



Findings from the Economic and Research Council's
Research Programme on *Devolution and Constitutional Change*

Devolution Briefings

Policy Making and Policy Divergence in Scotland after Devolution

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Key Points

- Devolution gives Scotland one of the widest ranges of competences of any devolved or federated government in Europe, excepting fiscal powers
- The Scottish Executive has had to build up new policy-making capacity and is reliant on its agencies and other external organisations for support and input
- Party competition pulls policy debate to the left of that in England, reflecting a bias in public opinion to more collectivist and egalitarian solutions
- Scottish interest groups have had to adjust from being lobbyists of UK government to more active participants in policy-making in Scotland, and frequently remain weak in policy-making capacity
- There remain powerful Britain-wide expectations of common standards regarding the welfare state, a single economic market, and a single defence and security area
- A smoothly operating practice of intergovernmental relations remains vulnerable to changes in government at Scottish or UK level
- Policy divergences so far have in part concerned style, with Scottish policy-making more consensual and negotiated. In part they have substance in a tendency for Scotland to cleave to liberal social values and social democratic welfare state attitudes which have been abandoned in England
- Divergences have often arisen because of the failure to follow an English example rather than pioneering new ideas

The historical legacy

Devolution in Scotland, unlike some other European cases, did not start from a blank slate, but built on elements remaining from the Union of 1707 and a system of administrative devolution developed since the late nineteenth century around the Scottish Office and the Scottish committees of Parliament. There were divergent views about the significance of this old system. Some authors detected a 'Scottish political system' or argued that Scotland had a significant degree of autonomy within the United Kingdom,

certainly until the rise of the welfare state and, in many respects until the Thatcher governments of the 1980s.

Others (including myself) argued that Britain was a centralized state and that the Scottish mechanisms were a way of delivering essentially unified British policies. It is important here to distinguish two aspects of autonomy: the horizontal autonomy of civil society vis à vis the state, and the territorial autonomy of Scotland within the UK. The old British constitution gave more autonomy to self-regulating groups within civil society (for example the professions, the financial sector, the churches, the landowners in Scotland) than many of its continental counterparts. This allowed distinct Scottish groups to carve themselves out a measure of autonomy with respect to the state, but this should not be equated with autonomy for Scotland as a unit; indeed some of these groups were rather hostile to political devolution as a threat to their place.

As a result, devolution must be seen as a twofold transfer of power: a vertical one from London to Scotland; and a horizontal one within Scotland from the old elites (including the territorial bureaucracy) to the elected politicians.

The machinery of government

The formal division of powers gives Scotland possibly the widest range of competences of any devolved or federated government in Europe, with the striking exception of fiscal powers. This is the result of the decision to specify only the reserved powers and to follow the general lines of the previous system of administrative devolution in determining what should stay at the centre.

The historical legacy also has the consequence of excluding Whitehall departments, except in reserved matters, from intervening in Scotland; other devolved and federal systems have parallel departments at both levels. A similar provision holds for legislation, where the Scottish Parliament can repeal and alter Westminster laws in devolved matters; in other countries, there are usually state-wide framework laws within which devolved parliaments must operate.

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On the other hand, the old Scottish Office was not, in general, a policy-making department and the Executive has had to develop new policy capacity. It needs still to take many policy ideas from Whitehall. It is also dependent on the capacity of its agencies, such as Scottish Enterprise or the Scottish Higher Education Funding Council.¹ It also needs to reach out to policy networks in the private and voluntary sector, the professions and local government for support. There is an absence in Scotland of independent think tanks or policy research, so weakening the capacity for innovation.

¹ This is even more the case in Wales, where it has been decided to take most of the agencies into the Assembly Government.

Policy communities

Public opinion in Scotland is in line with that in England on most issues, but with a small but consistent bias towards more collectivist and egalitarian solutions. To call this a 'left-wing' orientation would be misleading; it seems more of a diffuse support for a shared moral economy that reaches across social classes.

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More important, however, is the translation of public opinion into policy demand through party competition. The Scottish Parliament has only one, relatively small party on the centre-right (the Conservatives) and four on the centre-left or left (Labour, SNP, Liberal Democrats, Greens and Scottish Socialists). The ruling Labour-Liberal Democrat coalition thus faces competition to the left and little to the right. Similarly, on European issues, while the Scottish electorate is only marginally less Eurosceptic than the English, there is no strong party competition on the anti-European side.

The parties themselves have given their Scottish branches more autonomy, although this has not always been taken up. Liberal Democrats and Conservatives have been prepared to live with differences between their Scottish and English policies, while Labour has sought to maintain a united front (even when its policies have diverged it does not make an issue of it). Coalition politics makes a big difference to policy making. The programme of the Executive is set out in advance, and cannot be changed from one day to the next, as happens in Westminster, and the Liberal Democrats have forced Labour to accommodate some of their own policies.

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Scotland has long had its own interest groups, some purely Scottish and others affiliated to British or UK-wide ones. Devolution has led to a strengthening of the Scottish level of the British groups, which have generally been given a degree of autonomy on devolved matters, although they are still weak in policy-making capacity.

The orientation of groups, that is where they focus their lobbying efforts, differs. Business groups, especially the large ones, still look to London, where they are well-connected. Trade unions try to work at both levels. Smaller groups and those based purely in Scotland work within the Scottish arena and some have lost the London connections they once had.

