

THE SCOTTISH COUNCIL FOR DEVELOPMENT AND INDUSTRY

EVIDENCE TO THE COMMISSION ON SCOTTISH DEVOLUTION

Summary of Main Points

- **Devolution has provided the opportunity to establish a system of governance that aids more effective design and assessment of public policy in Scotland. (Paragraph 2)**
- **The structures created by devolution have been successful with the Parliament and Scottish Government establishing credibility and legitimacy having delivered greater visibility and accountability for Parliament and Government in Scotland and the Scottish Parliament is continuing to develop and mature in terms of delivering government under coalition and now minority administrations. (Paragraphs 5 and 6)**
- **The civil service in Scotland has responded well to the challenges of devolution and reform. It is accessible and easy to deal with. (Paragraph 9)**
- **Parliamentary scrutiny and oversight continues to operate at a very high level but the quality is varied. (Paragraph 10)**
- **The Inquiries carried out by the Committees also allow intensive exploration of important issues and provide a wide range of organisations the opportunity to input evidence to the Parliamentary and policy making process. (Paragraph 12)**
- **SCDI questions the impact that Committee Inquiry Reports have on policy and on Scottish Government Ministers. There is also a risk of Inquiries tending to repeatedly cover issues that have been the subject of Inquiries from previous sessions with no proper cognisance taken of these earlier reports. (Paragraph 12)**
- **The present Scottish Government has made economic growth its highest priority and supported this by introducing a GDP growth target. This is welcome and there are other areas of policy that are also important for economic development that have seen significant focus put upon them. Such a focus would have been unlikely under pre-devolution arrangements. (Paragraph 14)**
- **Many areas relevant to the economic performance of Scotland have been subject to Bills and Acts including planning reform, climate change, water quality, land reform, housing, education and aspects of legal reform. However, there is a view that the volume of legislation has crowded out the ability of the Parliament and Parliamentarians to consider and discuss issues in a more strategic way. (Paragraph 16)**

- **Immigration, energy and regulation are areas where there may be merit in either increasing, or at least considering aspects of, the devolved powers of the Scottish Parliament. (Paragraphs 22 to 30)**
- **SCDI is not aware of any reason why matters currently devolved to the Scottish Parliament should be reserved back to Westminster. (Paragraph 33)**
- **The current financial arrangements do not provide sufficient incentive or discipline on the Parliament regarding spending decisions due to its lack of responsibility for raising substantial revenue. (Paragraph 36)**
- **The current arrangements, as represented by the ‘Barnett’ process, are unsustainable in the long term and an evidence base must be built to ensure good quality information is ready and available to feed into consideration of any new system which may be established. (Paragraph 37)**
- **The Scottish Parliament should commission an independent, comprehensive review of Scotland’s fiscal arrangements, which should aim to identify a small number of key fiscal policy measures that would promote sustainable economic growth in Scotland and address some of the weaknesses in accountability and transparency present in the existing arrangements. (Paragraph 40)**
- **A new comprehensive needs assessment for the regions of the UK, identifying appropriate English regions for comparison with the territories of Scotland, Wales and Northern Ireland is required. (Paragraph 42)**
- **There is mixed evidence that devolving greater powers to sub-national governments to raise and spend their own public funds is in itself enough to promote economic growth. (Paragraph 45)**
- **The majority of SCDI members that participated in consultation discussions regarding the fiscal debate were not convinced by the arguments either for the status quo or for different models of either fiscal autonomy or further devolution. The key problem is the lack of independent evidence which might help inform the decision. There is a strong case for more independent research into the pros and cons for small countries like Scotland of adopting different fiscal powers. (Paragraph 46)**

Introduction

1. The Scottish Council for Development and Industry (SCDI) is an independent economic development organisation which strengthens Scotland's competitiveness by influencing government and public policies to encourage sustainable economic prosperity.
2. Prior to the establishment of the Scottish Parliament in 1999 and since, SCDI has followed closely the issues concerning devolution. For example, SCDI had observer status representation on the Scottish Constitutional Convention. This involvement has taken place without any endorsement for or against the principle given SCDI's diverse membership and the many different views held across civic Scotland. However, SCDI has been of the opinion that devolution has provided the opportunity to establish a system of governance that aids more effective design and assessment of public policy in Scotland. It has worked to improve the knowledge of its members and others regarding the proposals for, and likely consequences of, a Scottish Parliament, and its ongoing legislative and scrutiny programme. SCDI has supported the Scottish Parliament as a democratic, constitutional institution capable of initiating and scrutinising public policy and legislation in Scotland and adapting that policy or legislation more closely to distinct Scottish needs.
3. The Commission's review of devolution is timely coming as it does a decade on from the introduction of The Scotland Act. In reviewing the provisions of the 1998 Act, SCDI's priority in this process will be in achieving higher sustainable economic growth for Scotland.

