what the problem we're trying to address is. (Jack McConnell)
- Only increased fiscal authority would give the Parliament the capacity to reflect [social justice] in its policies. (Church of Scotland)
- Taxation could be used to assist growth of the economy. (Scottish Tourism Forum)

Comments on borrowing powers

- It is absolutely legitimate for the Scottish Parliament to have borrowing powers (as regards to capital) and anomalous that local authorities can borrow, but the Parliament cannot. (Scottish Council Foundation)
- Prudential borrowing powers should be available to the Scottish Parliament. (STUC)
- The more mature the solution or the settlement becomes, the more there will be an argument to take more ownership of our borrowing, but this is certainly not the time for that to happen. (Henry McLeish)
- It is ludicrous that local government has borrowing powers and the Scottish Parliament doesn't. (Unison)
- I think if you receive evidence that shows that the existence of borrowing powers would improve either the quality of life in Scotland or the decision making of devolved government in Scotland then you should look at it. But I think somebody would need to give you a very good concrete example of where that would be useful. It doesn't currently exist. (Jack McConnell)

General comments on financial accountability

- If a starting point is accountability then there is an argument that responsibility for raising and spending revenue should drift down to the most appropriate (local) level. (Scottish Council Foundation)
- Scottish people understand that the Scottish Parliament is accountable for the money it is given to spend: raising its own revenues wouldn't necessarily improve accountability. (STUC)
- Accountability already exists. The Scottish Parliament is accountable for spending the block grant. "It is questionable whether accountability would be increased if the Scottish Government was responsible for raising its own income". (ICAS)
- MSPs are not accountable as they do not have power over tax and are not elected on the basis of what they say about taxation. (IoD Scotland)
- The decisions over the last year ... to create free prescription charges, to remove all bridge tolls, to end the graduate endowment and so on, were individually not that significant in terms of the overall budget. Cumulatively they will have an impact on the amount of money available and that will have an impact on education and health spending in Scotland in comparison with the rest of the UK. And the current Government of Scotland in Edinburgh will need to explain that. And they will be held accountable for that. So we're kind of in the sort of territory when financial accountability within the block grant starts to happen. (Jack McConnell)

F: Intergovernmental Relations

General comments

- It is a problem having UK Ministers who also represent English interests and can mean that the English view becomes the default view of UK ministers who are supposed to be representing all parts of the UK. (NFU Scotland)
- England could be represented by a Minister of State at quadrilateral negotiations, leaving the Secretary of State to truly be representative of the UK as a whole. (NFU Scotland)
- We should not see the institutions as entirely separate bodies that cannot talk to each other. (Jack McConnell)
- Insularity is certainly something that we need to guard against. I am not saying that we need to take a constitutional legislative approach in that respect, but we really need to encourage people to meet and share experiences. One of devolution's benefits has been greater divergence of practice: we must capitalise on that by comparing and contrasting approaches, finding out what works and deciding whether differences in approach just reflect different circumstances or whether one approach is better than another. (Scottish Natural Heritage)
- Good relations are probably more important than the devolution of power to change a situation. (Veterans Scotland)
- The Scottish Parliament does obviously have a role in debating issues it may not have jurisdiction on as well and I think people do welcome that as a chance to express opinions. They wouldn't want it everyday because I think they would see it as a waste of Parliament's time, but I think it would be sometimes welcome seeing the Scottish Parliament debating issues that they maybe know that it can't directly change one way or

the other because it can show in some ways that that then can be passed on as an opinion of the Parliament as an interaction between the different systems. (CEMVO Scotland)

Comments on Scottish/UK relations

- We are not sure what is ultimately achieved by the interventions of the Scotland Office at a UK Government level as they are simply one voice amongst many. (SCDI)
- "The intergovernmental aspect ... is probably the weakest part of the relationship". (Graeme Pearson)
- "There is a lack of understanding at Westminster of peculiarly Scottish aspects". (ACPOS)
- Various mechanisms exist to identify issues that might be caused by the devolution settlement including reciprocal arrangements for officials to attend each others' meetings. (Scottish Funding Council)
- Scottish organisations that deal at both a Scottish and UK level may have tended to concentrate on the former to the detriment of relations with the latter and ability to make an impact at a UK level. (SCDI)
- Scotland Office has not provided effective input into Whitehall on behalf of Scotland. If liaison doesn't take place via the Scotland Office then we question the purpose of that Office. (RSE)
- "Officials on either or both sides do not seem to be fully aware of their responsibilities to achieve progress, decisions and effective governance rather than merely to promote a particular view". (RSE)
- JMCs (Joint Ministerial Councils) should come into play a lot more quickly when a potentially difficult issue is identified. (RSE)
- Governments can be held to account for their actions at JMC by their respective parliaments so they are not unaccountable mechanisms. (RSE)
- We have concerns that UK departments leading on the implementation of EU directives do not understand the Scottish context or consult appropriately. (GTCS)
- When the Parliament was established in 1999, there was a great deal of familiarity and political kinship, and we did not give enough importance to the machinery of government that we had established by virtue of the Scotland Act 1998. We did not use the machinery. On very few occasions was the whole panoply of the infrastructure that we had put in place mobilised on any particular issue. (Henry McLeish)
- We should have formal machinery involving Ministers meeting and having dialogue. The issues will not necessary be vastly important ones, but the machinery needs to be in place so that the settlement evolves, with an impact being made both in London and in Scotland. (Henry McLeish)
- I would like there to be greater scrutiny of the constitutional settlement at Holyrood. Currently, that is not being done. Ministers, conventions, concordats and JMCs all go on without any effective parliamentary scrutiny and, by definition, without the public having a say. (Henry McLeish)
- There are three increasingly strong devolved governments that have significant responsibilities. And I think UK Ministers, UK political parties as well as all of us in the

devolved nations need to be able to adapt the way that we conduct our public discourse to deal with them. (Jack McConnell)

- So I think there needs to be a more transparent relationship and a more formalised approach to dispute resolution in order to deal with the situations when the bilateral relationships are not working. (Jack McConnell)
- Proposals for change in the welfare and benefits system are apparently much better integrated with service patterns in England than they are with the patterns in Scotland. (Church of Scotland)
- Whatever the balance between devolved and reserved power there will always be some areas of difficulty and overlapping responsibility. We need not only more effective joint working between the different levels of government but a bit more transparency on that. (Church of Scotland)
- We would like to see better relationships between MPs and MSPs. (Church of Scotland)
- A clearer and more transparent process would be welcome. (Scottish Environment Link)
- Even when there are differences in policy aspiration, civil servants and departments in the UK and parts of the devolved administrations try to resolve them or limit their consequences. (Sustainable Development Commission Scotland)
- A mechanism for the early resolution of disputes would help and we would support it. (Scottish Fishermen's Federation)
- The recent MOD command paper ... was issued in consultation with the Scottish Government, which issued its own mini 'tartan' version ... it was clear from the two documents that collusion in its best sense had taken place. (Veterans Scotland)
- One challenge of the devolved system is to ensure that there is appropriate co-operation between those who have different powers within it, none of whom can have complete autonomy in the areas in which they act. (Consumer Focus Scotland)
- There was a common agenda to ensure that Scotland did not lose out and that Consumer Focus Scotland had exactly the same powers as our counterpart in England. That is a good example of an issue on which the interests of the Scottish Government and the Scotland Office coincided and they worked together extremely well. (Consumer Focus Scotland)
- People don't want to see constant bickering between Westminster and Holyrood with nothing getting done. (CEMVO Scotland)

Comments on Scottish representation at EU (and international) level

- Scottish MEPs are "good at robustly expressing a Scottish view and work well together in taking forward a joint Scottish approach". (NFU Scotland)
- There is a lack of scrutiny or consideration of impacts of EU directives which have a disproportionate effect on Scotland, e.g. the Nitrate Directive. (NFU Scotland)
- There are some difficulties in raising the profile of issues that are important to Scotland but not necessarily so elsewhere, e.g. abuse of diazepam. (Graeme Pearson)
- Scotland should be able to influence UK government decisions pertaining to Europe. (STUC)
- "Scotland has found it extremely difficult to make its voice heard at a European level" (in relation to some animal health issues) because interactions with DEFRA have been

weaker than they should have been. This may be the fault of both or either side(s). (RSE)

- It is not a question of Scottish power to influence European decisions, but Scotland's ability to influence Whitehall. (RSE)
- Under settlements in other parts of Europe, including Germany and Spain, there is – albeit to different degrees – better machinery for involving the sub-national governments in the direct affairs of Europe, or a better relationship with the national government in discussing the issues concerned. (Henry McLeish)
- A greater opportunity within a European Union structure for a voice for Scotland, for Flanders, for Catalonia, for Bavaria and for other sub-national governments I think is an important step. But I think it should be done in a properly organised way. I think if the UK and Scotland were to go off in one direction when it wasn't properly agreed with all the other European member states then we could damage Scottish and UK interests rather than enhance them. (Jack McConnell)
- There are regions, devolved regions, elsewhere in the European Union who looked jealously at the role that Scotland had within the UK delegation. And the role that Scotland had inside the UK in the determining of positions. I think by and large the relationship did work well and we in Scotland were able to influence the UK position and we were able to be part of the UK's representation. And where necessary, we were able to go out with that and conduct discussions, provoke dialogue, speak to Commissioners, influence the decisions that were going on our own terms sometimes too. (Jack McConnell)
- Since 1999 Scotland has, in legislative terms, gone its own way in a number of areas that are relevant to our work. As a consequence, it has produced solutions that are better adapted to Scottish circumstances, which are undoubtedly different. (Scottish Natural Heritage)
- A more transparent and – from the external stakeholder's point of view – understandable process would be desirable. (Scottish Environment Link)
- Because of the nature of the industry, we have not found it overly difficult to influence the UK's position. (Scottish Fishermen's Federation)
- We are helped by the existence of Scotland House and by the fact that Scotland is well represented on the UK negotiating team at a working group level, which is where a lot of the ground is covered. We also have access to and a relationship with the civil servants ... we feel that the system is adequate ... I believe that our voice is being heard. (Scottish Fishermen's Federation)
- We do not have a problem with the UK Minister fronting up the team... it is not helpful to display [conflict] to your colleagues if you are trying to influence an outcome. (Scottish Fishermen's Federation)

G: General/Miscellaneous Comments

The Commission itself and its remit

- Many do not understand the terminology and feel excluded from the debate. Some do not feel 'Scottish' and so do not feel able to comment on the future of Scotland. The Commission needs to discuss everyday issues so that people can make a connection and relate to the debate. This would help people understand devolution. (CEMVO Scotland)

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A: Questionnaire Feedback

One of the ways in which the Commission sought evidence was through a questionnaire. This was available on the Commission website enabling people to contribute to the work of the Commission in a quick and easy way.

The questionnaire was also distributed to attendees at the Commission's local engagement events and was publicised by the Commission's leaflet which was distributed across Scotland, which led to a number of requests for the questionnaire in hard copy.

The questions asked included:

- How successful do you think the Scottish Executive/Scottish Government has been in terms of delivering effective government in devolved areas?
- How successful do you think the Scottish Parliament has been in providing parliamentary scrutiny and oversight?
- Do you consider that evolution has produced results that better serve the people of Scotland than would have been likely or possible under pre-devolution arrangements?
- Do you believe the people of Scotland would be better served if some of the matters currently reserved to the UK Parliament were now devolved to the Scottish Parliament?
- Do you believe that the Scottish Parliament should have greater financial accountability and be responsible for raising a greater proportion of its income by having increased taxation powers?
- How effective do you think the UK Government and the Scottish Government have worked together since 1999 in order to secure a good deal for Scotland, particularly within the European Union?

In total over 700 questionnaire responses have been received (380 online and 325 hardcopy). As these are still coming in, only a brief overview of responses so far is currently provided. A more detailed analysis of the questionnaire responses will be posted on the Commission's website in due course.

Summary of views

The majority of questionnaire submissions (both online and hardcopy) expressed views that the Scottish Executive/Scottish Government has been successful (between 'quite' and 'very') in terms of delivering effective government in devolved areas. Most respondents also felt that the Scottish Parliament had been similarly successful in providing effective parliamentary scrutiny and oversight. As a whole, respondents expressed that devolution has produced results that much better serve the people of Scotland, compared with what would have been possible under pre-devolution arrangements. Overall, views were in fact that some powers currently reserved to the UK Parliament should be devolved to better serve the people of Scotland and strengthen the United Kingdom. Energy, immigration and broadcasting were some examples cited that could be further devolved.

Looking at various features of the Scottish Parliament the questionnaire asked if they should be changed, reconsidered or left as is. In terms of the number of MSPs and the electoral system, most considered to leave them as is, with a minority recommending reconsideration or change (e.g. stating that 129 MSPs may be too many). In terms of the unicameral Parliament, again the status quo was preferred, with some recommending a reconsideration. Tax-varying powers however was the one feature that clearly had mixed views - some want a definite change, some want a reconsideration and some want them left as is.

With regards to financial accountability, the questionnaire asked if the Scottish Parliament should have greater financial accountability and be responsible for raising a greater proportion of its income by having greater taxation powers. Here views were mixed, however, on balance most submitters felt there was a case for greater taxation powers.

In terms of intergovernmental relations, views were mixed on whether or not the UK Government and the Scottish Government have worked well together since 1999 in order to secure a good deal for Scotland, particularly within the EU. On balance, it would appear that most think there is room for improvement in how effectively the UK Government and the Scottish Government worked together.

The questionnaire also provided an opportunity to provide additional views and suggestions. On the whole these views were consistent with the views and opinions the Commission heard as part of its local engagement events across Scotland. Some of the more common views or comments expressed included that the public needed more information about which Government (Scotland or the UK) was responsible for certain functions. More information was also sought around the sources, effects and tradeoffs of spending decisions. Another suggestion was that Scotland's interests could be better reflected in EU Fisheries policy.

