

Intergovernmental relations and Scotland's constitutional debates

Presentation by Alan Trench for seminar
on 'Scotland's Constitutional Future'
University of Edinburgh, 16 March 2012

4 possible outcomes from the debates

- **Status quo (plus Scotland bill)**
 - Limited tax devolution, no significant change in functions
- **‘Devolution plus’**
 - Significant fiscal responsibility – 50% of devolved spending
 - New functions: some/all welfare benefits, broadcasting, immigration?

4 possible outcomes from the debates cont'd

- **‘Devolution Max’** – devolution of everything save defence, foreign affairs, currency
 - Full fiscal autonomy: all taxes in Scotland set & collected by Scottish authorities
 - End to UK-wide welfare state – welfare benefits (save pensions?) devolved
 - Micro-economic and regulatory (BIS) functions?
 - EU business?

4 possible outcomes from the debates cont'd

- **Independence**

- Scotland an independent state outside UK
- 'Social union' with rump-UK (cultural one too?)
- Monetary union
- Border/bilateral issues

Intergovernmental relations today

- Still pretty attenuated and un-institutionalised compared with federal systems
- Key format the Joint Ministerial Committee
 - Annual plenary meetings
 - Domestic format (biannual meetings)
 - EU format (4 times a year or so; DAs excluded from Cabinet Office-UKREP planning meetings since 2007)
 - Disputes resolution panel
 - Plus quadrilateral meetings of finance ministers (twice a year) and agriculture ministers (were 10 times a year)
- Role of Scotland (and Wales) Office now politicised – less able to act as ‘honest broker’

Devolution after the Scotland bill

- Likely but not certain that bill will become law – time is tight
- Limited tax devolution: stamp duty land tax, landfill tax, 10 points personal income tax
- Not much change to division of powers – tidying up (airguns, traffic regulation, charities)
- Widely seen as underwhelming – unionist parties seem to accept need to move beyond this (having insisted that they wouldn't)

Devolution after the Scotland bill 2

- Bill proposed greater use of intergovt mechanisms to manage overlaps of power and areas where there was a distinct devolved Scottish interest but Commission/UK Govt didn't wish to devolve further powers
- Key changes related to fiscal powers:
 - Finance ministers' quadrilateral renamed JMC (Finance) (or not)
 - New bilateral ministerial-level body to manage operational matters – already meeting, though clearly difficult
 - 'clear line of sight' for HM Revenue & Customs, incl accountability to Scottish Parliament

Devolution after the Scotland bill 3

- This was always insufficient, and showed a ‘make it up as you go along’ approach to something of much greater importance than present arrangements, and where certainty & clarity are needed
- Should go much further:
 - Greater clarity about UK policy – not just ‘no detriment’
 - Clout for interministerial meeting
 - Scope to expand if Wales goes down similar path
 - Scottish appointment to HMRC board

Devolution after the Scotland bill

4

- The West Lothian question: can no longer be ducked, but triggers huge Whitehall upheaval as well as in Parliamentary procedure
 - McKay Commission
- The upshot is that even the 'minimal change'/ status quo position would require extensive changes in institutional relations between UK and Scotland (and other devolved govts)

'Devolution plus' and its implications

- The new unionist alternative to Calman and independence
- Multiple initiatives: Lib Dem Home Rule Commission, Labour Commission, 'civic Scotland', Reform Scotland. (Conservatives?)
- Far from clear what this might involve, but likely to be
 - Significant fiscal devolution, involving all or much of personal income tax, VAT receipts, 'sin' taxes (alcohol, tobacco), land taxes, perhaps corporation tax, – equating to 50%+ of devolved spending
 - Devolution of significant welfare functions, on unknown basis
 - Other functions ? Broadcasting obvious top of list. Immigration also a contender.

‘Devolution plus’ and its implications

2

- A significant attraction of Devo Plus for unionist parties: if Scotland appears to bear burden of higher spending on welfare (or other functions), that reduces antagonism in England toward Scottish ‘special treatment’
- **Broadcasting:** Scottish Broadcasting Commission presented obvious (and unionist!) model – effectively, of executive but not legislative devolution, so making broadcasting more ‘Scottish’ without altering its general UK-wide framework

'Devolution plus' and its implications

3

Different models for *welfare devolution*:

1. Hand over whole system in Scotland to Scottish Parliament – meaning fragmentation of UK-level welfare system
 - How to fund that?
2. Devolution of 'small benefits' (AA, CTB) which have caused interface problems (compatible with structure of Universal Credit?)
3. Allow Scottish Parliament freedom to provide benefits which might overlap with UK ones, paid for from Scottish resources and administered by Scottish Govt ('parallel track' approach)
4. General power for Scottish Parliament to 'top up' strands of UC from devolved resources, administered by single agency as at present? ('Piggy-back' approach)

'Devolution plus' and its implications

4

- Any of these will require extensive changes incl accountability to Holyrood for Benefits Agency. Power to appoint to BA board?
- Plus interministerial liaison, and restraints on what changes UK Govt can introduce, how and when

Devo Plus and fiscal devolution

- Likely to be a medium-term project: much can be done quite quickly, but not all of it
- Phase 1: (within 3 years) devolve personal income tax, assign VAT and (most) land taxes
- Phase 2: (5-8 years) CGT on land; basis for charging tax on alcohol & tobacco (given problems with excise duties), devolve corporation tax (given corporate need for certainty, complexity of dividing receipts, rules for cross-border businesses)?

