Introduction

The Institute for Government is currently engaged in a research project entitled ‘Governing after the referendum’. In keeping with the overall charitable mission of the Institute, our research focus is on improving the effectiveness of the UK’s changing devolution arrangements and the relationships between the UK and devolved governments.

As such we are not advocating particular reforms to the devolution settlements nor a particular vision of how the country’s territorial constitution should be designed. We are, however, closely following and engaging in the constitutional reform debate and are pleased to have the opportunity to contribute to this Political and Constitutional Reform Committee inquiry, which is addressing a number of very important questions.

Below we address each of the committee’s questions in turn, although we should underline that our research is still in progress so we have not come to a firm conclusion on all the matters in question. We hope nonetheless that our contribution proves useful to the inquiry, and we would be pleased to discuss these issues further with the committee.

1. Should England, Wales and Northern Ireland be offered the level of devolution that has been discussed in relation to Scotland?

The UK is comprised of four nations, each with very different governance arrangements, powers and responsibilities. This asymmetry long predates the 1990s devolution reforms – for instance, Scotland has retained its own legal and education system ever since the Union of 1707, and Northern Ireland has always had its own civil service and social security system.

These differences reflect the UK’s longstanding approach to constitutional design, which has been to respond differentially to specific circumstances and pressures arising in each part of the country rather than seeking to design and implement a single consistent constitutional model. This remains the default approach – as can be seen in the separation of the debates about the Scottish and Welsh devolution arrangements (while Northern Ireland is barely on the agenda) as well as in the different models for local and regional governance being created in parts of England.

There are often good economic, cultural and historical reasons for constitutional asymmetry. For instance, fiscal devolution (implying a greater degree of self-sufficiency) is less attractive to Wales than Scotland due to Wales’ weaker economic position. And Northern Ireland’s distinct power-sharing devolution model is a product of devolution there being part of the peace settlement. As for England, its pre-eminence within the UK means that there has not been the perceived need to create separate English governance structures – Westminster and Whitehall are already predominantly focussed on English matters.

A case for a more uniform settlement across the different nations and regions of the UK could be made, but in order to convince, this would need to offer more than just greater constitutional neatness. Instead it would have to be justified in terms of how a more symmetrical constitutional settlement would produce better and more effective government, or would more accurately reflect the will of the people.
Our assessment is that many of the reasons for different models of devolution remain, and it is therefore unlikely that the UK will move in the near future towards a more uniform constitutional settlement. That said, there should be openness to the potential for further devolution (including of tax and welfare powers, as appears likely for Scotland) to Wales, Northern Ireland or England (or parts of England), where there is sufficient public and political support for this.

2. **If so, what should be the next stages to take forward devolution in a) Scotland, b) Wales, c) Northern Ireland, d) England?**

We note that separate devolution processes are already under way in various parts of the UK, including the Smith Commission in Scotland, the Wales Bill and Silk Commission with regard to Wales, and processes such as City Deals, the Deputy Prime Minister’s ‘Northern Futures’ programme, and the Chancellor’s ‘Northern Powerhouse’ policy in England.

We do not advocate a particular model that should be followed in all cases. But what is important is that there is full consideration of the implications of any further devolution (for instance, of the potential for tax competition), and of the implementation and governance challenges associated with further transfers of power (for instance, what new capacity might need to be created in order to manage new devolved fiscal powers?).

It is also important that there is a broad process of engagement with the public and civil society, and an attempt to build cross-party consensus behind any proposed changes.

There may also be value in considering the different devolution settlements in a more joined-up way than has hitherto been the case (for instance to avoid the potential for unintended spillover effects from one part of the country to another).

3. **To what extent is the Government’s timetable for considering the future of devolution realistic?**

The timetable for agreeing and producing proposals for further devolution to Scotland is certainly demanding. The 1999 devolution settlement followed many years of debate (including a six-year long Scottish Constitutional Convention). By contrast, the parties are committed to reaching agreement on ‘heads of agreement’ for a new devolution package by the end of November and draft clauses for a new Scotland Bill by the end of January 2015.

Based on their most recent pronouncements (in their respective submissions to the Smith Commission), it seems that there are still some significant differences between the three unionist parties, notably on income tax devolution. Reconciling these differences will be a significant but not impossible task. More challenging is to reach an agreement that can secure the backing of the Scottish Government, which will have a veto over any new Scotland Act under the legislative consent convention (at least so long as the SNP holds a majority of seats in the Scottish Parliament).