B: Other sources of evidence

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- 3 Centre for Public Policy for Regions (Christie A. and Swales J.K.), *The Barnett Allocation Mechanism: Formula plus Influence? (Discussion Paper No.10)* (2005)
- 4 Consultative Steering Group, *Shaping Scotland's Parliament: Report of the Consultative Steering Group on the Scottish Parliament* (Scottish Office, 1998)
- 5 Explanatory Notes to Scotland Act 1998 (OPSI, 2004)
- 6 Financial Issues Advisory Group, *Principles of the Scottish Parliament's Financial Procedures* (Scottish Office, 1999)
- 7 Gay, O., *The Scotland Bill: devolution and Scotland's Parliament* (House of Commons Library, 1998)
- 8 Gay, O and Holden H., *The West Lothian Question*, Standard Note: SN/PC/02586 (Parliament and Constitution Centre, 2008)
- 9 Goldsmith, Lord, *Citizenship: Our common bond* (Ministry of Justice, 2008)
- 10 Greer, S. L. and Trench, A., *Health and Intergovernmental Relations in the Devolved United Kingdom* (The Nuffield Trust, 2008)
- 11 Hazell, R. ed., *The State and the Nations: The First Year of Devolution in the United Kingdom* (Imprint Academic, 2000)
- 12 Hazell, R. ed., *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom* (Imprint Academic, 2003)
- 13 Hazell, R. and Rawlings, R., *Devolution, Law Making and the Constitution* (Imprint Academic, 2005)
- 14 Hazell, R. et al, *Towards a new constitutional settlement. An agenda for Gordon Brown's first 100 days and beyond* (Constitution Unit, 2007)

- 15 Heriot Watt University, *First Evidence from the Independent Expert Group to the Commission on Scottish Devolution* (November 2008)
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- 17 HM Treasury, *Needs Assessment Study – Report: The Report of an Interdepartmental Study coordinated by HM Treasury on the Relative Expenditure Needs in England, Scotland, Wales and Northern Ireland* (London, 1979)
- 18 House of Commons, Scottish Affairs Committee, Fourth Report of Session 2005-06, *The Sewel Convention: the Westminster perspective* (HC 983)
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- 32 Scottish Constitutional Convention, *Further steps towards a scheme for Scotland's parliament: a report to the Scottish Constitutional Convention* (Edinburgh, 1994)
- 33 Scottish Constitutional Convention, *Scotland's Parliament, Scotland's Right* (Edinburgh, 1995)
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C: UCL Constitution Unit Report to the Commission on Scottish Devolution

Earlier this year the Commission commissioned the University College London's Constitution Unit to prepare an analysis of the last ten years of Scottish Devolution. We are extremely grateful to them for kindly undertaking this work and for producing it in a timely manner in July 2008. It is very helpful, providing an excellent background and chronology of events.

This section includes, in its entirety:

Paun, A., *Towards a New Settlement, A review of experience from the first decade of Scottish devolution* (The Constitution Unit, 2008).

Towards a New Settlement?

A review of experience from the first decade of Scottish devolution

Akash Paun The Constitution Unit

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Introduction

In 2008, ten years after the Scotland Act laid the foundations for the new era of devolved governance, reform of the Scottish constitutional settlement is once more under serious consideration. Following the launch of the Scottish Government's 'National Conversation',¹ which aims to advance the cause of independence for Scotland, the three major UK-wide parties have all committed to revisit the 1998-99 devolution settlement, with a view to renegotiating the place of Scotland within the devolved UK.

The Commission on Scottish Devolution (Calman Commission) was established to advance this agenda by "review[ing] the provisions of the Scotland Act 1998 in the light of experience" and on this basis recommending changes to improve the performance and "financial accountability" of the Scottish Parliament, but without weakening the place of Scotland within the UK.² The Commission's remit throws open the possibility of three major sets of developments: amendments to the division of policy responsibilities between Westminster and Holyrood (including over revenue-raising); other changes to the structure of the devolved institutions as created in 1998-99; and the introduction of new mechanisms for managing the relationship between Scotland and the rest of the UK.

The purpose of this report is not to advocate specific changes to the devolution settlement, but rather to inform the Commission's work by providing a clear and comprehensive overview of the first (near) decade of devolution. No matter what conclusions the Commission eventually reaches, however, we suggest that its deliberations will be enhanced by reflection about the objectives that devolution was designed to meet. Consequently, our report begins by looking briefly at the pre-1999 period and, in particular, the debate about what purpose devolution was expected to serve. This provides a context for the subsequent chapters, which compare the experience of devolution in practice with the expectations invested in the new institutions beforehand. We review in detail the ups and downs of the first two sessions of the Scottish Parliament – whose lessons risk being overlooked in favour of more immediate experience. More briefly, we summarise the events since the May 2007 election, before a short concluding section draws together some overarching lessons that might inform deliberations among those engaged in rethinking Scotland's devolution settlement.³

1 Scottish Government, *Choosing Scotland's Future: A National Conversation: Independence and Responsibility in the Modern World*, August 2007, at: www.scotland.gov.uk/Resource/Doc/194791/005232s1.pdf.

2 Remit of the Commission on Scottish Devolution, 2008, at: www.commissiononscottishdevolution.org.uk/about.

3 The principal source of information for this report is the ongoing Scotland Devolution Monitoring Report series published since 1999 by the Constitution Unit. These are published at: www.ucl.ac.uk/constitution-unit/publications/devolution-monitoring-reports/index.html (1999-2005) and: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html (2006-2008).

1. The Purpose of Devolution

The very first meeting of the Scottish Parliament was opened with the memorable statement that “the Scottish Parliament, which adjourned on 25 March 1707, is hereby reconvened.”⁴ The romantic imagery was understandable in the circumstances, but the reality was that the Parliament was an entirely new institution whose structure and powers reflected years of deliberation and negotiation about the specific purpose(s) that devolution would serve. Particularly influential were the final report of the Scottish Constitutional Convention in 1995,⁵ the Labour Government’s White Paper of 1997,⁶ and the Consultative Steering Group report of 1998⁷ that drafted a detailed procedural blueprint for the new Parliament.

In addition to the populist case that a Scottish Parliament should be created simply because there was majority support,⁸ at least four distinct, though inter-related, rationales for devolution can be identified in the debates leading up to 1999. These can provide a framework for assessment of how successful devolution has been in practice, and therefore a context for discussions about how the present structures might be reformed.

1.1 The Public Policy Rationale

“With its new responsibilities, the Scottish Parliament will be in a position to encourage vigorous sustainable growth in the Scottish economy. Policies on health, housing and education will respond more directly to Scotland’s needs.”⁹

Perhaps most obviously, devolution was advocated on the grounds that it would enable Scotland to formulate policy that more accurately reflected its distinct interests and needs. Indicators of success might include the quantity of legislation passed at Holyrood (compared with Scottish legislation passed in pre-devolution Westminster), the extent of policy ‘divergence’ from Westminster, or measurable change in policy outcomes. Alternatively, success might be reflected in policy innovations emulated in other parts of the UK, or even in cases where Scotland has autonomously decided to follow the same policy as England. A sign of failure, therefore, would be the inability to develop distinctive policies in spite of a desire to do so rather than an absence of policy distinctiveness per se.

1.2 The Governance Rationale

“The establishment of the Scottish Parliament offers the opportunity to put in place a new sort of democracy in Scotland... an open, accessible Parliament; a Parliament where power is shared with the people; where people are encouraged to participate in the policy making process...; an accountable, visible Parliament; and a Parliament which promotes equal opportunities for all.”¹⁰

To many pro-devolutionists, devolution also held the promise of a better type of politics than the Westminster system, operating according to the four ‘CSG principles’ set out above: power-sharing, accountability, openness, and equal opportunities. Indicators of success could include the involvement of a wide and diverse range of actors in policy-making, and clear and transparent decision-making processes.

4 Scottish Parliament Official Report, 12 May 1999, col. 5.

5 Scottish Constitutional Convention (1995), *Scotland’s Parliament, Scotland’s Right*, section on ‘The Case for Change’, at: www.almac.co.uk/business_park/scc/scc-rep.htm#The_Case_For_Change.

6 Scottish Office (1997), *Scotland’s Parliament*, Cm 3658 (London: HMSO), at: www.scotland.gov.uk/government/devolution/scpa-00.asp

7 Consultative Steering Group on the Scottish Parliament (1998), *Shaping Scotland’s Parliament* (Edinburgh: Scottish Office), at: www.scotland.gov.uk/library/documents-w5/rcsg-00.htm.

8 This indeed was set out as the “first and greatest reason for creating a *Scottish Parliament*” in *Scotland’s Parliament, Scotland’s Right*, op cit, in the section on ‘The Case for Change’.

9 Donald Dewar, in preface to *Scotland’s Parliament*, op cit.

10 Henry McLeish, in Foreword to *Shaping Scotland’s Parliament*, op cit.

1.3 The Democratic Legitimacy Rationale

"Scotland has come to lack democratic control over [its legal and education system and key social and cultural institutions]. Their conduct is determined by a government for which few Scots voted, operating through a dense tangle of unelected quangos. This is a democratic deficit which runs contrary to Scotland's distinct political identity and system."¹¹

Devolution was further justified, particularly during the period of Conservative rule from 1979 to 1997, by reference to a perceived 'democratic deficit', in which the institutions of government were not clearly accountable to the Scottish people, damaging the relationship between citizen and state. Devolution was therefore necessary in order to "reverse an apparent decline in both trust and confidence in the political system".¹² Success might be indicated by high electoral turnout (or other forms of engagement), and public opinion data reporting satisfaction with the way Scotland is governed.

1.4 The Unionist Rationale

"The Union will be strengthened by recognising the claims of Scotland, Wales and the regions with strong identities of their own. The Government's devolution proposals, by meeting these aspirations, will not only safeguard but also enhance the Union."¹³

Finally, and closely related to the above, devolution was supported by many as necessary to ward off the threat to the Union posed by nationalism and inter-territorial friction. One indicator of success would therefore be the popular support enjoyed by nationalist parties and the idea of independence itself. In addition, success might be reflected in the smooth operation of UK-wide structures which manage inter-territorial relations. Tensions or conflict would point in the other direction and might therefore provide backing for reform.

11 *Scotland's Parliament, Scotland's Right*, op cit, in the section on 'The Case for Change'.

12 John Curtice (2004), 'Restoring Confidence and Legitimacy? Devolution and Public Opinion', in Alan Trench (ed.), *Has Devolution Made a Difference? The State of the Nations 2004* (Exeter: Imprint), p. 217.

13 *Scotland's Parliament*, op cit, para 3.1.

2. The First Term: 1999-2003

1999: A Year of Firsts

- On 6 May 1999, the **first election to the new Scottish Parliament** was held, with Labour winning 56 of 129 seats, SNP 35, Conservatives 18, Liberal Democrats 17 and others 3. As in the 1997 general election, Labour won the lion's share of the first-past-the-post constituencies (53 of 73) but the operation of the top-up lists under the additional member system (AMS) meant that Labour was 9 seats shy of a majority (see Appendix A).
- In terms of **vote share** (see Figure 3), Labour's support dropped significantly compared with 1997 (from 46% to 39% on the constituency vote). The principal beneficiaries were the SNP (which took 29%, up from 22%). The two parties won 34% and 27% respectively on the regional list vote, with smaller parties and independents picking up support. The Conservatives won 16% and 15% on the two votes; and the Liberal Democrats 14% and 13%.
- At 59%, overall **voter turnout** was 12 points lower than in 1997. This pattern of lower turnout for Scottish Parliament than House of Commons elections has been replicated in all elections up to 2007 (Figure 2).
- On 12 May 1999, the **first meeting of the Parliament** was held. As set out in standing orders, the first business of the Parliament was the **election of a Presiding Officer**. Sir David Steel (LibDem) duly defeated George Reid (SNP) by 82 votes to 44 with 3 abstentions.¹⁴
- In subsequent ballots, Patricia Ferguson MSP (Labour) and George Reid (SNP) were elected as **Deputy Presiding Officers**.¹⁵
- Donald Dewar MSP (Labour) was elected **Scotland's first First Minister** the following day, 13 May 1999. All 71 Labour and Liberal Democrat MSPs in the chamber backed Dewar, amid controversy about the terms of the deal between the parties on the issue of university funding.
- On 14 May 1999, Donald Dewar and Scottish Liberal Democrat leader Jim Wallace publicly signed a **coalition agreement**, which committed the parties to establishing a Committee of Inquiry on university tuition fees.¹⁶ Other pledges included increased spending on education, more nursery places, schools reform, and public health promotion. The tricky issue of local electoral reform was left to the McIntosh Commission.
- The Parliament met only twice more in its first month, on 18-19 May 1999 with resolutions passed to appoint the **new Scottish Executive**. This comprised eight Labour MSPs (including three former Scottish Office ministers) and two Liberal Democrats, supported by ten junior ministers (split in the same proportion) and the Lord Advocate and Solicitor General, who had previously been part of the UK Government.
- After initial excitement, the new Parliament was widely considered to have made a **slow start**, with the Parliament occupied by procedural items such as the establishment of the Scottish Parliament Corporate Body (on 19 May), and the creation of sixteen parliamentary committees (on 17 June).

¹⁴ Scottish Parliament Official Report, 12 May 1999, cols. 7-9.

¹⁵ Scottish Parliament Official Report, 12 May 1999, cols. 10-12.