Devo Plus and fiscal devolution 2

- Who should collect taxes? Strong arguments for a single collection agency (simplicity for tax payers, minimising administrative costs)
 - But this means considerable upheaval for HM Revenue & Customs

BUT this implies:

- Turning HMRC into a ‘multi-govt’ agency – not a creature of UK Govt and subordinate to Treasury, but to both UK and Scottish Parliaments
- Audit arrangements?
- To extent grant funding remains part of the mix (highly likely), having more impartial decision-maker – not HM Treasury

Devo Plus and fiscal devolution 3

Implications: either Devo Plus is only a partial devolution of welfare, in which case it still entails huge UK-level changes to create and accommodate limited measures of devolved autonomy, or it's very close to Devo Max and turning UK into a 'shell state'.

Plus: doing fiscal devolution seriously (as Devo Plus implies) also requires considerable change in making and implementing tax policy

Devolution Max

Devo Max appears less politically healthy now than it did a few months ago – lack of support from any unionist party

- not surprising – what party campaigns for something defined by its opponents?

Would entail

- ‘Full fiscal autonomy’ (VAT only being assigned): all taxes in Scotland being set by Scottish Parliament, with share paid to UK Govt for common UK services
- Full or very substantial devolution of welfare benefits, to be paid from Scottish tax receipts
 - Hard to sustain welfare benefits paid by UK on basis of transfers from Holyrood
- UK retaining responsibility for defence, foreign affairs, macro-economy but not much else
 - Controversies attaching to these areas: Iraq war, Trident renewal, Dec 2011 EU summit
 - What about the ‘UK border’ and immigration and nationality?

Devolution Max 2

Full fiscal autonomy would imply

- Creation of Scottish Customs & Revenue service (tax collection)
 - How to manage cross-border businesses, both for PAYE and employers' NICs, and corporation tax? (cf double tax treaties)
- Tax policy co-ordination agreements? What is advantage for (rest of) UK of agreeing to a system that enables tax competition that may damage it economically or fiscally, without some safeguards?
- What about macro-economic management? Would Scotland be willing to accept whatever choices Chancellor, HM Treasury and Bank of England made?
 - Significant effect on devolved matters including revenues
 - What safeguards?
 - Prior consultation: about what decisions, when?
 - Formal engagement in decision-making – e.g. MPC remit, seat on FPC?

Devolution Max 3

- Supply side of the economy? (EU role)
- EU obligations and UK liability for (non) compliance?
 - Role in making of UK EU policy given that large parts will be wholly devolved in Scotland, but not in relation to other parts of UK?
- External border issues and immigration?
- West Lothian question and English votes for English laws
 - Unavoidable
 - Means UK responsibilities remain limited but high-profile and high stakes (as well as controversial: Iraq war)

Devolution max 4

SO:

Devo Max would still entail a large degree of interaction between 'Scottish' and UK authorities

Much of that would relate to highly controversial matters, or ones of considerable importance to 'Scotland' and devolved ones

So there would still be a complex relationship with the UK, but decreasing resources (officials with knowledge of key policy areas on both sides of border, politicians) for that

HIGHLY LIKELY TO BE VERY UNSTABLE AS A RESULT

Independence and its implications

Plans for ‘independence’ appear to indicate a high degree of overlap with UK and shared services or areas of interest:

- The ‘social union’ (whatever that is)
 - ‘Cultural union’ too – is that just the BBC?
- Currency/monetary union
- Low-level practical services e.g. Ordnance Survey, DVLA (Kenny Macaskill *Building a Nation*)
- Defence and customs issues (common island border)
- Scots serving in rUK armed forces?

Independence and its implications 2

These imply two things:

- Willingness on part of remaining-UK to agree to provide such services, on appropriate terms
 - Raising question of what happens if terms rUK offers are too onerous
- What happens if for whatever reason (cussedness? No material advantage to it?) rUK won't offer them?
- As well as the question of the mechanics of how such arrangements are concluded – e.g. involvement in MPC policy making, BBC licence fee for Scottish viewers

Some conclusions

- Any plausible outcome to the Scottish debates is going to trigger a significant upheaval in intergovernmental relations: in how govts interact with each other, and the issues over which they need to do so
- Broadly speaking, the greater the scope of Scottish self-govt, the more important that interaction will be for both govts, in general political sense and in its impact on the ability to deliver policies in areas for which they're responsible
 - Low levels of IGR possible so far because it's been quite low stakes for both parties, though more important for devolved than UK
 - As it becomes higher stakes, risks on both sides become higher

Some conclusions 2

- The question is whether the UK/rUK is able and willing to make those adjustments
 - Impacts on other parts of UK incl Wales & N Ireland
 - Conservative backbench irritation/indifference toward Scotland
 - Failure of key parts of Whitehall to adapt so far (HMRC, Treasury)