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The evidence submitted relates mainly to Northern Ireland but does include comparative material relating to Scotland and Wales.


Principles underlying The Union and Devolution

The Union

Q 1. The UK has a long history as a unitary state reflected; in a powerful centralised government at Westminster; in mass national political parties and no other form of government between the UK government and local government. Northern Ireland has presented an exception to this pattern, with a form of devolved government from 1921 to 1972 and then from 1999 and with distinctive political parties. Historically Northern Ireland has had a system of devolved government within the Union established as a political solution to the Irish Home Rule crisis but not in recognition of an Ulster nation state, or an Ulster nation.

Q 2. Historically political negotiations and dominant interests have played a more important role in establishing and maintaining the UK union than rational principles. The Commission on Scottish Devolution in 2012 (Calman Commission) presented a rational narrative for maintaining Scotland’s place in the Union. Debates on rational, economic arguments for Northern Ireland remaining in the Union appear to carry little weight in the context of the basic community division between unionists and nationalists based on national identities and religious affiliation. It is, of course, not unusual in Europe to have nation states with major cleavages among the population along lines of ethnicity, language, religion and, particularly in border areas, identification with a neighbouring nation state.

Devolution

Q 3. Devolution is a form of government based on the devolution or delegation of executive, legislative and administrative functions from central government along with a significant range of policy responsibilities which means a division of powers with the UK government. Also required is adequate financial capacity and resources for the devolved government.

The original devolution arrangements set up in 1998 the Welsh Assembly Government without powers over primary legislation. The actual system for Scotland and Northern Ireland was closely based on the Northern Ireland model of devolution as described in the Northern Ireland Constitutional Act 1973 and the earlier devolution proposals for Scotland and Wales in 1978. The administrative system created and the range of powers devolved was closely linked to the systems of territorial administration as operated by the Scottish
and Welsh Offices prior to devolution and continued the existing structures of administrative devolution in Northern Ireland which had existed under Direct Rule. The other key principle of devolution related to the financial arrangements. In practice this did not involve new principles but the continuation of the Barnett Formula and its use to fund the devolved administrations. Barnett does incorporate a principle of ensuring a degree of equity in expenditure resources.

Q 4.
The example of federalism is usually regarded as more appropriate to very large countries, Australia, USA, Canada or countries with strong political reasons for a weaker central government, for example, Germany and Switzerland. There has been a growth in decentralised governance in Europe on the basis of sub-national forms of devolution and regional government. This is normally a response to ethnic, linguistic and religious differences within states and particularly in some border areas where there are cross border national identities. Decentralisation or devolution has also grown in response to rationales about the advantages of more localised governance and to recognition and support for regional forms of government within the EU.

Implementation

Q 5.
The two sets of principles can be said to be imbedded in the original three Acts of 1998 and subsequent amendments. There are three main areas of principles for the working of devolution. Firstly, the division of powers and their development has been covered in the original legislation and subsequent separate Scotland, Wales and Northern Ireland Acts passed at Westminster. There has been little general discussion of principles governing the division of powers or their development. Common themes do arise and at present focus on increasing devolved fiscal responsibilities. Secondly, is the area of inter-governmental cooperation which could cover the role of the territorial Secretaries of State, the JMC, the British-Irish Council, and other quadrilateral or trilateral (three devolved government) forums, and memorandums of understanding referring to such matters as the EU and international relations and inter-departmental relationships. There is no agreed set of principles governing inter-governmental cooperation as a whole. Thirdly, is the financial arrangements where the main issue would revolve around reviewing the principles of the Barnett Formula and the consequences of a new principle of increased fiscal devolution.

Practical Steps to Strengthen the Union

Q 6.
In considering the period 1999 to 2015 there are grounds for questioning an assertion that the devolution settlement was asymmetric between Scotland, Northern Ireland and Wales. This view tends to overlook the many similarities in the systems of devolution as they operated and developments which tended to promote symmetry. The main areas of similarity covered: a convergence in devolved powers, especially after the increase in legislative powers for Wales; a similar system of government ministers; a similar model of Parliament/Assemblies; similar processes of legislation, legislative consent motions and scrutiny and inquiries by committee: the use of the Barnett Formula in all three developed
administrations to allocate public expenditure and influence the boundaries of devolved discretion; the similar role of the Secretaries of State and the territorial offices for Scotland, Wales and Northern Ireland; the operation of the central government administration and extensive use of quangos and similar relationships with quangos and local government; participation as equal bodies in intergovernmental relations through the JMC, the British-Irish Council, concordats and other forums.