¹⁶ *A Partnership for Scotland*, 14 May 1999, reproduced at: http://news.bbc.co.uk/1/hi/special_report/1999/06/99/scottish_parliament_opening/379340.stm

- More **contentious early business** included a vote on parliamentary allowances on 8 June – with a dispute over whether constituency and regional members should be treated equally – and, on 23 June, the passage of the first motions giving consent to Westminster to legislate in devolved areas (later termed ‘Sewel motions’).
- Another early landmark was the announcement (on 16 June) of the Executive’s **legislative programme**, consisting of eight bills each of which, the First Minister stated, represented “a Scottish solution to a distinct Scottish need [which] is now the responsibility of this Parliament”.¹⁷ Major items included a land reform bill, the abolition of feudal tenure, a transport bill creating a framework for road charging, and a bill to raise educational standards.
- Following the **formal transfer of powers** to Holyrood and official Opening Ceremony on 1 July 1999, the Parliament only met once more, creating the Committee of Inquiry on university finance, before the two-month summer recess, which added to a **sense of lost momentum**.¹⁸
- Upon reconvening, the Executive published its Programme for Government on 6 September,¹⁹ which added detail and a timetable for the Executive’s earlier pledges. In the event, the **first Act of the Scottish Parliament** was the emergency Mental Health (Public Safety and Appeals) (Scotland) Act, which was rushed through Parliament on 8 September.
- September to December 1999 saw the introduction of four of the Executive’s planned eight bills. This was viewed as “a rocky period for the Scottish Executive”, however, with the ‘Lobbygate’ issue raising accusations of ‘sleaze’,²⁰ other ‘scandals’ leading to the resignations of key advisers to the First Minister,²¹ and a policy agenda criticised as “lacking in substance”.²²
- The Executive also signed a **Memorandum of Understanding** with the UK Government on 2 October 1999 setting an informal framework for intergovernmental relations in the devolved UK. It also made provision for a Joint Ministerial Committee forum in which lessons would be shared and disputes resolved between the UK and devolved administrations.²³
- Meanwhile the **committee system** – expected to be a central vehicle for the ‘new politics’ – started to undertake its functions in earnest. Inquiries were launched into subjects such as resource allocation in the NHS, and the McIntosh recommendations on local government reform. In addition, the first public meeting of a committee outside Edinburgh was held in Inverness (partly in Gaelic) on 20 October.²⁴
- Heralded by the Executive as a further “sign of our commitment to the new politics of participation” was the announcement on 29 October of £300,000 funding for the Scottish Civic Forum.²⁵
- 21 December 1999 saw the publication of the **Cubie report** on university finance, which proposed the reintroduction of means-tested maintenance grants, and the abolition of up-front tuition fees for Scottish students, to be replaced by a scheme for post-graduation ‘endowment’ contributions.²⁶

17 Scottish Parliament Official Report, 16 June 1999, cols. 405-8.

18 Graham Leicester, ‘Scotland’, in *The Monitor* (Constitution Unit newsletter), September 1999, p. 3, at: www.ucl.ac.uk/constitution-unit/files/monitor/monitor8.pdf.

19 Scottish Executive (1999), *Making it work together: A programme for government*, at: www.scotland.gov.uk/Resource/Doc/158140/0042788.pdf

20 See ‘“Lobbygate” sets the parliament alight’, BBC News, 3 October 1999, at: <http://news.bbc.co.uk/1/hi/scotland/464053.stm>

21 Scotland Devolution Monitoring Report: February 2000, pp. 2-4.

22 Graham Leicester, September 1999, op cit.

23 Memorandum of Understanding and Supplementary Agreements, Cm 5240, at: www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600629.pdf. Also see Scotland Devolution Monitoring Report: November 1999, p. 13.

24 Scotland Devolution Monitoring Report: November 1999, pp. 6-8.

25 Scottish Executive news release, 29 October 1999, at: www.scotland.gov.uk/News/Releases/1999/10/645032b8-23c8-4282-8d05-5306edbebbd5

26 See: Scottish Parliament Information Centre, *The Cubie Report*, Research Note 00/06, 26 January 2000, at: http://politicsforpeople.org/business/research/pdf_res_notes/rn00-06.pdf

2000: Growing Pains Continue

- The New Year was marked by **divisive moral controversies** over the planned abolition of 'Section 2A' – banning the 'promotion' of homosexuality in schools²⁷ – and the use of the Sewel convention to allow Westminster to lower the age of consent for homosexual males.²⁸
- On 17 February 2000, the **resignation of the Lord Advocate**, Lord Hardie, further destabilised the Executive. Lord Hardie had been placed in the spotlight over his dual role as member of the Executive and chief prosecutor. Questions about the party political affiliation of Lord Hardie's successor, Lord Boyd, were then raised in the Parliament.²⁹
- At the same time, **policy progress** made by the Executive included its initial response to Cubie on student finance (25 January),³⁰ the introduction of the first Budget Bill (26 January), proposals for an integrated transport strategy (10 February), and the Standards in Scotland's Schools Bill (22 March).³¹
- The early travails of the Executive were reflected in the **Ayr by-election** on 16 March, which the Conservatives won from Labour, with the Liberal Democrats trailing in fifth place.³²
- Spring 2000 also saw the introduction of a dozen or so **members' bills** – seen as an important element of 'power-sharing'. Among these was Scottish Socialist Tommy Sheridan's Abolition of Poindings and Warrant Sales Bill, which passed Stage 1 on the back of a rebellion among Executive backbenchers.³³
- As the number of bills introduced rose, the **capacity of the parliamentary committees** began to come under strain, prompting the Parliamentary Bureau of whips to consider restructuring the system.³⁴
- In May 2000, devolution received a **mixed first-year report card**. Even supportive commentators recognised that "it has been a painful birth, and there are growing pains ahead."³⁵ However, opinion polls found no desire to turn back the clock and even at this early stage there appeared to be support for further devolution.³⁶
- The **row about Section 2A** rumbled on through the second quarter of 2000, with a referendum funded by businessman Sir Brian Souter finding 87% support for retention. The issue was finally laid to rest by the passage of the Ethical Standards in Public Life Bill on 21 June 2000, which abolished the controversial clause but inserted a compromise requirement that local authorities "have regard to the value of stable family life".³⁷
- The **health service** was high on the agenda in this period, with a public dispute among ministers over underspending of Scotland's health budget. Tony Blair's National Plan for the NHS in July also raised the profile of this policy area, despite its would have minimal impact in Scotland (save for via the Barnett Formula).³⁸ Other legislation passed in June-July 2000 related to school standards, national parks, and judicial appointments.

27 This issue was debated in the Parliament on 10 February 2000. See Scottish Parliament Official Report, cols. 936-974.

28 See Scottish Parliament Official Report, 19 January 2000, cols. 219-260.

29 Scotland Devolution Monitoring Report: February 2000, p. 3.

30 Scottish Executive news release, 'Scotland - the learning nation', 25 January 2000, at: www.scotland.gov.uk/News/Releases/2000/01/318fffe4-6953-41d9-9753-059c14d4accd.

31 See Scottish Parliament Official Report for the respective dates.

32 Scottish Parliament Information Centre, *Ayr By-election Results*, Research Note 00-19, 17 March 2000.

33 See Scotland Devolution Monitoring Report: May 2000, pp. 24-27. Stage 1 debate on this bill at Scottish Parliament Official Report, 27 April 2000, cols. 162-194.

34 Scotland Devolution Monitoring Report: May 2000, p. 3.

35 Iain MacWhirter, 'A year is a long time in politics', *Sunday Herald*, 30 April 2000.

36 Scotland Devolution Monitoring Report: May 2000, pp. 5-9.

37 Scotland Devolution Monitoring Report: August 2000, pp. 8 and 18.

38 Scotland Devolution Monitoring Report: August 2000, pp. 25-27.

- On 1 July 2000, a year after the official opening of the Parliament, polling evidence was reported that revealed an **underwhelming assessment amongst the public**, with nearly 80% reporting that devolution had made no difference and a quarter unable to name the First Minister.³⁹
- On 17 July 2000, **Alex Salmond resigned** unexpectedly as leader of the SNP after a decade in the role.
- The Executive was under pressure over the summer of 2000 over problems with assessing Higher examinations by the **Scottish Qualifications Authority** leading to the resignation of its Chief Executive, though Education Minister Sam Galbraith survived.
- Shortly after the summer recess, on 14 September 2000, the First Minister announced the Executive's **2000-01 legislative programme**.⁴⁰ The nine bills announced included: legislation to abolish up-front tuition fees; a Housing Bill to reform the 'right to buy' and tackle homelessness; and a bill on the regulation of the care sector.
- Following Alex Salmond's resignation, **John Swinney was elected as SNP leader** on 23 September 2000, defeating leftwinger Alex Neil at party conference.⁴¹
- On 11 October 2000, First Minister **Donald Dewar passed away** suddenly, having previously been treated for heart problems.
- The Scotland Act required a new First Minister to be elected by the Parliament within 28 days, which ruled out a full Labour Party leadership contest. In place of this, a ballot of MSPs and senior party officials was held. The favourite, **Henry McLeish**, defeated Jack McConnell by 44 votes to 36, and was confirmed as the **new First Minister** on 26 October 2000.
- In the face of the unexpectedly strong showing of McConnell, McLeish sought immediately to stamp his own vision on the Executive. He carried out a reshuffle on 29 October 2000 and announced that backbenchers would be involved more in policy-making in future.⁴²
- In policy terms, he also hinted at a willingness to take a **more independent line from London**, most notably by signalling a rethink of the Executive's position on free (i.e. government funded) personal care for the elderly as proposed in the 1999 Sutherland report.⁴³
- The debate about **committee capacity** continued through the autumn, and on 14 December 2000 the Parliament voted – despite opposition from the SNP and reservations in other parties – to split the Justice Committee into two, and to reduce the size of most committees to seven.⁴⁴
- **Byelections** were held on 23 November 2000 (Glasgow Anniesland, Westminster and Holyrood seats) and 21 December 2000 (Falkirk West, Westminster). Labour won all three, but lost between 10% and 15% of its previous support, while turnout fell beneath 40% in all three polls. These figures reflected UK-wide problems such as the ongoing fuel crisis as well as difficulties faced by the new First Minister in filling the void left by Donald Dewar.⁴⁵

39 Scotland Devolution Monitoring Report: August 2000, pp. 6-9.

40 Scottish Parliament Official Report, 14 September 2000, cols. 375-428.

41 See: 'Swinney win is good for Scotland's new politics', *Sunday Herald*, 24 September 2000.

42 Scotland Devolution Monitoring Report: November 2000, pp. 4-6.

43 Health Minister Susan Deacon responded to the Sutherland Report on behalf of the Executive on 5 October 2000 (see Scottish Parliament Official Report, cols. 1014-1029). McLeish indicated his apparent reversal of this policy in an interview published on 5 November (as reported in Scotland Devolution Monitoring Report: November 2000, p. 7).

44 Scottish Parliament Official Report, 14 December 2000, from col. 1079.

45 Scotland Devolution Monitoring Report: February 2001, pp. 26-30.

2001: Filling the Shoes of Donald Dewar

- **Henry McLeish's first few months** as First Minister included important policy developments such as the publication of Scotland's National NHS Plan on 14 December 2000, the passage of the Transport Bill on 20 December 2000, and agreement on the McCrone recommendations for teachers' pay.⁴⁶
- Nonetheless, the period was described as "torrid" for the Executive.⁴⁷ Particularly damaging was the ongoing vacillation over personal care funding – which caused divisions within and between both Executive parties – culminating in a further u-turn and an eventual commitment to the Sutherland principles on 29 January 2001.⁴⁸
- After eighteen months of calm intergovernmental relations, there were some **tensions with the UK Government** in early 2001, including over Henry McLeish's suggestion to rebrand the Scottish Executive as the Scottish Government.⁴⁹ More significant was the decision to diverge from the UK position on personal care, which prompted questions about the sustainability of Scotland's share of public expenditure (see Figure 1).⁵⁰ The First Minister's forays into international and EU affairs also caused concern in Whitehall.⁵¹
- The major policy achievement of this period was the passage of the **Education (Graduate Endowment and Student Support) (Scotland) (No.2) Bill** on 29 March 2001, which replaced up-front tuition fees for Scottish students with the new post-graduation endowment scheme.⁵²
- Politics in spring 2001 was largely taken up by UK-wide issues, partly due to the forthcoming UK General Election,⁵³ and also because of the foot and mouth crisis, which necessitated close coordination with Whitehall.⁵⁴
- In the event, the **Westminster election** on 7 June 2001 was something of a non-event. Only one Scottish seat changed hands, with the Conservatives winning Galloway and Upper Nithsdale from the SNP. Turnout in Scotland, as across the UK, fell significantly on 1997 but remained higher than in the 1999 Holyrood poll (Figure 2).
- **Legislative developments** in May and June 2001 included the passage of the Regulation of Care (Scotland) Bill, and the Housing Bill on 31 May and 13 June respectively. In addition, Cathie Craigie's members' bill on mortgage rights was passed on 20 June, while on 28 June the first committee bill was introduced by the Justice Committee (on 'protection from abuse').
- On 5 September 2001, Henry McLeish unveiled the **Executive's legislative agenda** for the following year, noting that the Parliament had passed 24 Acts in its first two years, far more Scottish-specific legislation than pre-devolution Westminster typically managed (see Figure 4 below). 18 new bills were announced including on freedom of information, mental health, land reform, community care [implementing free long term care for the elderly], criminal justice, and local government.⁵⁵
- **Reserved matters causing controversy** in this period included the war in Afghanistan, the UK government's energy review (and the Scottish Executive's position on nuclear power), the collapse of Railtrack, and the plight of asylum seekers in Scotland.⁵⁶

46 Scotland Devolution Monitoring Report: February 2001, pp. 55-62.

47 'Scotland', in *The Monitor* (Constitution Unit newsletter), March 2001, p. 3.