There are some positive signs about the potential for agreement. The very existence of the Smith Commission process is in itself one of these. Almost no previous period of constitutional change in Scotland has proceeded on the basis of consensus across the party spectrum, yet at this point it seems that all the parties are committed to working with Smith and trying to stick to the stated timetable. Given this fact (and the political pressures to deliver), it may be that rapid progress can be made after all. However, the risk is that this
comes at the expense of widespread consultation and engagement or of full consideration of the different options on the table. And having raised expectations, there is also a risk of disillusion and backlash if deadlines are missed or promises are seen to go unfulfilled.

4. What measures, such as a written constitution, could most effectively entrench future devolution settlements?

A full written constitution is of course one theoretically possible way to entrench the devolution settlements, and the committee will be aware of the many different ways in which other countries incorporate specific rules to make constitutional amendment a rare and difficult event (including parliamentary super-majorities, a requirement to achieve the consent of subnational governments, and referendums).

The Institute for Government has not taken a position on the merits or otherwise of a written constitution, though it seems unlikely that the UK will move in this direction in the short to medium term (and certainly not on the same timescale as the current discussion about further devolution to Scotland). If a constitutional convention of some kind is set up under a future government we would hope to engage in the debate and consider the issues more fully at that point.

As far as entrenchment of the devolution settlements is concerned, a less constitutionally-radical option would be to put the legislative consent convention on a statutory footing (giving it legal enforceability if a UK government were to act in breach of this principle by legislating in a devolved area or seeking to change the powers of a devolved body without consent). Again, this is not a model that we have considered in detail but we note that it is an option favoured by some.

As far as Wales is concerned, an important issue to consider is whether a move to a ‘reserved powers’ rather than a ‘conferred powers’ model (as in Scotland, where all powers are devolved save for those explicitly reserved) could create a more firmly entrenched settlement, with a more clearly defined and permanent sphere of devolved responsibilities.

5. Given that different parties have put forward different proposals for further devolution to Scotland, what is the best way forward?

As stated above, we support the intention to reach a cross-party consensus about further devolution to Scotland. It is indeed the case that the five parties involved in the Smith Commission have each put forward different proposals, and reaching a consensus will be a challenging task on the timelines set. But it is to be hoped that agreement can be reached on at least some of the most significant issues in time for the publication of ‘heads of agreement’ by end of November and draft legislation by end of January 2015.

To the extent that there remains disagreement, then the parties will presumably put their different constitutional visions to the electorate in the May 2015 general election, and it will then be a matter for the government formed after the election to determine how to take forward the process of devolution (including considering options such as a constitutional convention).
6. What implications does further devolution to Scotland have for how the House of Commons should deal with legislation that deals with only part of the UK?

The West Lothian Question asks why MPs from one part of the UK should be able to vote on laws that do not affect that territory (while the reverse is not the case). Most often the problem is framed in terms of Scottish MPs being able to vote on ‘English business’, though similar issues arise for Wales and Northern Ireland. This has been the case since devolution in 1999 (as well as having been the case for MPs from Northern Ireland during the Stormont era of 1922 to 1972).

As far as Scottish MPs are concerned, it has been very rare for their presence to make the difference in divisions in the Commons on laws that do not apply in Scotland, and as a result the political pressure to introduce reforms such as ‘English Votes for English Laws’ (EVEL) has never achieved significant momentum.

The question is whether things are different this time, and there are some reasons to believe that they might be. First, the Prime Minister linked the issues of Scottish devolution and the EVEL issue in his 19 September speech, which has created an expectation of reform. Second, additional devolution of powers (such as over tax and welfare) to Scotland will increase the number of issues in which, it might be argued, Scottish MPs have no direct interest. And third, there is evidence (for instance from the Future of England Survey) that English voters are dissatisfied with current constitutional arrangements and favour the introduction of EVEL in particular.

If this or a future government does seek to introduce EVEL, it should start from the recommendations of the McKay Commission, which proposed a model of EVEL that would allow the English voice to be heard, without removing the right of the House of Commons to take the final decision – but while creating an expectation that any government that chose to over-ride the English majority on an English issue (assuming this can be easily defined) would have to publicly account for its decision.

Stronger forms of EVEL (such as outright exclusion of certain MPs from certain debates or votes or requirements for a ‘dual majority’) would have more far-reaching implications for our political system, and – as we have argued above – constitutional change of this kind should rest upon significant debate and consultation as well as, so far as possible, cross-party agreement.

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