



Smith Commission on Devolution

Submission from UNISON Scotland - October 2014

Introduction

UNISON is Scotland's largest trade union and we welcome the opportunity to make a submission to the Smith Commission on further powers to be devolved to the Scottish Parliament and beyond to local government.

UNISON Scotland's approach to constitutional change driven by the interests of our members, by the sort of Scotland we want and deserve to live in. This means that for us, precise constitutional arrangements are the end point and not the starting point of the debate. We started by defining the sort of Scotland we wish to see in our [Fairer Scotland](#) paper and measure constitutional arrangements against that vision. The objective is to tackle inequalities, poor health and deprivation, pursue full employment and employment rights.

Extending Devolution

UNISON's position on extending devolution is based on the principle of subsidiarity, the idea that matters should be handled by the smallest (or, the lowest) competent authority. This principle also applies to the Scottish Parliament in its dealings with local government because decisions should be taken as closely as possible to the citizen.

We recognise and pay credit to the detailed work undertaken on devolution by initiatives including *Devo-Max* and *Devo-Plus* as well as the Red Paper and the Liberal Democrat Home and Community Rule Commission. However, most of these schemes centre largely on what could be called 'constitutional mechanics'. Changing where powers are managed from, or altering how this or that tax is levied etc is often seen as an end in itself. Our approach in *A Fairer Scotland* has been that it is social change that matters. The merits, or otherwise, of constitutional change are dependent on whether they are going to help create a fairer, more equal and just society.

While we set out our view of the devolution mechanisms below, they are offered in the context of our wider approach to constitutional change. This requires the political parties to use the extended powers to create a fairer Scotland.

Fiscal powers and taxation

Much of the discussion around changes to the current devolution settlement involves discussion of further powers over taxation and spending. We recognise that after the Scotland Act 2012 is fully implemented Scotland will have one of the most devolved tax revenues in Europe. However, because a Scottish Government can't vary the rate in each band, any increase in income tax is not as progressive a measure as it could be.

We support the following package on fiscal powers:

- Devolve all property based taxes. They already largely will be after the Scotland Act 2012 is implemented.
- Fully devolve income tax including the power to vary the rate in bands as partial devolution makes little sense. This should include National Insurance as the link with contributory benefits is becoming increasingly weak and government needs to see the full impact of their taxation policy on people's incomes.
- Business taxes should remain at UK level. Tax competition is wrong in principle and in any case will be constrained by tightening EU rules in this field.
- Consumption taxes (primarily VAT) largely at UK as EU rules don't allow variable rates in the same state. There is a stronger policy element to fuel duty, tobacco and alcohol taxes, but given the integrated nature of the UK it is hard to see how these could be set differently in Scotland.

We understand the calls for greater oversight of oil revenues in Scotland. However, we also recognise that the volatility of oil revenues do not make it a suitable devolved tax.

Fiscal devolution is important to allow the Scottish Parliament to pursue its own approach to public service reform, rather than being tied to the financial consequences of reform in England. For the avoidance of doubt, the Scottish Parliament should have explicit powers to introduce new taxes.

Any partial devolution of fiscal powers will also require a balancing mechanism using a combination of grant and borrowing. We see little value in assigning revenues as this is largely cosmetic and we do not subscribe to the 'moral hazard' argument for fiscal devolution.

Taxation is not the only fiscal power we should consider. The Scotland Act 2012 gives the Scottish Government new borrowing powers and the Treasury has published its plans for bond issuance. However, these are very limited, both in method and amount, with the Treasury orthodoxy insisting on central government's right to control overall state finances. This is a crucial issue for Scotland and it is essential that Scotland gets wider borrowing powers.

The only restriction should be prudential i.e. can Scotland finance the cost of borrowing from revenue. This power already exists for local government therefore it seems absurd that devolved administrations should not have similar powers. With such flexibility we could finally get rid of the huge cost of PPP/PFI schemes by giving prudential borrowing powers to health boards, NDPBs and public corporations, including Scottish Water.

In the context of enhancing the financial powers of the Scottish Parliament/Government in a devolved UK. We should not lose sight of the value of fiscal solidarity across the UK. Allocating resources on the basis of need was the thinking behind the Barnett Formula. It also happens in other European countries using mechanisms like shared taxation, hypothecated spending and equalisation mechanisms. Scotland has benefitted from this approach in the past and may need to do so again. Greater fiscal autonomy must continue to allow for resource transfer to areas of need across the UK.