48 Scotland Devolution Monitoring Report: February 2001, pp. 9-13.

49 Scotland Devolution Monitoring Report: February 2001, pp. 7-8.

50 Scotland Devolution Monitoring Report: February 2001, p. 50.

51 Scotland Devolution Monitoring Report: August 2001, chapters 5 and 6.

52 Scottish Parliament Official Report, 29 March 2001, from col. 1034.

53 See Scotland Devolution Monitoring Report: May 2001, p. 3.

54 James Mitchell, 'Scotland', in *The Monitor* (Constitution Unit newsletter), June 2001, p. 3.

55 Scottish Parliament Official Report, 5 September 2008, from col. 2194.

56 Scotland Devolution Monitoring Report: November 2001, pp. 16 and 59-63.

- Over the autumn the Executive became embroiled in the **'Officegate' affair** that led to the resignation of Henry McLeish on 8 November 2001.⁵⁷ He was replaced by Jack McConnell as Labour leader and First Minister.⁵⁸ Obituaries for 'Team McLeish' painted a picture of policy incoherence and infighting that had contributed to his downfall.⁵⁹
- **McConnell's reshuffle**, on 27 November, was extensive. Many of those promoted were friends of the First Minister – prompting charges of 'cronyism' – and the new team was seen as more left-wing and more likely to clash with the Blair administration.⁶⁰
- Seeking to repair the tarnished reputation of the Executive, McConnell promised to **"do less, better"** and to focus on delivery in five core areas: health, education, transport, crime and jobs.⁶¹
- The **Parliament flexed its muscles** against the new administration, rejecting the Labour nominee for Deputy Presiding Officer (DPO) on 29 November 2001. Meanwhile, Presiding Officer Sir David Steel criticised **Westminster's control of the "constitution of the Parliament"** (topical issues were the requirement to have precisely two DPOs, and the plan to reduce the number of MSPs in line with Westminster boundary changes).⁶²

2002: Doing less, doing better?

- There was a noted **emphasis on 'governance' issues** in the period as the Executive's Freedom of Information Bill and Scottish Public Sector Ombudsman Bill were introduced. Both bills were first debated in the Parliament in January 2002 and enacted by the spring. A second committee bill, creating a Scottish parliamentary standards commissioner, was introduced on 28 February 2002. While Alex Neil (SNP)'s bill on public appointments was rejected, the Executive made apparent concessions on the issue as it formulated its own legislation.⁶³
- A further significant **private member's success** of the period was the passage of a bill banning hunting with dogs on 13 February 2002, setting Scotland on course for a further example of policy divergence from England and Wales.⁶⁴
- On 26 February 2002 the Executive created the new role of **Ministerial Parliamentary Aide (MPA)**, appointing eight Labour backbenchers to assist ministers in the mould of Westminster PPS's, a development which drew criticisms from opposition parties about the expansion of Executive power.⁶⁵
- Spring 2002 saw much focus on the **poor public image of the Parliament**. Negative media coverage focussed on the cost of the new Parliament building, MSPs' pay rises and other matters, while the Procedures Committee took evidence on how the four 'CSG Principles' were operating in practice.⁶⁶

57 Scotland Devolution Monitoring Report: November 2001, p. 3.

58 Scottish Parliament Official Report, 22 November 2001, cols. 4150-4168.

59 See Scotland Devolution Monitoring Report: February 2002, p. 3.

60 Scotland Devolution Monitoring Report: February 2002, pp. 3-8.

61 See 'Scotland', in *The Monitor* (Constitution Unit newsletter), March 2002.

62 Scotland Devolution Monitoring Report: February 2002, pp. 11-13 and 27.

63 Scotland Devolution Monitoring Report: May 2002, pp. 7-8.

64 Scottish Parliament Official Report, 13 February 2002, from col. 6317.

65 Scotland Devolution Monitoring Report: May 2002, pp. 6-7.

66 Scotland Devolution Monitoring Report: May 2002, pp. 10-12.

- The **future of public services** was at the forefront of the Scottish and UK policy agenda in this period. The Executive finally passed its personal care legislation in February 2002,⁶⁷ launched a 'national education debate' in March,⁶⁸ and defended its stance on private sector involvement in provision of public services such as health and prisons.⁶⁹ There were also further tensions around the **interaction between reserved and devolved policy areas**, relating to nuclear power, the new EU arrest warrant, and the treatment of asylum seekers.⁷⁰
- On 30 May 2002, the First Minister unveiled the Executive's **final legislative programme of the session**, shifting the speech from September to fit in with Holyrood's May-to-May cycle.⁷¹ Headline measures included legislation on criminal justice and local government, but still nothing on local election reform – the Liberal Democrats' central policy ambition.⁷²
- Three years after the Parliament assumed its powers, a study of MSPs reported in June 2002 revealed disillusionment with **the reality of 'power-sharing'** under devolution. As at Westminster, there were complaints of Executive dominance (36 of 44 bills passed by this point were Executive-sponsored).⁷³
- **Intergovernmental tensions** in spring-summer 2002 arose in relation to the UK bill creating OFCOM, which would have no automatic Scottish representation on its board. The debate over reducing the size of the Parliament also rolled on, as did questions about the post-devolution purpose of the Scotland Office.⁷⁴ Meanwhile, **Jack McConnell intervened in debates about the EU's future** on 6 June 2002, calling for a new 'Subsidiarity Council' to be created.⁷⁵
- The **Treasury's Spending Review**, published in July 2002, promised 4.4% annual growth in Scotland's block grant from 2003 to 2006, but the 'Barnett squeeze' meant that this was less than the growth rate in England (Figure 1).⁷⁶ The Treasury also refused to release to the Executive funds saved from Attendance Allowance payments by the introduction of free personal care.⁷⁷
- In September and October 2002 **four Executive bills** were introduced as the end of the session approached. But on 5 September and 13 September, **parliamentary strength** was demonstrated as the Executive was forced into u-turns on the closure of Peterhead prison and a proposed child smacking ban.⁷⁸ The Executive was also damaged by an alleged scandal over the finances of Jack McConnell's constituency.⁷⁹

67 Scottish Parliament Official Report, 6 February 2002, from col. 6093.

68 See 'Public to shape schools' future; People from all walks of life invited to take part in new education debate', *Sunday Herald*, 17 March 2002.

69 Scotland Devolution Monitoring Report: May 2002, pp. 62-63.

70 Scotland Devolution Monitoring Report: May 2002, pp. 36-38.

71 Scotland Devolution Monitoring Report: August 2002, p. 4.

72 Scottish Parliament Official Report, 30 May 2002, from col. 12383.

73 Scotland Devolution Monitoring Report: August 2002, pp. 8-10.

74 Scotland Devolution Monitoring Report: August 2002, pp. 14-15, and 24-25.

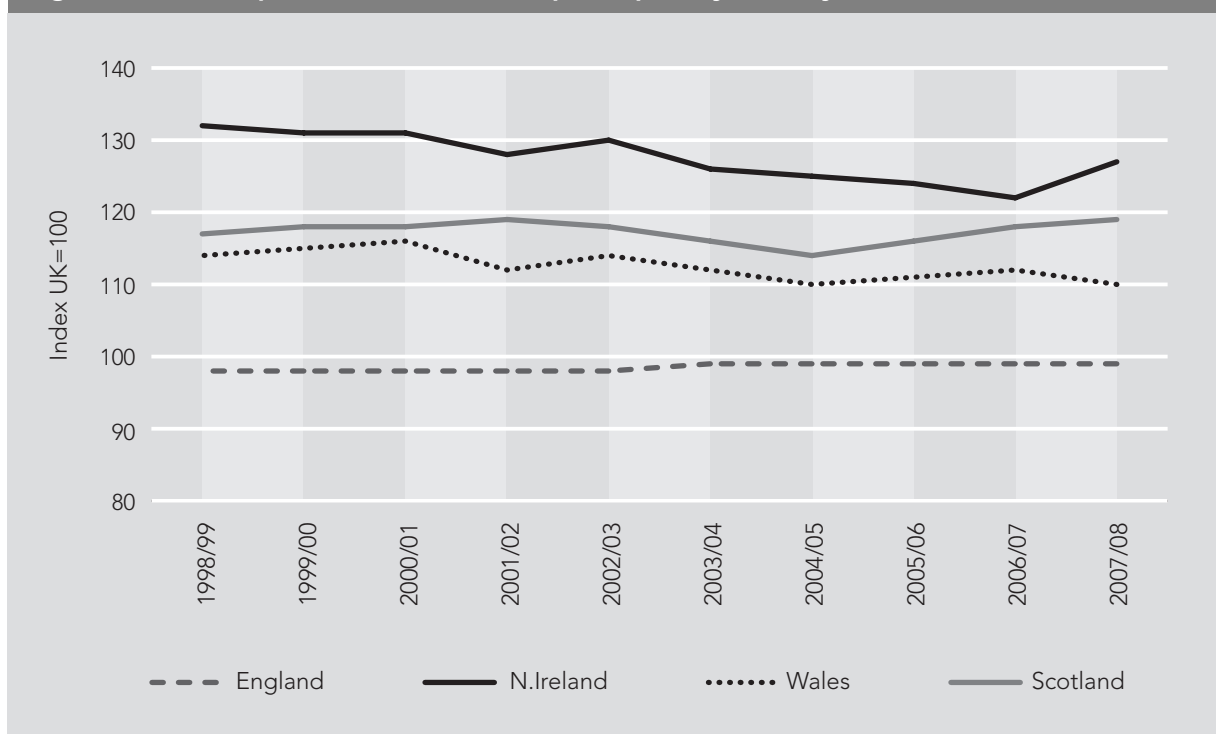
75 Scottish Executive news release, 'New "subsidiarity watchdog" proposed', 6 June 2002, at: www.scotland.gov.uk/News/Releases/2002/06/1720.

76 HM Treasury, *2002 Spending Review*, July 2002, at: www.hm-treasury.gov.uk/Spending_review/spend_sr02/report/spend_sr02_repindex.cfm; discussed in Scotland Devolution Monitoring Report: August 2002, pp. 37-38.

77 Iain Macwhirter, 'Playing safe's a dangerous game now for McConnell', *The Herald*, 20 February 2002.

78 Scotland Devolution Monitoring Report: November 2002, p. 34.

79 Scotland Devolution Monitoring Report: November 2002, p. 6.

Figure 1: Total expenditure on services per capita by country, 1998-2008

Source: HM Treasury (2008), Public Expenditure Statistical Analyses, HC 489 (London: The Stationery Office), at: www.hm-treasury.gov.uk/media/1/A/pesa0809_complete.pdf, p. 115.

- On 22 October 2002 the plenary intergovernmental **Joint Ministerial Committee** met in London for the third time. It would not meet again until June 2008. Shortly afterwards, the Lords Constitution Committee published a major report arguing that **more formal intergovernmental structures should be established** in readiness for the end of Labour dominance across Great Britain.⁸⁰
- The Executive continued to emphasise **policy delivery**⁸¹ although in December 2002 it dropped plans for a new Performance and Delivery Unit.⁸² This followed minister Susan Deacon's suggestion that responsibility for the civil service might be devolved.⁸³

⁸⁰ House of Lords Constitution Committee, *Devolution: Inter-institutional relations in the UK*, HL Paper 28, 17 December 2002.

⁸¹ See Scottish Executive, *Recording Our Achievements*, 16 December 2002, at: www.scotland.gov.uk/Resource/Doc/46932/0025805.pdf, which claimed that 92% of targets had been met or were "on track", p. 3.

⁸² Scotland Devolution Monitoring Report: February 2003, p. 5.

⁸³ Susan Deacon, 'Reform Agenda', *Holyrood* magazine, 21 October 2002.

2003: The end of the first session

- 8 January 2003 saw a significant **Executive defeat** on an amendment to the local government bill.⁸⁴
- A third **committee bill** – creating a childrens’ commissioner – received Stage 1 approval on 15 January, but an SNP bill to introduce the Single Transferable Vote (STV) for local elections was rejected on 6 February as Labour-LibDem negotiations on the issue carried on.⁸⁵
- The Executive, it was suggested, was “wrong-footed” in this period by the UK government’s plans to introduce university top-up fees in England. **The need for effective intergovernmental coordination** was also underlined by the fishing crisis and fire strike.⁸⁶
- **Fourteen bills were passed** in February and March 2003 in the final months of the session (raising the first session total to 62 – see Figure 4), but politics was dominated by the Iraq war. The Parliament held a three-hour debate on the issue on 13 March, which split the Executive and provoked a significant Labour backbench rebellion.⁸⁷
- March 2003 also saw the **transfer of Glasgow’s local authority homes** to the Glasgow Housing Association financed with the help of c.£200m of Treasury money that was additional to funds received through the Barnett formula.⁸⁸
- On 5 March 2003, reflecting the growing Executive interest in international affairs, the Parliament’s European Committee was renamed the **European and External Relations Committee**, with expanded remit to match.⁸⁹
- On **20 March 2003**, the Procedures Committee published its report on the four ‘**Founding Principles of the Scottish Parliament**’,⁹⁰ recommending a number of changes to boost legislative scrutiny and parliamentary involvement in policy-making (relating to the power sharing principle).
- In the **election campaign**, there seen to be few major policy differences between the main parties (especially Labour, the LibDems and the SNP), aside from over constitutional issues. The economy, law and order, and health were prominent issues while opposition parties sought to capitalise on anti-politician sentiment by proposing fewer ministers (SNP and Tories), fewer quangos (SNP) and fewer MSPs (Tories).⁹¹

84 Scottish Parliament Official Report, 8 January 2003, from col. 16758.

85 Scottish Parliament Official Report, 6 February 2003, from col. 17839.

86 Scotland Devolution Monitoring Report: February 2003, pp. 25-26, and 43.

87 Scottish Parliament Official Report, 13 March 2003, from col. 19425.

88 Scotland Devolution Monitoring Report: August 2003, p. 32.

89 The new committee’s remit (with items (c) and (d) added to the existing European Committee remit) can be seen at: www.scottish.parliament.uk/business/committees/europe/index.htm

90 Scottish Parliament Procedures Committee, *The Founding Principles of the Scottish Parliament: the application of Access and Participation, Equal Opportunities, Accountability and Power Sharing in the work of the Parliament*, SP Paper 818, 20 March 2003.