Question Responses

1. 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?

4. A significant advantage of establishing a Scottish Parliament was felt to be in allowing major policy decisions concerning Scotland to be made in Scotland by direct representatives of the Scottish people.
5. In general, SCDI feels that the structures created by devolution have been fairly successful in achieving that goal.
6. Despite some well documented difficulties early on and some recent problems, such as the controversy regarding the ballot papers at the last Scottish Parliament elections, the Parliament and Scottish Government have established credibility and legitimacy.
7. Prior to devolution, there was a risk of expectations being raised unrealistically high about how governance would improve once devolution was accomplished leading to disenchantment when it is found that, on a day to day administrative level, less change than anticipated has occurred. In retrospect, this was indeed

the case but there are now more realistic expectations regarding what the Parliament and Scottish Government do and what they can deliver.

8. In general, the devolved structures have delivered greater visibility and accountability for Parliament and Government in Scotland and the Scottish Parliament is continuing to develop and mature in terms of delivering government under coalition and now minority administrations.
9. The civil service in Scotland has responded well to the challenges of devolution and reform. It is accessible and easy to deal with. Accessibility to Ministers and other MSPs has also been one of the main plus points. Since determining the most appropriate methods of engagement, SCDI has seldom experienced problems regarding accessibility to and engagement with Parliamentarians. SCDI provides a variety of opportunities for our members to engage with Ministers and MSPs and these are well supported by both parties. They allow direct contact between SCDI members and policy makers facilitating discussion and feedback on relevant areas of policy.
10. Parliamentary scrutiny and oversight continues to operate at a very high level but the quality is varied. Although one of the main successes of devolution has been the establishment of powerful backbench Committees providing accountability and increased transparency of the political decision making process, it is felt that some legislators still do not have the basic skills and knowledge to scrutinise Bills and the Government effectively.
11. SCDI's Executive Committee also questioned whether there is full confidence that legislation is scrutinised properly in the unicameral Scottish Parliament.
12. The Inquiries carried out by the Committees also allow intensive exploration of important issues and provide a wide range of organisations the opportunity to input evidence to the Parliamentary and policy making process. The Committees' ability to invite representation by outsiders and to advise on certain aspects of policy was also felt to be a positive step alongside the power to question Ministers on their decisions and actions. However, although the Committees, in the main, do an excellent job, SCDI would still question the impact that their reports have on Policy and on Scottish Government Ministers and that there is a risk of Inquiries tending to repeatedly cover issues that have been the subject of Inquiries from previous sessions with no proper cognisance taken of these earlier reports.
13. The Scottish Government also undertakes extensive pre-legislative consultation and this is welcomed. However, the manner in which responses to these consultations are dealt with is not always satisfactory. Feedback is limited and it is not sufficiently clear how government decision making and policy has been influenced or altered by the consultation process, if at all. A current example of this is in regard to proposals to introduce a Local Income Tax. Many consultation responses have raised fundamental problems and concerns regarding the Scottish Government's proposals and yet the policy seems to be being pursued without proper cognisance being taken of these

concerns or communication as to how they will be addressed. Such disregard of consultation feedback risks undermining the value of the consultation process leading to disillusionment and frustration among consultees.

2. 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?

14. SCDI's main focus is on the economy of Scotland and how policy is designed and implemented to provide increased sustainable economic growth. That economic development, in general terms, has a higher profile under a Scottish Parliament is accepted. The present Scottish Government has made economic growth its highest priority and supported this by introducing a GDP growth target. This is welcome and such a focus would have been unlikely under pre-devolution arrangements. Documents such as the Framework for Economic Development (FED) and the current Government Economic Strategy and the analysis that lies behind these documents have provided a level of investigation and scrutiny of the Scottish economy that has never been undertaken before. This scrutiny continues with the establishment of the Council of Economic Advisers and the National Economic Forum. One result of this has been the production of higher quality and more timely economic statistic for Scotland, although further developments are required.
15. There are other areas of policy that are also important for economic development that have seen significant focus put upon them. Areas such as transportation, planning, population and migration, financial services, tourism, manufacturing, Scotland's international profile and the food industry, to highlight only a few, have all been the subject of a Government Strategy, Framework or Initiative. In addressing these issues there has been widespread consultation with relevant players and this has helped to support and develop important areas of policy. However, delivery is the crucial measure of effectiveness and this has not always been present. On occasion, excessive strategising can be an excuse for a lack of action. If provided with an accompanying delivery or action plan, that have been produced in some cases, then progress can be identified and measured and the effectiveness of any strategy is improved. Nonetheless, as with the FED document and successors, such intensive investigation and policy proposals would have been unlikely under pre-devolution arrangements, certainly in a similar time frame.
16. With regard to legislation, devolution has provided far greater scope for Scottish-specific legislation. There is a long list of areas relevant to the economic performance of Scotland that have been subject to Bills and Acts including planning reform, climate change, water quality, land reform, housing, education and aspects of legal reform. However, there is a view that the volume of legislation has crowded out the ability of the Parliament and Parliamentarians to consider and discuss issues in a more strategic way. This would include the ability of the backbench Committees to consider certain issues, the effectiveness of, and participation by MSPs in, Cross-Party Groups and the usefulness of entities designed to encourage strategic and forward