Non-Fiscal Powers

The key principle when allocating powers between levels of government should be subsidiarity, the idea that matters should be handled by the smallest (or, the lowest) competent authority. On that basis we have looked at the balance of powers and support the further devolution of the following powers:

- **Welfare benefits.** The UK Government's penal welfare cuts have inevitably resulted in calls to consider the devolution of welfare benefits. We sympathise with those concerns while recognising that the cyclical nature of welfare spending could create significant difficulties for the Scottish Parliament and the consequential budget pressures on other public services. We therefore, with some reluctance, agree that welfare benefits should be generally reserved. However, there are a few exceptions. Council Tax Benefit is being devolved and this is necessary for any reform of the Council Tax, which is a devolved matter. We also believe that Housing Benefit should be separated from the Universal Benefit because of the close link to housing policy, a devolved issue. Similar considerations apply to Attendance Allowance and Carers Allowance. The Scottish Parliament should also have explicit powers to introduce new benefits or supplement existing provisions.
- **Pensions.** While the state pension should remain at UK level, public service pensions for devolved services should be fully devolved. At present devolution is limited to regulatory powers only. Our experience with the UK Public Service Pensions Bill confirms our view that a one size fits all UK approach is not appropriate for this issue.
- **Control of medicines and misuse of drugs.** These are reserved whilst other health and criminal provisions are devolved. This appears to be inconsistent and we would favour these powers being devolved.

- **Elections to Scottish Parliament and voting franchise.** The current hybrid arrangements can cause confusion with authorities as well as the public. The Scottish Parliament should control all aspects of elections that they have responsibility for. This would also enable the Scottish Parliament to extend the franchise to 16 and 17 year olds as was successfully achieved in the independence referendum.
- **Data protection.** The Scottish Information Commissioner, appointed on the recommendation of the Scottish Parliament, deals with freedom of information issues in devolved public service areas. The Information Commissioner is a separate UK-wide authority appointed by Westminster and responsible for reserved areas of public service, including in Scotland, and also issues which relate only to England, Wales and Northern Ireland. The UK Information Commissioner is responsible for dealing with Data Protection issues across the UK. The two authorities currently co-operate on the basis of a Memorandum of Understanding but as Freedom of Information and Data Protection are closely linked we can see merit in devolving Data Protection.
- **Immigration.** As the 'Fresh Talent' initiative showed, the immigration requirements of Scotland have been constrained by a UK immigration policy that is largely driven by the needs of SE England. Whilst UK borders remain, we would argue for consideration of some separate immigration controls including the use of Scottish residence requirements. This would enable Scotland's economic requirements (already a devolved issue) to be given greater focus. In addition there is also a case for considering elements of asylum powers as the exercise in practice of these powers have not always reflected Scottish public opinion in recent years. Asylum also has significant implications for devolved responsibilities particularly social work and education.
- **Competition policy.** We believe competition policy in respect of provision of public services should be devolved. This is most obvious in water as this is a public service in Scotland. Public service, not competition policy should drive the regulatory approach.
- **Consumer protection.** This is largely enforced by local government in Scotland and UK government roles do not always reflect Scottish requirements. Devolution could make consumer protection more responsive to local conditions, and there are no reasons to keep this matter reserved.
- **Energy.** This is a shared area of responsibility at present. Generation and nuclear regulation are reserved. Planning, aspects of energy efficiency and renewable energy are devolved. This can lead to confusion over roles and conflicting policies. There is a UK market for energy and European Directives which would require some common approaches. However, Scotland's energy industry is structured differently to the rest of the UK and we have concerns over discriminatory arrangements by UK regulators. Scottish energy policies have been different to the rest of the UK, reflecting Scotland's strengths in this field and there is a demand for new forms of ownership including local authority and cooperative models. It also a key element of economic strategy which is also devolved.
- **Job centre employment programmes.** We support the devolution of these powers as recommended by the Christie Commission to ensure a joined up approach to service delivery. The Scottish Parliament needs to have the powers necessary to promote job creation.
- **Health & Safety.** We believe that devolution of powers over health and safety could improve Scotland's poor record in health and safety at work. Scotland has different industry structures that may explain in part the differences. In addition other aspects of health and safety including the NHS and local authority roles are already devolved and could be joined up more effectively if this service was devolved. This is already devolved in Northern Ireland.
- **Broadcasting.** As culture is largely devolved it seems an anachronism that the public service broadcaster should be regulated at UK level. The Broadcasting Commission partly supported this with their recommendation that the Scottish Parliament should take an active role in