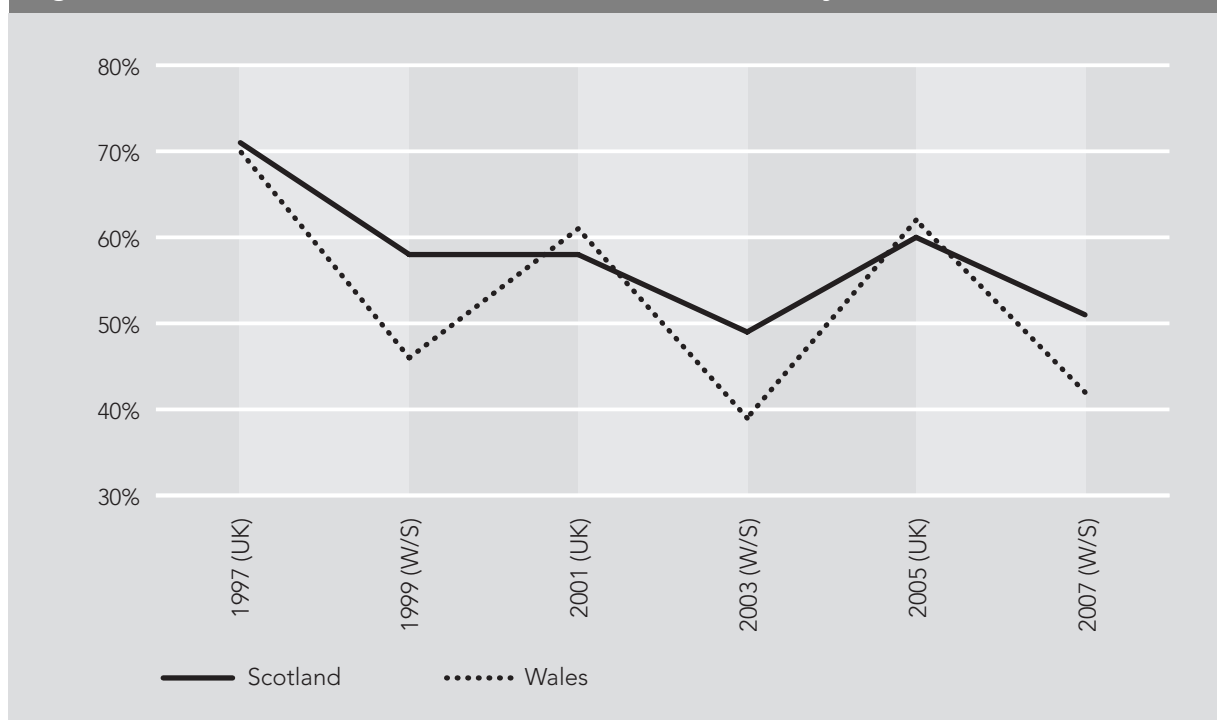
91 See Scotland Devolution Monitoring Report: June 2003, pp. 42-44, and 57-63.

3. The Second Term: 2003-2007

2003: The 'Rainbow Parliament'

- In the event, when **Scotland went to the polls** on 1 May 2003, the main beneficiaries of public disillusionment were minor parties and independents (who won 17 seats). Both Labour (50) and the SNP (27) lost votes and seats while the Tories (18) and LibDems (17) stood still (see Appendix A).⁹²
- Dissatisfaction was also reflected in the **low turnout**, of just 49% (Figure 2). **Public attitudes data** published around this time confirmed that only a minority of voters thought that the election result made much difference or that devolution had delivered significant concrete benefits, but a majority also continued to prefer devolution to other constitutional options (Figure 7).⁹³

Figure 2: Turnout in Westminster and devolved (constituency vote) elections (1997-2007)



Source: BBC Online (various pages)

⁹² Full results can be seen on BBC Online, at: http://news.bbc.co.uk/1/shared/bsp/hi/vote2003/scottish_parliament/html/atoz.stm

⁹³ Scotland Devolution Monitoring Reports: June 2003, pp. 18-24; and August 2003, pp. 15-17.

- On 7 May 2003, **George Reid was elected Presiding Officer** without opposition, having previously been Deputy (DPO). One Conservative and one Labour DPO were elected, cementing the tradition of cross-party distribution of the posts.
- With 67 of 129 seats Labour and the Liberal Democrats had the arithmetic, just, to form a **second majority administration**. The key sticking point was the LibDem demand of proportional representation for local elections. Labour conceded, in exchange for LibDem support for Labour's tougher line on law and order, and Jack McConnell was reelected First Minister on 15 May 2003.⁹⁴
- **Labour's weakened position** was reflected in the extra post given to the Liberal Democrats in the Cabinet, announced on 20 May 2003.⁹⁵ There was no reduction in the number of ministers, though only two MPs were appointed.⁹⁶
- On 28 May 2003, the **2003-04 legislative programme** was announced. Among the 14 bills were the NHS Reform Bill, Anti-Social Behaviour Bill, two education measures and the bill introducing PR for local elections.⁹⁷
- The **Parliament's committees** were described as "one of the jewels of devolution" by Minister for Parliamentary Business Patricia Ferguson on 4 June 2003, as they were re-established for the new session. The Executive came in for criticism, however, for ensuring itself a majority on all 16 committees, and for the high turnover of members, mitigating against the development of expertise.⁹⁸
- In Whitehall on 12 June 2003 a new **Department for Constitutional Affairs (DCA)** was created, incorporating the Scotland Office. The position of Secretary of State for Scotland was retained as a Cabinet post but, for the first time, would be filled on a part-time basis (by Alistair Darling).⁹⁹
- The first three months of the new Parliament witnessed the introduction of an **unprecedented 17 proposals for members' bills**, mainly by opposition MSPs.¹⁰⁰
- In an interview published on 7 September 2003, Scotland Secretary Alistair Darling confirmed the **declining significance of the Scotland Office**, noting that it had shrunk to below 100 staff with the Scottish Executive encouraged to liaise directly with other Whitehall departments.¹⁰¹
- On 30 September 2003, the Scottish Executive published a consultation paper on **civil partnership legislation** (legalising 'gay marriage'). Having been burnt over the Section 2A issue, the Executive decided to piggy-back on the planned UK bill via the Sewel convention, provoking "accusations of moral and political cowardice".¹⁰²
- Following months of negative publicity, the **Fraser inquiry** on the costs of the new Scottish Parliament building started work on 28 October 2003, with hopes that it might defuse the issue.¹⁰³

94 See Scottish Executive, *A Partnership for a Better Scotland: Partnership Agreement*, 15 May 2003, at: www.scotland.gov.uk/Resource/Doc/47095/0025772.pdf.

95 Scotland Devolution Monitoring Report: August 2003, pp. 4-6.

96 Scotland Devolution Monitoring Report: May 2004, p. 3.

97 Scottish Parliament Official Report, 28 May 2003, from col. 81.

98 Scotland Devolution Monitoring Report: August 2003, p. 8-9.

99 Scotland Devolution Monitoring Report: August 2003, pp. 23-25.

100 Scotland Devolution Monitoring Report: August 2003, p. 12.

101 Scotland Devolution Monitoring Report: November 2003, p. 29.

102 Scotland Devolution Monitoring Report: November 2003, p. 55.

103 Scotland Devolution Monitoring Report: November 2003, p. 9.

- On 12 November 2003, Jack McConnell assumed the presidency of the Regions with Legislative Powers group (RegLeg), celebrating RegLeg's success at influencing the recently-concluded **European Convention**. The Parliament's EU committee was also active, co-founding a new Network of Regional Parliamentary European Committees (NORPEC) and taking evidence from the UK Minister for Europe on 7 January 2004.¹⁰⁴
- The **West Lothian Question** gained a new political salience when, on 19 November 2003, Scottish MPs provided the decisive votes in a vote on introducing **foundation hospitals**.¹⁰⁵
- On 27 November 2003 the Scotland Office published legislation to enable the **number of Scots MPs to be reduced** without a knock-on cull of MSPs. The UK Government insisted that no other aspects of the Scotland Act were open to renegotiation though some Labour MPs spied an opportunity to reduce the proportional aspect of the Scottish Parliament's electoral system.¹⁰⁶
- 18 December 2003 an **Enterprise Committee** report argued that into the introduction of top-up fees in England would have an "adverse impact on Scottish higher education".¹⁰⁷

2004: A New Home for the Parliament

- Shortly afterwards, on 27 January 2004, Scottish Labour MPs were decisive in saving the top-up fees proposals, stirring further controversy about the **West Lothian Question**.¹⁰⁸
- A major debate on the British government's **plans to establish a Supreme Court** was held at Holyrood on 29 January 2004 as concerns continued about the effect its establishment would have on the Scottish legal system.¹⁰⁹
- On 12 March 2004 the Executive revealed that since the end of 2002 only the **Joint Ministerial Committee on Europe** had continued to meet (including three times already that year). The rest of the JMC framework had fallen into disuse, with informal intergovernmental mechanisms used instead.¹¹⁰
- In London, the Home Office published its draft bill and consultation paper on introducing ID Cards on 26 April 2004, prompting the First Minister to confirm that it would be up to MSPs to decide whether **ID Cards** would be required to access devolved services.¹¹¹
- In Spring 2004 **polling evidence** found that few people thought devolution had delivered concrete benefits, but most wanted the Scottish Parliament to have more influence than Westminster and to have additional powers. There was no evidence of rising Scottish (as opposed to British) national identity (see Figure 5 below).¹¹²
- On 23 June 2004, the Parliament passed the bill introducing **PR for local elections** in Scotland from 2007 with support from all members except the Conservatives and a handful of Labour rebels.¹¹³ Coming after Scottish Executive commitments not to follow Westminster on top-up fees and foundation hospitals, and the previous month's passage of the **NHS Reform Bill** (which abolished NHS trusts), the combined effect seemed to be an **acceleration of policy divergence**.

104 Scotland Devolution Monitoring Report: November 2003, pp. 36-36; and February 2004, pp. 23-27.

105 See Guy Lodge, Devolution and the Centre Monitoring Report: November 2003, pp. 6-11, at: www.ucl.ac.uk/constitution-unit/monrep/centre/centre_november_2003.pdf. Scottish MPs had also proved decisive (though very narrowly) at an earlier stage of the bill's passage in July 2003.

106 Scotland Devolution Monitoring Report: February 2004, pp. 20-21. The legislation became the Scottish Parliament (Constituencies) Act 2004.

107 Scottish Parliament Enterprise and Culture Committee, Report On Scottish Solutions Inquiry, 3rd Report, 2003 (Session 2), SP Paper 67, para. 17.

108 See Guy Lodge, Devolution and the Centre Monitoring Report: February 2004, pp 15-24, at: www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf.

109 Scottish Parliament Official Report, 29 January 2004, from col. 5295; and discussed in Scotland Devolution Monitoring Report: February 2004, pp. 14-16, and 35-36.

110 Andy Kerr, Scottish Parliament Written Answers, 12 March 2004, answering question S2W-3045 from David Mcleitchie.

111 See Scotland Devolution Monitoring Report: May 2004, pp. 57.

112 See Scotland Devolution Monitoring Report: May 2004, pp. 15-22.

113 Scottish Parliament Official Report, 23 June 2004, from col. 9392.

- On the other hand, the **Anti-Social Behaviour Bill**, passed a week earlier, on 17 June, brought Scotland closer in line with the UK's tougher approach to law and order.¹¹⁴ June also saw the Scottish Parliament pass a Sewel motion allowing Westminster to legislate for Scotland on civil partnerships.¹¹⁵
- Also on the agenda was council tax, which, it was revealed, had risen over 40% since 1996-97. The Executive responded by establishing a **Independent Review of Local Government Finance** on 30 June 2004.¹¹⁶
- On 3 September 2004 **Alex Salmond MP became SNP leader** for the second time. John Swinney had resigned after the SNP's vote share slipped below 20% in June's European Parliament elections.¹¹⁷ Nicola Sturgeon, the new deputy, would lead the party at Holyrood.¹¹⁸
- MSPs debated the **Executive's 2004-05 legislative programme** on 7-8 September 2004. The package of 12 new Executive bills included further health, education, criminal justice and transport measures.¹¹⁹
- On 15 September 2004, shortly after the **Parliament moved into its new home**, the Fraser Report was published, drawing critical conclusions of how the building project and its budget were managed.¹²⁰
- 6 October 2004 saw the Parliament pass the **School Education (Ministerial Powers and Independent Schools) Bill**. The bill was criticised by opposition parties and COSLA for the intervention powers it gave to ministers, which **moved Scotland closer to the English approach**.¹²¹
- Meanwhile, **health policy** "moved firmly to the top of the devolved policy agenda" due to concerns at waiting lists/times and hospital reorganisation/closures.¹²²
- The problems did not appear to stem from a lack of resources, as a November 2004 analysis of Treasury data concluded that **per capita public expenditure in Scotland** had remained at about 115% of the UK average over the first four years of devolution (see Figure 1).¹²³
- On 15 November 2004, the UK Government published a **draft civil service bill** stirring further debate about the possibility of a separate devolved Scottish civil service. Discussions were also ongoing at this time about the **conduct of civil servants** involved in the Holyrood Project and '**dispersal**' of **civil service jobs**, following a critical Finance Committee report.¹²⁴
- On 30 November 2004 Jack McConnell hosted the annual **RegLeg summit**, bringing to an end his low-key term as president.¹²⁵ Meanwhile, figures revealed that **Scottish ministers had participated in the EU Council of Ministers** on 57 occasions since 1999.¹²⁶

114 Scottish Parliament Official Report, 17 June 2004, from col. 9261.

115 Scottish Parliament Official Report, 6 June 2004, from col. 8946.

116 Scottish Executive, 'Local government finance review team named', 30 June 2004, at: www.scotland.gov.uk/News/Releases/2004/06/5749

117 Full results at: http://news.bbc.co.uk/1/shared/bsp/hi/vote2004/euro_uk/html/10.stm

118 See Scotland Devolution Monitoring Report: November 2004, pp. 40-41.

119 Scottish Parliament Official Report, 7 September 2004, from col. 9871.

120 *The Holyrood Inquiry: A Report by the Rt Hon Lord Fraser of Carmyllie QC on his Inquiry into the About Holyrood Project*, SP Paper 205, 15 September 2004, at: <http://tinyurl.com/5nseue>. And discussed in: Scotland Devolution Monitoring Report: November 2004, pp. 5-6.