looking thinking on significant issues of relevance to Scotland such as the Scottish Futures Forum. It is important that the performance of the Scottish Parliament is not solely determined by the amount of legislation that it enacts. The Parliament and Scottish Government can have a major influence on policy through means other than legislation.

17. Devolution has also provided the opportunity for Scotland to take a much different approach in certain areas of policy such as healthcare for the elderly and student fees. These distinguish Scotland from the rest of the UK and are very highly valued by those benefiting from the policy. However, the financial impacts of these policies are considerable. Taking a substantially different approach in Scotland does raise the possibility of the benefits of a level UK “playing field” being lost and in some instances, could impact negatively on Scottish competitiveness. However, if used judiciously, divergent approaches should be used to improve Scotland’s competitive position.

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

18. Of the six bullet points listed in Note A of the consultation document regarding this question, SCDI has comments on two – the number of MSPs and taxation.
19. In 2002 when the Scotland Office consulted on the size of the Scottish Parliament SCDI was extremely concerned that, due to changes in the number of Scottish MPs at Westminster, this would have a knock on effect on the number of MSPs and that a reduction in MSP numbers would adversely affect the capacity of the Scottish Parliament, particularly, its Committees, to transact business effectively. SCDI concluded that the Scotland Act 1998 should be amended to remove the link between the number of Scottish constituencies represented by MPs in the UK Parliament and the number of Scottish Parliament constituencies and MSPs. The number of MSPs should be maintained at the current level of 129 and any changes in the number of MSPs in the future should be a matter for the Scottish Parliament, in full consultation with the UK Parliament, and the Scottish electorate.
20. SCDI’s views on the fiscal powers of the Parliament are addressed below.

4. 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?

21. Over the period of devolved government, there have been several instances where SCDI has, either explicitly or implicitly, suggested that there may be merit in either increasing, or at least considering aspects of, the devolved powers of the Scottish Parliament. The transfer of responsibility for rail passenger franchises and the provision, improvement or development of railway services is one example SCDI supported and that has been implemented.

22. Other suggested areas include:
 - Immigration
23. SCDI has expressed concern regarding UK immigration policy and its impact on the Scottish economy and called for greater flexibility within the system with a proposal to vary the immigration regime to the benefit of Scotland.
24. The Scottish economy has benefited considerably in recent years from central and eastern European migrant workers, with many sectors dependent on migrants for a significant proportion of their employees. However, this situation is changing and it is therefore unlikely that Scottish businesses can continue to depend on this source of employees into the medium and longer-term future.
25. For this reason, the Scottish economy needs greater flexibility for non-EU migrant workers. The new points-based UK immigration system does to an extent recognise that Scotland faces specific issues, such as the declining and ageing population, and record levels of economic activity, which requires extra flexibility. However, SCDI believes that there is a strong case for introducing an incentive to migrants to come to parts of the UK where they are most needed.
26. SCDI has urged the UK Government to consider, along with the Scottish Government, examples such as that of the Canadian Provincial Nominees Programme. This is a joint initiative by central and provincial governments which gives the provincial governments the right to nominate a certain proportion of the country's immigrants for approval. These lists are normally proposed by local employers and, after the necessary security checks, nominees under the system are usually approved.
27. In this way, the needs of Scottish businesses and the economy could be much more closely aligned with the immigration system. Scottish employers, who are best placed to judge their skills needs, would have much more direct involvement.
 - Energy
28. It may be that an increased amount of devolved power regarding aspects of energy policy would be beneficial given the importance of the energy sector to Scotland and the continuing significant role that the sector will provide in new and established energy sources. However, it is vital that there is clarity about where responsibilities for energy policy lie to ensure certainty for those both currently involved in the energy sector and potential investors. One specific example of where the UK approach seems to disadvantage Scotland is given below.
29. In 2007 SCDI wrote to Ofgem regarding its 'minded to' decision on zonal transmission charges. The regulatory necessity for a cost-reflective charging