considering the broadcasting industry and services audiences in Scotland receive, in order to provide a visible and public forum for debate, with Scottish Ministers having greater responsibility, within the UK framework, for those operational functions directly affecting Scotland. They also recommended that the influence and responsibilities of Ofcom in Scotland should be strengthened and there should be specific representation for Scotland on the Ofcom Board at UK level.

- **Equal opportunities.** The substantive legislative provisions are reserved and the Scottish Parliament's powers are currently largely restricted to promoting equality. We believe that Scotland's demographics are different to England and that we have different equality concerns (e.g. sectarianism). Therefore these provisions should be devolved. There are precedents for this: Northern Ireland has had different equality legislation from the rest of the UK, and Scotland already has its own Human Rights Commission.
- **Labour market regulation.** UNISON shares the widespread anger at the attacks on employment rights, equalities and trade union rights at Westminster. This approach is also leading to an economy where work is less well paid, less secure and less permanent. The Working Together (Mather) Commission has set out a new blueprint for industrial relations in Scotland and the devolution of all aspects of labour regulation will enable the Scottish Parliament to implement all the recommendations. Labour market regulation and the National Minimum Wage in particular are vital levers in addressing poverty and income inequality. The development of free trade unions through recognition and procedural agreements and collective bargaining are an essential element in ensuring fairer wage distribution.
- **Transport**
While transport is largely devolved, the administrative devolution of the Scotrail franchise does not include the explicit power to introduce new forms of ownership. Air Passenger Duty (APD) should also be devolved to enable a comprehensive strategy to be developed over aviation. This would of course need to balance economic development with the statutory requirement to cut carbon emissions.

Scottish Parliament and Westminster

We also support mechanisms to ensure the legal entrenchment of devolution within the constitution. Several areas that remain reserved should still be subject to dialogue between the UK and Scottish Parliament to ensure joined up approaches or that UK approaches are appropriate for Scotland.

In order to solidify the position of the Scottish Parliament in this respect the Sewel Convention should be given legal force. The Scottish Parliament should be able to exert greater influence over the UK Government's ratification of Treaties and Directives which have an impact upon areas where power is devolved. This would include Treaties such as the Transatlantic Trade and Investment Partnership which could impact potentially upon the ability of the Scottish Government to ensure that the delivery of services such as NHS remain public.

There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the jurisdiction of the Scottish Parliament.

Devolution below the Scottish Parliament

As set out above one of the reasons UNISON has consistently advocated devolution and its extension is a belief in the principle of subsidiarity – the idea that decisions be taken at lowest practical level in order to allow people the biggest feasible say over their lives. So further reforms to devolution should be aimed at strengthening other layers of decision making and improving democratic accountability at all levels. Devolution should not end at Holyrood.

At a time when there is increasing concern over the centralisation of services in Scotland, it is important that the constitutional role of local government should be recognised in any discussion

over devolved powers. We emphasise this relates to devolving powers to democratically accountable local authorities, not simply localism.

Local authorities should have a stronger statutory footing - gaining greater control over their finances including business rates and there should be less ring fencing of council grants as with the Council Tax freeze. As the Christie Commission recognised, Scotland has the smallest number of local authorities per head of population in Europe. We should be considering strengthening local democracy, not taking it further away from the people through mergers and centralisation.

Conclusion

UNISON Scotland believes that the debate on further devolution should be more than an examination of mechanisms. We recognise the importance of getting the balance of powers right and that should be done with some guiding principles such as subsidiarity.

In this paper we have outlined how extended devolution could be delivered with greater control over fiscal and other powers. In some cases this would give the Scottish Parliament the levers to address specifically Scottish issues. In other cases simply because it we would do things differently in Scotland without undermining the solidarity of the UK. One of the strengths of devolution is that other parts of the UK can learn from the success and failures of different approaches.

In this debate we should always remember that we seek greater devolved powers for the purpose of improving people's lives. The constitutional mechanics are a means to an end. Not an end in themselves.

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