121 Scottish Parliament Official Report, 6 October 2004, from col. 10950.

122 Scotland Devolution Monitoring Report: November 2004, p. 42.

123 Scotland Devolution Monitoring Report: November 2004, pp. 29-38.

124 Scotland Devolution Monitoring Report: May 2005, pp. 3-5. See also: Scottish Parliament Finance Committee, *Relocation of Public Sector Jobs*, SP Paper 189, 24 June 2004, at: <http://tinyurl.com/557jgu>.

125 Scotland Devolution Monitoring Report: April 2005, pp. 27-28.

2005: Blurry boundaries between reserved and devolved issues

- Scotland's Freedom of Information Act came into operation on 1 January 2005, an important milestone given the Scottish Parliament's commitment to 'openness and accessibility'.¹²⁷
- Around this period, there was also **mixed evidence about 'power sharing' in practice**. MSPs forced Executive climbdowns on trespass law (February 2005) and competitive tendering of ferry services (December 2004), while a public petition on child abuse became the first to be debated in Parliament (December 2004). On the other hand, the Executive cut funding for the Civic Forum, while standing orders were amended to make it more difficult to introduce members' bills (November 2004).¹²⁸
- As the **2005 general election approached**, a number of **UK issues gained prominence** at the devolved level. With no collective responsibility applying on reserved matters, the Executive parties split and Labour was defeated in votes on planned mergers of Scottish regiments and ID Cards in winter 2004-05.¹²⁹
- The **Sewel Convention** also remained in the headlines. In January and February 2005 alone, 8 Sewel motions were passed, giving consent to Westminster to pass bills including the controversial Serious Organised Crime Bill and Constitutional Reform Bill. Meanwhile, the Procedures Committee began an inquiry on the convention on 18 January.¹³⁰
- During the **UK General Election campaign**, the Executive's record in delivering health service improvements was called into question, and contrasted with the 'New Labour' approach.¹³¹ The Further and Higher Education Act (passed on 20 April) meanwhile, was criticised as introducing top-up fees by stealth.¹³²
- Yet on **polling day**, 5 May 2005, Labour's vote held up far better in Scotland (40%) than in England (35%), and the party won 41 of 59 constituencies. The SNP's poor showing (18%, behind the LibDems) confirmed that voters behave significantly differently in Westminster and Holyrood polls (Figure 3).¹³³

126 Scotland Devolution Monitoring Report: November 2004, pp. 24-26.

127 Scotland Devolution Monitoring Report: April 2005, pp. 4-5.

128 Scotland Devolution Monitoring Report: April 2005, pp. 5-9.

129 See Scottish Parliament Official Report, 16 December 2004, from col. 12981 (on the defence issue) and 24 February 2005, from col. 14705. Also discussed in Scotland Devolution Monitoring Report: April 2005, pp. 5-9.

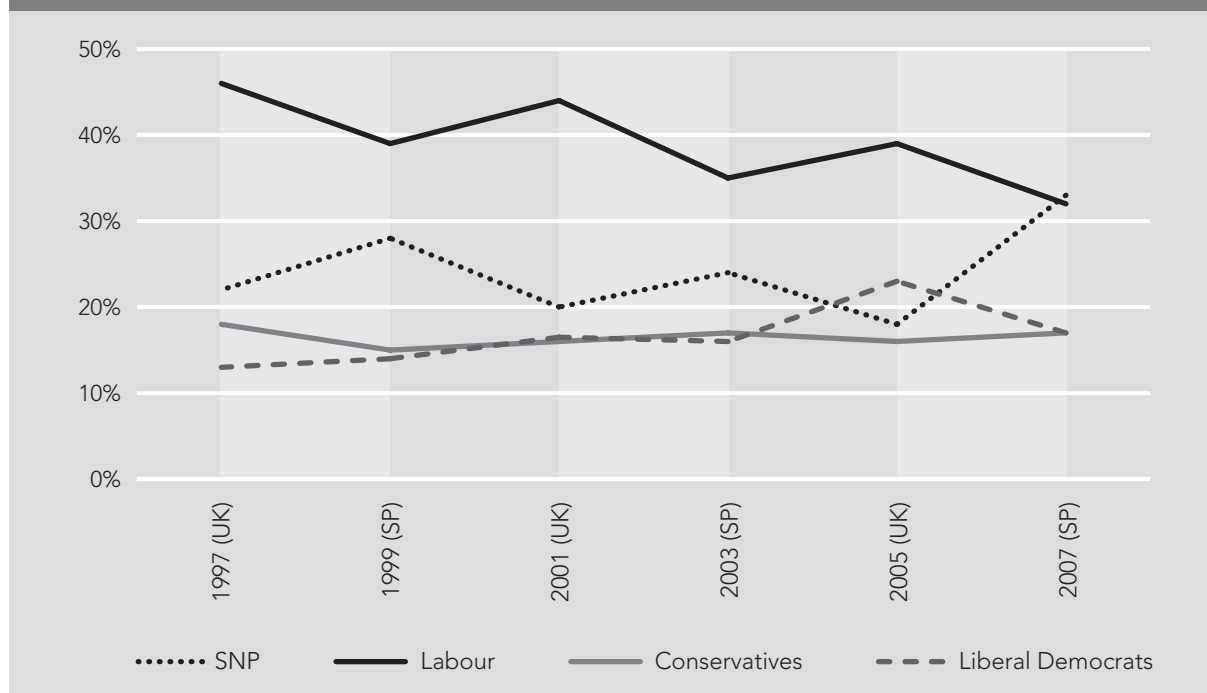
130 See Procedures Committee Official Report, 18 January 2005, from col. 776. Discussed in Scotland Devolution Monitoring Report: April 2005, pp. 21-24.

131 Scotland Devolution Monitoring Report: April 2005, pp. 39-42.

132 Scottish Parliament Official Report, 20 April 2005, from col. 16134.

133 Full results, including regional breakdowns, can be found at: http://news.bbc.co.uk/1/hi/uk_politics/vote_2005/constituencies/default.stm

Figure 3: Share of votes by party in Westminster and Holyrood (constituency vote) elections, 1997-2007 (%)



Source: BBC Online (various pages)

- Shortly after the election, Scottish Liberal Democrat leader and Deputy First Minister **Jim Wallace stepped down**. He was succeeded by **Nicol Stephen**.¹³⁴
- **Legislative developments** included the passage of the Protection of Children and Prevention of Sexual Offences Act (2 June 2005), the Transport Act (29 June 2005) and the Act banning smoking in workplaces (30 June 2005). This latter represented a further example of policy divergence, and also of “venue shift” in which the **smoking ban was reframed as a public health measure** (and therefore devolved) rather than an employment issue (therefore reserved).¹³⁵
- In launching the Scottish Malawi Appeal Fund (1 June 2005) and Fresh Talent programme (22 June 2005) to counter depopulation, the First Minister revealed a willingness to tip his toe into the reserved waters of **immigration policy and international development**.¹³⁶
- On 6 September 2005 the First Minister announced a bumper **legislative programme**, setting out 19 bills for the 19 months before the 2007 election. Law and order was prominent, with plans to crack down on knife crime, drugs and sectarianism. Other bills included a planned reform of judicial appointments. A reduction in the business rates to the English level was also unveiled.¹³⁷
- More generally, the **‘delivery agenda’** retained a high profile in autumn 2005 as the Executive sought to squeeze savings out of local councils while the Finance Committee turned the spotlight on weaknesses at the centre of the Executive.¹³⁸

¹³⁴ Scotland Devolution Monitoring Report: January 2006, pp. 109-110.

¹³⁵ Cairney, Paul (2007), ‘Using Devolution to Set the Agenda? Venue Shift and the Smoking Ban in Scotland’, *British Journal of Politics & International Relations*, Vol. 9(1).

¹³⁶ The Fresh Talent plans were originally announced the previous year (Jack McConnell, Scottish Parliament Official Report, 25 February 2004, from col. 5940). And on the Malawi initiative see: Jack McConnell, Scottish Parliament Official Report, 1 June 2005, from col. 17373. Both are discussed in: Scotland Devolution Monitoring Report: January 2006, pp. 87-88, and 122-123.

¹³⁷ Scottish Parliament Official Report, 6 September 2005, from col. 18763.

¹³⁸ Scotland Devolution Monitoring Report: January 2006, pp. 16-17, and 103-106. And see Scottish Parliament Finance Committee, *Submission to the Public Administration Select Committee Inquiry into Civil Service Effectiveness*, SP Paper 405, 8 July 2005, at: <http://tinyurl.com/6fw2wr>.

- In September 2005 the First Minister and his predecessor both suggested that **further powers could be devolved to Scotland**.¹³⁹ This was amid **reported tensions between Scotland and the UK** on deportations, firearms law, and the policing costs of July's G8 Gleneagles summit.¹⁴⁰
- **Labour comfortably won two byelections** on 29 September 2005. However, turnout in Glasgow Cathcart **fell to a new nadir of 32%**.¹⁴¹
- The freedom of information regime claimed a major victim on 31 October 2005 as Tory leader **David McLetchie resigned** after revelations about taxi expenses, to be replaced by Annabel Goldie.¹⁴² This episode confirmed the **double-edged nature of FOI** as a tool for boosting public trust in politics.
- **Five Executive bills were passed** in the autumn term including important legislation on housing (24 November 2005), licensing regulations (16 November) and family law (liberalising divorce law – on 15 December). Concerns about **Executive domination of the legislative process** (see Figure 4) were also expressed on 26 October 2005 as restrictions were imposed on backbench MSPs' access to the bill drafting unit.¹⁴³
- **Five Sewel motions** were passed in this period too. To assuage complaints some procedural changes were made on 23 November 2005, to enhance parliamentary accountability over the use of the convention.¹⁴⁴

Figure 4: Scottish legislation and Sewel motions passed, 1995-2008

	Scottish Acts 1995-99 (Westminster)*	Acts of Scottish Parliament 1993-2003	Acts of Scottish Parliament 2003-2007	Acts of Scottish Parliament 2007-June 08
Executive Bills	24	50	53	5
Committee Bills	0	3	1	0
Members' Bills	6	8	3	0
TOTAL	30	61	57	5
Private Bills	8	1	9	0
Sewel Motions	n/a	39	38	9

Sources: Office of Public Sector Information (www.opsi.gov.uk); Scottish Parliament Information Centre, various factsheets (at: www.scottish.parliament.uk/business/research/subject/parliament.htm).

Note: Since 1999 a further two Scotland-only Acts have been passed at Westminster: the Sunday Working (Scotland) Act 2003 and the Scottish Parliament Constituencies Act 2004.

139 See, for instance, Angus Macleod, 'McConnell engaged in familiar balancing act', *The Times*, 6 September 2005, at: www.timesonline.co.uk/tol/news/uk/article563099.ece; and 'McLeish weighs into argument', *The Times*, 12 Sept 2005, at: www.timesonline.co.uk/tol/news/uk/article565578.ece

140 Scotland Devolution Monitoring Report: January 2006, pp. 19-21, 85-86, and 93.

141 Scotland Devolution Monitoring Report: January 2006, pp. 111-112.

142 Scotland Devolution Monitoring Report: January 2006, pp. 112-113.

143 Scottish Parliament Official Report, 26 October 2005, from col. 19938.

144 Scottish Parliament Official Report, 23 November 2005, from col. 20968.

2006: Towards the end of Labour hegemony

- In early 2006, the Parliament rejected **Scottish Socialist Party proposals** to abolish Prescription Charges (25 January) and Council Tax (1 February). **Executive legislation introduced** included the Budget Bill for 2006-07 (26 January), Police, Public Order and Criminal Justice (Scotland) Bill (2 February) and the Scottish Schools (Parental Involvement) Bill (22 February).
- Over this period the Executive was also involved in a **“bitter dispute” with local authorities** over its attempts to restrain local spending and council tax levels, as well as over council workers’ pay and pension rights.¹⁴⁵
- Labour’s dominance of Scottish politics was shaken by the dramatic loss of the **Dunfermline and West Fife Westminster byelection** to the Liberal Democrats on 9 February 2006. The result was especially embarrassing given the personal involvement of Chancellor Gordon Brown in the campaign, which had led to clashes with the Executive over bridge tolls.¹⁴⁶
- At Westminster, meanwhile, Lord Baker of Dorking kept the West Lothian Question on the agenda by introducing, on 17 January 2006, a private members’ bill to **bar Scots MPs from voting on ‘English matters’**.¹⁴⁷
- The **division between the Executive parties on energy policy** was made plain as Labour’s conference called for the option of new nuclear power stations to be kept open (26 February 2006) while the Liberal Democrat leadership ruled this out.¹⁴⁸ On 6 March 2006 the party’s Steel Commission also called for significant new legislative and fiscal powers for Holyrood.¹⁴⁹
- The UK Budget, announced on 22 March 2006, generated an extra £87m for the Scottish Executive (via ‘Barnett consequentials’). However, the **Treasury’s tight grip on devolution finance** showed its more inconvenient side when refusing to release money left over by the Executive’s underspend in 2005-06.¹⁵⁰
- Labour suffered another electoral blow on 27 April 2006, slumping to fourth as the SNP increased their majority in the **Moray Scottish Parliament by-election**.¹⁵¹
- The **UK Government was reshuffled** on 5 May 2006 (after local election losses for Labour in England), with Douglas Alexander becoming the **new Secretary of State for Scotland**. Like his predecessor, he was to hold the post part-time, highlighting the undemanding nature of the role. The **role of Scottish MPs** was also in the spotlight as a Scottish Affairs Committee report (published in June) called for the West Lothian Question to be resolved “before... it undermine[s] the whole devolution settlement”.¹⁵²
- Three Executive bills were passed in May 2006: on parental involvement in schools, animal health, and another tough law and order bill.¹⁵³

145 Scotland Devolution Monitoring Report: May 2006, pp. 53-57, and 61-62.

146 Scotland Devolution Monitoring Report: May 2006, pp. 29-31.

147 Following its first reading, the bill was debated at length on 10 February 2006 (House of Lords Hansard, from col. 902). The bill would subsequently pass through the Lords without further debate or divisions but was not given time for debate in the Commons.