mechanism - to develop an efficient network and protect consumers is acknowledged and Transmission Network Use of Supply (TNUoS) charges do this. However, the proposed introduction of zonal transmission loss charges based on the location of the generator would have been extremely damaging to Scotland's energy sector including nuclear and renewables. The introduction of the zonal transmission charges, in addition to the other charges imposed on Scottish based energy generators, such as TNUoS, will mean that the development of renewable projects in optimal, but peripheral locations would become more difficult to finance, with many schemes unable to proceed. SCDI believes that Ofgem's 'minded-to' decision risked hindering the encouraging progress on renewable energy by making it less attractive to export "clean" electricity, both renewable and nuclear, from Scotland to the highly populated markets in the south of England. This seems completely contrary to Scottish and UK Government energy policy to address climate change. While it may be true that transmission and distribution losses represent a cost even for electricity generated from renewable sources, the environmental impact of such losses is significantly lower than other forms of generation, given its carbon-free nature. SCDI recommended that Ofgem not impose any zonal transmission charges.

- Regulators

30. Related to the above energy issue, on several occasions SCDI has expressed the view that UK economic regulators should have the Scottish dimension properly represented at the top level within their staff and boards. SCDI welcomed the opening of an OFT Office in Scotland and the appointment of an OFT Representative in Scotland. Although SCDI recognises that consistent and coherent regulation throughout the UK is important for the economy, previous SCDI submissions on economic regulation have inferred that Scotland has some specific issues that need to be approached in a different manner by regulators. There are three main approaches. In some instances regulation is fully devolved and the responsibility of a distinct entity, for example, environmental regulation is the responsibility of SEPA and SNH. In other areas, there is a significant Scottish presence, but the regulatory framework is not devolved, for example, Health and Safety or Food Standards. Finally, there are instances where a regulator has little or no Scottish presence such as Postcomm. It would be useful for the Commission to consider each of the approaches to determine if there are particular benefits to be gained and if any has a distinct advantage over the others.
31. Excepting those given above, SCDI has not had cause to consider any of the other reserved matters listed in Note B of the consultation and, therefore, cannot comment on them in detail. However, it has been brought to SCDI's notice that there may be a case for further devolved control of skills policies, perhaps in regard to the Sector Skills Councils in Scotland for example, to ensure there is proper consideration of Scottish skills issues within these bodies and powers regarding international shipping to be devolved to improve the ability of the Scottish Government to attract potential operators to land in Scotland.

32. It is important to consider and explore options before committing to a major review of the constitutional settlement. Nonetheless, the devolution of further powers is only one aspect. It must also be considered whether the Scottish Parliament and Government have sufficient knowledge and expertise to exercise any further powers. In addition, were other matters to be devolved these must have associated guaranteed funding to ensure they can be adequately catered for in a devolved context.

5. 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?

33. SCDI is not aware of any reason why matters currently devolved to the Scottish Parliament should be reserved back to Westminster. However, review of where powers should sit should occur over time.

6. 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?

34. SCDI feels there is merit in exploring the concept of an intermediate category. This could be linked to the reintroduction of the Joint Ministerial Committees. However, such an intermediate category must avoid becoming an obstacle for legislation or a parking place for difficult issues which need decisions. Although there have been no significant challenges to the Parliament's work under the Scotland Act to date, it is likely that there will be a legal challenge at some point and this will help to establish clarity under the Scotland Act.

7. 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?

35. In 2006 SCDI produced the Discussion Paper, "Scotland's Economy – The Fiscal Debate" followed by a "Statement of Findings" containing the conclusions of discussions with its members. These can be found at <http://www.scdi.org.uk/pi/2007/2584.pdf> and <http://www.scdi.org.uk/pi/2007/2687.doc>.
36. One of the key messages from these discussions was a belief that the current financial arrangements do not provide sufficient incentive or discipline on the Parliament regarding spending decisions due to its lack of responsibility for raising substantial revenue. A greater deal of control over taxation decisions would, some feel, promote more responsible legislating and spending by

Government and increase accountability. However there is a great deal of work to be done on the operational aspects of how the Scottish Parliament might raise and collect such taxes without seriously disrupting the Scottish economic environment and incurring additional costs for employers. The current financial arrangements have significant limitations, but there is a lack of credible alternative arrangements at present. This is covered in more detail below.