Similarities in devolved governance has been promoted by four key factors: 1/ the influence of the Westminster model; 2/ the dominance of the UK Government legally and financially; 3/ the extent of policy copying; and, 4/ the emergence of a devolved style of governance, more participative and more joined-up.

There has been a continuing process of an extension of powers although this still leaves some asymmetrical features, the power sharing arrangements in the Northern Ireland Executive, the separate civil service in Northern Ireland and the absence of devolved justice and policing powers in Wales. The future development of devolved powers relates to fiscal devolution of areas of income tax and other taxation including corporation tax and the nature of the partial devolution of social security. At present it is often not realised that Northern Ireland has more devolved powers than Scotland, including the civil service, social security, employment, trade union legislation, and abortion. Such an assessment may require adjustment with greater fiscal devolution to Scotland.

Much recent attention has been given to a strategy in England of bestowing ‘devolution’ on large cities. This does raise a major issue of definition as what is proposed is not devolved legislative and executive government but mainly larger units of local government with some enhancement of existing local government powers particularly related to transportation, planning, economic development and integrated care.

**Q 7.**
The proposal for partial devolution of taxation for Scotland and Wales along with continuation of Barnett Formula is likely to require a mechanism for some annual discussion with the UK Treasury on allocations, perhaps some form of Exchequer Board on a bilateral basis. There is little demand for tax devolution for Northern Ireland, other than corporation tax. The proposed division of welfare benefits in Scotland raises more difficult issues relating to the need for coordination and cooperation. It also has implications for aspects of other devolved services, including housing and social care. A formal joint coordinating committee from the two administrations may be necessary. In practice welfare benefits are to an extent already divided in Northern Ireland with tax credits being a reserved function while it has proved difficult to secure agreement on Northern Ireland providing a single system of social security, child support and pensions as required by the Northern Ireland Act 1998, section 87, and of the fiscal convention of the total funding of the benefits bill by the UK Treasury. The UK Government may feel obliged to take over social security powers or long term may examine the establishment of a joint social security authority with negotiating powers.
The further devolution of welfare powers is likely to increase policy divergence in the UK and may also increase inequalities and reduces the salience of arguments for maintaining a UK level of equity and sharing of risks to well-being. To some extent, even given a UK national welfare system the devolved administrations can use their current devolved powers to mitigate the impact of welfare reforms and compensate those with reduced benefits through non-cash and even some cash payments, for example, maintaining educational maintenance allowances in Scotland, Wales and Northern Ireland while they were abolished in England.

Q 8.
This is a largely political question with a large political block in two countries not wishing to preserve the Union, the SNP in Scotland and Sinn Fein and the SDLP in Northern Ireland. The reactions of various political parties to current policy debates suggests a range of issues which may destabilise the Union; the impact of austerity cuts on public services, opposed by almost all the political parties in the devolved countries; the restrictions on MPs from Scotland, Wales and Northern Ireland in the House of Commons and an EU referendum on continuing membership.

Q 9.
Structural change to provide a more stable foundation for the devolution settlement might include the following;

1/ stronger inter-governmental relations with clearer principles and objectives, clear statutory powers and functions, enhanced committee structures, administrative support, and frequency of meetings.
Such measures might apply to the JMC, British-Irish Council, quadrilateral ministerial meetings, a Financial Exchequer Board or Welfare/Social Security joint authority.

2/ Review of mechanisms for operation of Barnett Formula and other features of the Block Grant or for annually managed expenditure, in the light of greater fiscal devolution.

3/ Major constitutional developments and increase in powers has been a process involving detailed inquiries, collection of evidence and reports in relation to the individual devolved systems, usually using independent chairs. What is not so common is wider investigations to cover all three devolved administrations and/or England and the UK dimension.

4/ The issue of restrictions on MPs from non-English constituencies, ‘English votes for English laws’, may undermine a strong foundation for the Union and some of the complex issues involved appear to have received little attention. These include the very large percentage of UK legislation that contains sections applying to Scotland, Wales and Northern Ireland and the impact on other parliamentary procedures, for example, the scope and remit of select committees.

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