148 Scotland Devolution Monitoring Report: May 2006, pp. 67-68.

149 The Steel Commission, *Moving to Federalism – A New Settlement for Scotland*, March 2006, at: www.scotlibdems.org.uk/files/steelcommission.pdf.

150 Scotland Devolution Monitoring Report: May 2006, pp. 60-61. See also: ‘Brown puts shackles on spending by Executive’ *The Herald*, 24 April 2006.

151 Scotland Devolution Monitoring Report: May 2006, pp. 31-32, and 41-43.

152 House of Commons Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective*, HC 983, Fourth Report of Session 2005-06, 19 June 2006, para. 50.

153 See also Scotland Devolution Monitoring Report: September 2006, pp. 21, 50 and 76.

- There were other signs of **policy convergence pressures** relating to flagship examples of Scottish policy innovation. In addition to the threat posed by the introduction of top-fees in England, problems with the implementation of free personal care were identified in June 2006 in an Executive survey¹⁵⁴ and an (otherwise positive) Health Committee report.¹⁵⁵ The implementation of the smoking ban, on the other hand, was seen as a success, raising the chance of it being emulated elsewhere in the UK.¹⁵⁶
- The Executive also faced **continuing pressure over efficiency issues**. On 11 May 2006 the Executive had to give Scottish Enterprise an extra £45m to fill a hole in its budget,¹⁵⁷ which was followed by publication on 26 May of a survey finding that under 30% of Executive staff thought the government made good use of money.¹⁵⁸ This came after the revelation that the public sector accounted for over half the Scottish economy.¹⁵⁹ In June, in addition, Audit Scotland reported that public pension schemes might face a deficit of up to £53bn.¹⁶⁰
- As the parties began to move into election gear the Executive made a **further statement on its legislative programme** on 22 June 2006 setting out plans to introduce further criminal justice legislation, a school meals bill, and a Protection of Vulnerable Groups Bill reforming vetting procedures for responsible adults.¹⁶¹
- Energy policy also remained high on the agenda as Tony Blair endorsed a **new generation of nuclear power stations**.¹⁶² Caught between competing elements within his party (and faced by LibDem, SNP and Green pressure to rule out the nuclear option) Jack McConnell continued to sit on the fence.¹⁶³
- The Executive also had to deal with **disputes with local government workers** (over pensions reform – settled on 29 June 2006 in councils' favour¹⁶⁴) and lawyers, who threatened to boycott legal aid work unless fees were raised (settled on 7 August 2006¹⁶⁵). This coincided with ongoing criticisms of the planned Judicial Appointments Bill for encroaching on judicial independence.¹⁶⁶
- On 4 August 2006 former Scottish Socialist leader **Tommy Sheridan won a libel case** against the News of the World, fatally splitting his party in the process.¹⁶⁷
- **Economic and fiscal issues** dominated much public debate in late 2006. A Conservative policy group report was favourable towards fiscal devolution,¹⁶⁸ while Jack McConnell was decidedly sceptical.¹⁶⁹ The Executive also rejected recommendations for a property value tax to replace council tax,¹⁷⁰ while for once concluding a **local government finance settlement** that councils welcomed.¹⁷¹

154 Hamish Macdonell, '5,000 pensioners are forced to wait for free personal care', *The Scotsman*, 14 June 2006.

155 Scottish Parliament Health Committee, *Care Inquiry*, 10th Report, SP Paper 594, 13 June 2006.

156 These issues are discussed in: Scotland Devolution Monitoring Report: September 2006, pp. 52-53 and 69-71.

157 Scotland Devolution Monitoring Report: September 2006, pp. 58-59.

158 Hamish Macdonell, 'Top civil servants slated by own staff', *The Scotsman*, 26 May 2006.

159 Peter MacMahon, 'Public sector spending accounts for 51 per cent of the economy', *The Scotsman*, 13 March 2006.

160 *Public sector pension schemes in Scotland*, Prepared for the Auditor General for Scotland and the Accounts Commission, June 2006, at: www.audit-scotland.gov.uk/docs/central/2006/nr_060620_publicsector_pension.rtf

161 Scottish Parliament Official Report, 22 June 2006, from col. 26914.

162 See Patrick Wintour and David Adam, 'Blair presses the nuclear button', *The Guardian*, 17 May 2006, at: www.guardian.co.uk/environment/2006/may/17/energy.business.

163 See Peter MacMahon, 'It's time for Jack McConnell to say where he stands on the big issues', *The Scotsman*, 30 June 2006.

164 See Peter MacMahon and James Kirkup, 'Pensions 'rule of 85' upheld to 2020', *The Scotsman*, 30 June 2006.

165 See Robbie Dinwoodie, 'Lawyers win a 12per cent rise for legal aid work; Solicitors describe deal over fees as derisory', *The Herald*, 8 August 2006, p.2.

166 See Douglas Fraser, 'Legal system shake-up on hold; Controversial move delayed until after the election', *The Herald*, 8 August 2006, p.6.

167 Scotland Devolution Monitoring Report: September 2006, pp. 28-29.

168 Scottish Conservative Party, *Policy Advisory Group Report*, at: www.scpag.info, chapter 1.

169 Jack McConnell, 'In the interest of our nation', JP Mackintosh lecture, 24 October 2006, draft at: http://scottishpolitics.typepad.com/my_weblog/files/in_the_interest_of_our_nation.doc

170 The recommendation having been made by the Local Government Finance Review Committee in *A Fairer Way*, 9 November 2006, at: www.localgovernmentfinancereview.org/report/docs/lgrfc-report.pdf

171 Scotland Devolution Monitoring Report: January 2007, pp. 51-54.

- Another major source of dispute was **whether an independent Scotland would need to raise taxes** to maintain current levels of public services. Executive data¹⁷² indicating that Scotland ran a budget deficit (and therefore would need to raise taxes if independent) were published on 11 December 2006 but criticised as biased by the SNP.¹⁷³
- A further ongoing theme was the **size of the Scottish public sector** and ‘quangocracy’ which both the SNP and the Conservatives pledged to reduce. On 19 December 2006, the Auditor General expressed scepticism about the savings reportedly made by the Executive as part of its Efficient Government Initiative.¹⁷⁴
- Amidst these debates, the **Executive advanced its legislative programme**, with the Parliament passing the Scottish Commissioner for Human Rights Bill (2 November 2006), the Planning Bill (16 November), a bankruptcy reform bill (30 November), and the Adoption and Children Bill (7 December), which stirred controversy about adoption by gay couples.
- On the last sitting day of the year, 21 December 2006, an SNP-sponsored motion calling on the UK Government not to go ahead with plans to replace **Trident nuclear submarines** (which are located in Scotland) provoked a Labour rebellion including Cabinet Minister Malcolm Chisholm, who consequently resigned.¹⁷⁵

2007: Unhappy 300th Birthday

- Officially the Scottish Parliament election campaign did not start until the beginning of April, but in reality **electioneering overshadowed all normal political activity** from January 2007. Labour and the SNP were virtually level in the polls throughout the lead-up to the election,¹⁷⁶ keeping interest levels high.
- The **constitutional question** was prominent as the Labour and the SNP set out their competing visions for the future of Scotland. The issue was given extra topicality by the 300th anniversary of Scotland’s ratification of the Treaty of Union on 16 January.
- As over the latter months of 2006, economic issues were high on the agenda, as **Labour made the case that independence would be damaging to Scotland’s prosperity**, set out for instance in a pamphlet by Gordon Brown and Douglas Alexander.¹⁷⁷
- Unfortunately for Scottish Labour and Jack McConnell, which sought to emphasise ‘domestic’ policy issues such as education, **the campaign was dogged by reserved matters** associated with the outgoing Prime Minister – in particular Iraq, the ‘cash for honours’ investigation and Trident replacement.
- The SNP was given a further boost by the leak (on 22 January) of a report, written by the Executive’s senior official in Brussels, which argued that **Whitehall frequently failed to consult with or ignored the Executive** in formulating the UK line in EU negotiations, with consequences that could be “disastrous”.¹⁷⁸
- Meanwhile, at Holyrood, the **Executive rushed to complete its legislative programme** before the dissolution, passing a total of 11 bills between January and March 2006 including reforms to legal aid, justice procedures, prostitution law, and school meals provision. A further six Sewel motions were also passed.¹⁷⁹

172 Scottish Executive, *Government Expenditure and Revenue in Scotland 2004-2005*, 11 December 2006, at: www.scotland.gov.uk/Publications/2006/12/11084016/0

173 Discussed in Scotland Devolution Monitoring Report: January 2007, pp. 60-61.

174 The Auditor General, ‘The Efficient Government Initiative: a progress report’, Audit Committee Official Report, 19 December 2006, from col. 1921, at: <http://tinyurl.com/6gb7mk>.

175 Scottish Parliament Official Report, 21 December 2006, from col. 30777.

176 See polling data summarised in Scotland Devolution Monitoring Report: April 2007, pp. 54-55.

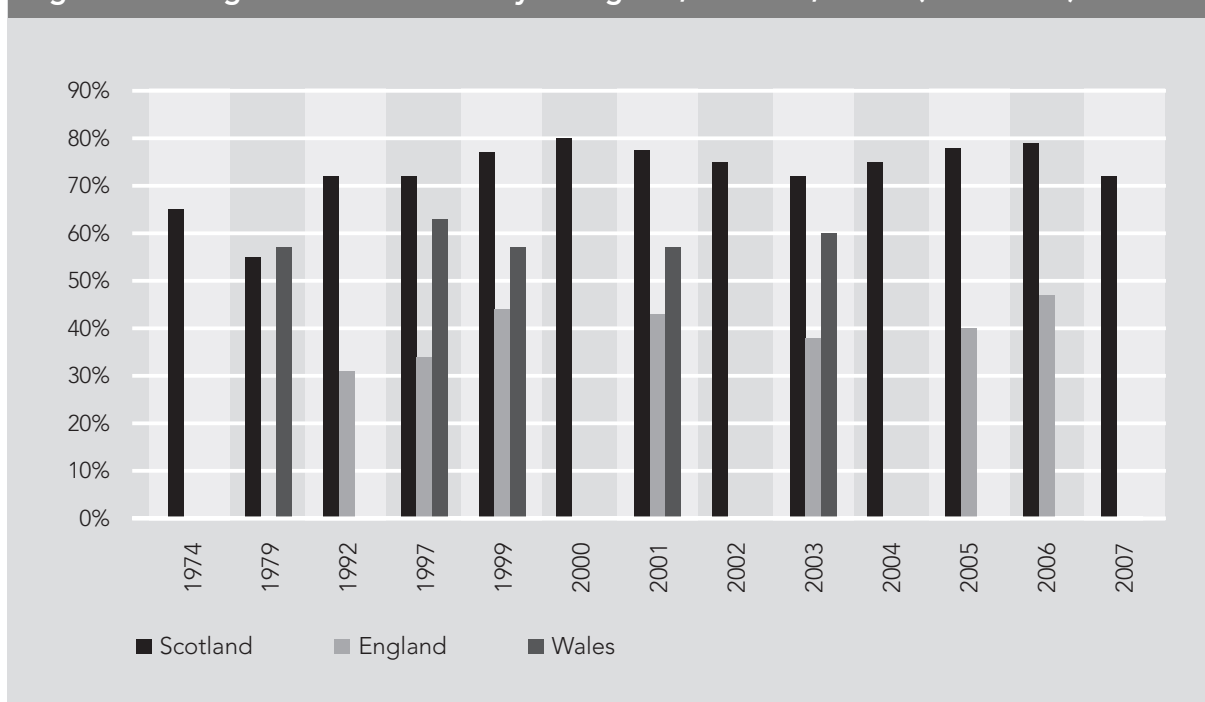
177 Gordon Brown and Douglas Alexander (2007), *Stronger Together: The 21st century case for Scotland and Britain* (London: Fabian Society).

178 See Douglas Fraser, ‘Scotland “finding itself frozen out of Brussels”’, *The Herald*, 22 January 2007, at: www.theherald.co.uk/politics/news/display.var.1137459.0.0.php; discussed in Scotland Devolution Monitoring Report: April 2007, pp. 7-9.

179 See data summarised in Scotland Devolution Monitoring Report: April 2007, pp. 18-21.

- The second session drew to a close on 29 March 2007. An assessment of the **performance of the Parliament** thus far found several signs of Executive dominance, with the number (and significance) of non-Executive bills passed dropping off in the second session compared to the first (Figure 4, above).
- The high volume of legislation was also considered to have had a **deleterious impact on the effectiveness of committees**, with scrutiny of bills crowding out executive scrutiny inquiries and agenda-setting activities such as the introduction of bills, a point made by the 'Conveners' Group' in a February 2007 report.¹⁸⁰
- More positively, Information Commissioner Kevin Dunion praised, in his **review of the implementation of freedom of information** published on 8 March 2007, what was seen as Scotland's "progressive and effective FOI regime".¹⁸¹
- As for **public opinion**, after eight years there remained **ambivalence about whether devolution had delivered concrete benefits**, but strong support for retaining and indeed strengthening the Parliament.¹⁸² Scottish Social Attitudes data also **no evidence of a surge in Scottish national identity** (see Figure 5) though since devolution English identity does appear to have increased.

Figure 5: Strength of national identity in England, Scotland, Wales (1974-2007)*



Source: Alison Park et al (2007), British Social Attitudes : The 24th Report (Aldershot; Gower).