37. However, a clear conclusion from this work was that it is becoming increasingly clear that the current arrangements as represented by the ‘Barnett’ process, are unsustainable in the long term. If this is the case, it is imperative that an evidence base is built in Scotland to ensure good quality information is ready and available to feed into consideration of any new system which may be established.
38. Given the changing political context in both the Scottish and UK Parliaments, the time now seems right to engage in a fundamental review of the way Scotland’s public finances are calculated and allocated.
39. One of the key issues has been the lack of data acceptable to all sides. The review of the Government Expenditure and Revenue Scotland (GERS) data resulting in changes to the methodologies of calculating some of the estimates is welcome and has significantly improved the accuracy of the report. However, it by no means answers all the questions regarding Scotland’s fiscal position. SCDI believes that an independent exercise is required to review and improve upon the existing data. The objective of the exercise should be to establish a consensus around a coherent set of baseline data.
40. SCDI has proposed that the Scottish Parliament should commission an independent, comprehensive review of Scotland’s fiscal arrangements, which should aim to identify a small number of key fiscal policy measures that would promote sustainable economic growth in Scotland and address some of the weaknesses in accountability and transparency present in the existing arrangements. The review should meet the following criteria:
 - It should be conducted by a panel of independent academics, including members from outside the UK who have not previously engaged in the Scottish debate.
 - It should consider Scotland as a discrete economy within the larger UK and EU economies, but should not assume either independence or continued membership of the UK. Instead, where Scotland’s political status is a key factor in assessing a particular fiscal measure, the options with and without independence should be set out.
 - Recognising the findings of *Scotland’s Economy – The Fiscal Debate*, the review should also pay close attention to the implications of recent European Commission and ECJ decisions on the legality of different proposals for fiscal autonomy within Member States.

41. While the Barnett arrangements have served Scotland well in the past and have brought stability to the system of sub-national funding, the current disparity in spending between Scotland and other parts of the UK has become increasingly indefensible, no longer representing the relative levels of need in different regions of the UK. However, it is important that any replacement to Barnett must not introduce instability to the funding system.
42. Any review of Scotland's fiscal regime must also strongly reflect the UK context – particularly the relative levels of need for public spending in different parts of the UK. Therefore, the SCDI has also concluded that it is time for a new comprehensive needs assessment for the regions of the UK, identifying appropriate English regions for comparison with the territories of Scotland, Wales and Northern Ireland. The review should also take into account some significant sub-regional effects that exist, for example the additional needs of remote rural areas. Any assessment should be conducted in an open and accountable way, with the oversight of an appropriate UK Parliamentary Committee and including the contributions of all of the devolved administrations and English regional agencies. Independent experts from outside the UK should be involved – the SCDI believes that the experience of the Australian Grants Commission might be particularly useful.
43. The SCDI believes that the steps proposed above are important for ensuring greater equity and, importantly, transparency in the UK's public funding arrangements, issues that seem particularly significant in the current UK and Scottish political contexts.

8. 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?

44. The SCDI Discussion Paper, “Scotland's Economy – The Fiscal Debate” and the “Statement of Findings” stated that the ongoing debate about the appropriate level of fiscal powers for Scotland reflects the importance of the right fiscal regime in promoting economic growth.
45. However, SCDI members felt it important to recognise that there is mixed evidence that devolving greater powers to sub-national governments to raise and spend their own public funds is in itself enough to promote economic growth. In fact, for members, the most important issues for economic growth are likely to remain those which have been recognised for some time:
 - improving the skills of the workforce and increasing productivity;
 - encouraging greater private sector research and development; and
 - ensuring an effective contribution from the public sector in support of growth.
46. The majority of SCDI members that participated in the consultation discussions regarding the fiscal debate were not convinced by the arguments

either for the status quo or for different models of either fiscal autonomy or further devolution. The key problem is the lack of independent evidence which might help inform the decision. There is a strong case for more independent research into the pros and cons for small countries like Scotland of adopting different fiscal powers as set out in paragraph 40 above. Without this it is difficult to assess different options on a consistent basis. This research should also give a full account of the political and other constraints that different options face. Members are concerned that any decision should be based on clear and well-supported arguments, be they political or economic in nature, and that those powers are used sensibly and accountably.

9. 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?

47. Relationships have evolved, developed and matured since 1998 and must continue to do so. Until May 2007 their effectiveness was more difficult to assess due to a lack of awareness or transparency. The election of different political parties to power in Holyrood and Westminster is the next natural step under devolution and to date has had no negative impact on Scotland. The formalisation of relations between Governments through Joint Ministerial Committees may bring more clarity and focus than was previously the case, but it is imperative that all Governments operating within the devolution settlements display an ability and attitude to work together where required and demonstrate that devolution can and is working.

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