* Figures refer to those selecting 'English', 'Scottish', or 'Welsh' rather than 'British' as their identity when forced to choose between the two.

180 Conveners' Group, Legacy Paper – Second Session, February 2007, at: www.scottish.parliament.uk/s3/committees/CommitteeConvenersGroup/docs/LegacyPaperSession2.pdf

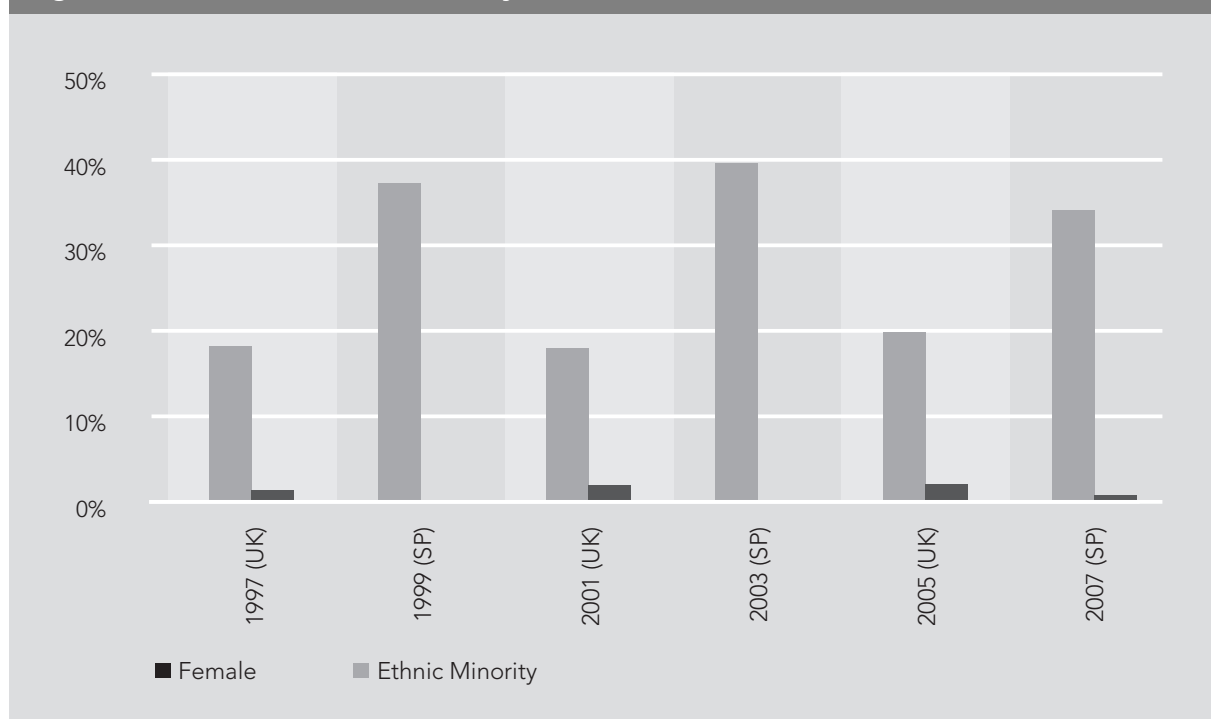
181 Scottish Information Commissioner, *Past, Present, Future*, Freedom of Information Annual Report 2007, March 2007, at: www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2566&slD=234

182 See data summarised in Scotland Devolution Monitoring Report: April 2007, pp. 31, 43-44.

4. Into the Unknown: The 2007 elections and beyond

- The **third election to the Scottish Parliament** was held on 3 May 2007. When the ballot papers had finally been counted (or indeed discounted, as were an unprecedented 142,000), the SNP could claim victory by a solitary seat in the Parliament, and by 1-2% of the vote (see Appendix A).
- Though the big story was the nationalist surge, most of the SNP gains came at the expense of the minor parties and independents rather than the three UK-wide parties. Consequently there remained a **clear unionist majority at Holyrood**.
- **Turnout was slightly up on 2003** (at 52%) but was still lower than Scottish turnout in all recent Westminster elections (see Figure 2 above). The Parliament's **commitment to equal opportunities** was also questioned by the fall in the proportion of women elected, while Bashir Ahmad became the first ever MSP from an ethnic minority background (see Figure 6).

Figure 6: Female and ethnic minority MSPs and MPs, 1997-2007 (% of total)



Note: In 2001, people of ethnic minority background represented 8% of the UK population, and only 2% of the Scottish population (National Statistics Online, 'Ethnicity and Identity: Geographic Distribution', January 2004, at: <http://www.statistics.gov.uk/cci/nugget.asp?id=457>).

- With the arithmetic so finely poised, agreeing on a **new Presiding Officer** proved tricky – as no party wanted to lose a voting member. In the end Conservative Alex Fergusson was persuaded to stand and was elected on 14 May 2007 (with independent Margo MacDonald attracting 20 votes). One SNP and one Labour DPO were elected.¹⁸³
- Having failed to tempt the Liberal Democrats into coalition, but with no appetite either for an anti-SNP unionist coalition, **Alex Salmond was elected First Minister** on 16 May 2007¹⁸⁴ with support from the two Green MSPs with whom a formal cooperation agreement was signed.¹⁸⁵
- The **new slimmed-down 16-member Executive** (subsequently rebranded the Scottish Government) was confirmed on 17 May 2007.¹⁸⁶
- The **Scottish Government's legislative programme** was unveiled on 5 September 2007.¹⁸⁷ The eleven bills announced included the already-introduced bill to abolish bridge tolls, plus legislation on public health, election of local health boards, sexual abuse, judicial appointments, and university finance (to abolish the graduate endowment).
- However, with no majority in the Parliament or on any of the fifteen committees¹⁸⁸ set up on 7 June 2007, the new **administration struggled to make much legislative progress** (which some have welcomed after years of alleged "legislationitis").¹⁸⁹ One year after the start of the third session, only five Executive bills (and no non-Executive legislation) have been passed, including the Budget Bill – passed after a deal with the Conservatives (see Figure 4 above).
- The SNP Government also has the backing in principle of a majority of MSPs to replace the council tax with a **Local Income Tax (LIT)**,¹⁹⁰ though there have been suggestions that its plans may fall outside the powers of the Parliament.¹⁹¹ The SNP has also begun to make the case for transfer of money saved from Council Tax Benefit should the LIT be implemented.
- This is far from the only example of the new government **testing the boundaries of the devolution settlement**. Sources of tension partly deriving from the new administration's agenda have included: control of Scottish Parliament elections (which the independent Gould report suggested should be devolved¹⁹²); plans for new nuclear power plants (which the SNP has vetoed in Scotland); the location of Trident submarines; Scotland's role in EU fisheries negotiations; and the size of the block grant allocated to Scotland in autumn 2007.¹⁹³
- Most notably, of course, the new administration has sparked a major ongoing debate about **Scotland's constitutional future**, publishing its White Paper Choosing Scotland's Future on 14 August 2007, setting out its vision for independence while also raising the possibility of the devolution of further powers to Scotland without proceeding to full independence. Numerous opinion polls over the past few years have found evidence that this middle way of 'devolution plus' enjoys the most support. And indeed, the standard Scottish Social Attitudes multi-option question found no increase in support for independence since 1999 (see Figure 7).

183 Scottish Parliament Official Report, 14 May 2007, from col. 11. And see Scotland Devolution Monitoring Report: September 2006, p. 20.

184 Scottish Parliament Official Report, 16 May 2007, from col. 20.

185 Scottish National Party and Scottish Green Party, *Cooperation Agreement*, 11 May 2007, at: www.scottishgreens.org.uk/site/id/5798/title/Green_SNP_Co_operation_Agreement.html

186 Discussed in Scotland Devolution Monitoring Report: September 2006, pp. 12-15.

187 Scottish Parliament Official Report, 5 September 2007, from col. 1362.

188 Discussed in Scotland Devolution Monitoring Report: September 2006, pp. 22-23.

189 See e.g. Tom Gordon, 'Too many laws being passed, says minister', *The Herald*, 6 December 2006.

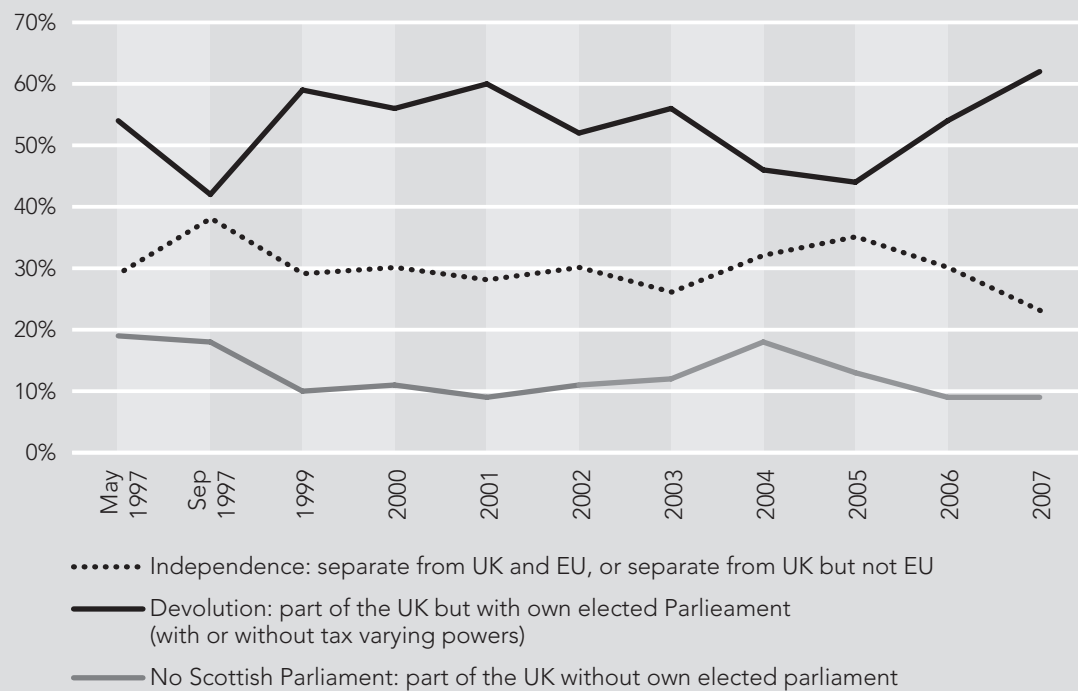
190 A motion in favour of the policy was passed with the support of SNP, Liberal Democrat and Green members on 17 April 2008, Scottish Parliament Official Report, from col. 7619.

191 See e.g. David Maddox, 'Local income tax "would be illegal"', *The Scotsman*, 27 May 2008.

192 *Independent review of Scottish Parliamentary and local government elections: 3 May 2007* (Gould Report), (London: Electoral Commission), October 2007, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/23_10_07_votereport.pdf

193 See Akash Paun (ed.), *Devolution and the Centre Monitoring Report: May 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_May08.pdf, p. 47.

Figure 7: Scottish constitutional preferences, 1997- 2007 (%)



Source: John Curtice, 'Public Attitudes and Elections', Scotland Devolution Monitoring Report: May 2008, at www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html, p. 35.

- The SNP's victory also acted as a catalyst for the creation of the unionist parties' own constitutional initiative, the **Commission on Scottish Devolution**, to whom we address this report.

Conclusions

As stated in the introduction, the principal purpose of this report is not to draw firm conclusions about how the current devolution arrangements could be improved, but to inform the deliberations of the Calman Commission on this question. The evidence presented here is by no means comprehensive, as a summary of nearly ten years of political history could never be, but the intention has been to point the reader towards further useful lines of inquiry. In addition, it has been suggested that recommendations for reform of the present arrangements should first of all consider the different purpose(s) that devolution was intended to serve.

In terms of **public policy**, devolution has certainly enabled the passage of significantly more Scottish legislation, though this fact has not been without its critics. There have been examples of policy divergence (e.g. tuition fees, personal care and local electoral reform), policy innovations emulated elsewhere (the smoking ban), and decisions to follow the English line (on anti-social behaviour for instance). But Whitehall has, in some cases, clearly been a (not necessarily insurmountable) obstacle to policy innovation, such as Treasury reluctance to hand over money saved from Attendance Allowance. The evidence of **governance** improvements is also mixed. The Executive – at least when it has a majority – has come to dominate the legislative process as at Westminster, though there are indications of success, for instance, at delivering a more transparent system of government, and one which citizens find easier to engage with (via the petitions process for instance). The SNP victory of 2007 may have been a shock to some **unionist** advocates of devolution, but independence remains a minority view among MSPs and, more importantly, the Scottish people as a whole. The low turnout in all three Holyrood elections to date has confounded expectations of a new, more trusting relationship of citizen and state. Likewise, many of the policy outputs of devolution have not been met with overwhelming acclaim. But the **legitimacy** of devolution itself is beyond question: a clear majority favour retaining the present Parliament, though a renegotiation of its powers and its relationship with Westminster may hold the promise of enhancing its status still further.

Appendix A: Scottish Parliament Election Results, 1999-2007

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	1999			2003			2007		
	Constits (vote)	List seats (vote)	Total seats	Constits (vote)	List seats (vote)	Total seats	Constits (vote)	List seats (vote)	Total seats
Labour	53 (39%)	3 (34%)	56	46 (35%)	4 (29%)	50	37 (32%)	9 (29%)	46
SNP	7 (29%)	28 (27%)	35	9 (24%)	18 (21%)	27	21 (33%)	26 (31%)	47
Conservatives	0 (16%)	18 (15%)	18	3 (17%)	15 (16%)	18	4 (17%)	13 (14%)	17
LibDem	12 (14%)	5 (12%)	17	13 (15%)	4 (11%)	17	11 (16%)	5 (11%)	16
Others	1 (3%)	2 (13%)	3	2 (10%)	15 (23%)	17	0 (2%)	3 (15%)	3

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