Many interest groups have found difficulty in making the transition from being lobbyists, seeking to get more from London, to participants in the policy process. This involves greater policy-making skills and knowledge and more time. It has also come as a shock to

some that the old Scottish lobby, consensually united in demanding more resources, has splintered as groups are competing with each other within the new political system.

What has yet to emerge is a stable pattern of co-operation or concertation among the social partners such as exists in some of the small European democracies, which are able to adapt flexibly to externally-imposed shocks. This is due to a combination of lack of adaptation of the interest groups and the lack of a mobilizing capacity on the part of the Executive.

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The Context

Devolution has occurred at a time when there is little debate over the fundamental choices of society in economy and welfare state. These assumptions are rooted into the devolution settlement, which could be destabilized if they were to be questioned. The welfare state rests upon a conception of social citizenship based on Great Britain (and possibly the United Kingdom) as a whole. It is not anticipated that there will be radical differences in welfare entitlements on either side of the border.

Great Britain is also a single economic market in which business conditions are the same throughout and the settlement reflects this (single market provisions are less strong for Northern Ireland). Economic interdependencies impose further limits on what devolved governments can do without distorting markets or losing investment.

Finally, there is a common defence and security area, with free travel throughout Britain (again there have been exceptions for Northern Ireland). So, while most of the criminal law is devolved in Scotland, a lot of care is taken to avoid legal lacunae or loopholes that would allow people, including potential wrongdoers, to ‘shop around’ jurisdictions. Many of the Sewel motions in the Scottish Parliament involve this type of question.

Intergovernmental Relations

In spite of the relatively clear allocation of functions (compared with other countries) there are overlaps and interdependencies among devolved and reserved functions. New policy issues do not fit old categories, for example in active labour market policies that cross welfare (reserved) and training (devolved), social inclusion, or economic development.

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Much policy making is thus in the intergovernmental sphere. Here there is a variety of formal mechanisms, which always give the last word to London, and which are hardly

used. Instead, matters are resolved between civil servants or, where controversial, between (usually Labour) politicians at the two levels. Labour has tended to take the view that what matters is the policy, not where it was made, so creating a whole network of interdependencies. Were different parties to dominate at Holyrood and Westminster, intergovernmental relations would come under considerable strain and there might be a resort to more formal mechanisms.

Where Europe is concerned, the same largely applies. There is some more use of formal machinery, notably the joint committee on agriculture held before meetings of the Council of (Agriculture) Ministers. Differences are, however, resolved politically. The Scottish Executive has been very active in European networks, but plays as a loyal member of the UK team, a strategy that has gained it a good deal of access to UK and European networks, but one that, again, depends on the same party being in power at both levels.

Finance

Another unusual feature of the British devolution settlements is the combination of dependence on central grants with almost complete discretion on how to spend the money. It is not possible to measure how far Scotland is following England in its expenditure priorities. The spending headings are different; there are inconsistencies in the reporting of Departmental Expenditure Limits and Annual Managed Expenditure; and a large part of the Scottish block is passed on to local governments, which then make their own priorities.

One consequence of this is that the Scottish Executive cannot simply use English expenditure decisions and the resulting Barnett consequential for Scotland as a default option for its own allocations. It has to have a system of its own. This has been slow in developing.

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Treasury influence is felt in capital spending, where it would be difficult for the Scottish Executive to avoid Public-Private Partnerships (the old PFI) even if it wanted to – in fact it has embraced them willingly. Scotland is also involved in Treasury policy learning and research initiatives. It is not, however, subject to the Public Service Agreements imposed on Whitehall departments and, contrary to some comment, there is no evidence of Treasury micro-managing of policy in Scotland.

Policy in Practice

Government in London and Edinburgh is dominated by New Labour, which shares most of the same ideas on either side of the border. There are, however, significant divergences in both policy style and policy substance.

Policy style in Scotland is more consensual and negotiated. This may reflect the founding ethos of the Scottish Parliament and the Constitutional Convention, although much of the early talk about consensus politics was misconceived and confused consensus about having a Parliament with consensus on what it would do. The Parliament itself, without a single-party majority and relatively strong committees, imposes a need to negotiate. The weakness of policy capacity in the Executive forces it to reach out to the networks. Indeed, there are now many criticisms that the Executive consults too much and needs to make more bold decisions on its own.

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The greatest policy divergence concerns modes of public service delivery. Labour in England has moved away from uniform, publicly-provided services towards differentiation, internal markets and mixed models of delivery. This is a matter of belief, as well as a response to the drift of the middle classes to private health and education, by giving them their own niche within the welfare state.

In Scotland this challenge is less acute. It also reflects the pattern of public opinion in Scotland, as mediated and structured by policy communities in Scotland. The difference was apparent in the health service from an early stage. Scotland has not reintroduced internal market elements as in England, and there are no star ratings or foundation hospitals. The Sutherland proposals on free personal care for the elderly, rejected in England, were taken up north of the border. Scotland has placed more emphasis on local government as a service provider and less on the voluntary sector.

There is an explicit commitment to comprehensive education, largely abandoned in England and there are no school league tables in Scotland. All parties in the Scottish Parliament have rejected top-up fees for universities, and there is no move to create elite universities or concentrate all the research funding in a few institutions.

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During the first session of the Parliament (1999-2003) there was a less hard line attitude on law and order, as the Liberal Democrats controlled the portfolio. After 2003 Labour took this department and followed similar populist policies as down south. Liberal Democrat influence was still felt, however, in the decision not to use identity cards to access devolved services; in Scotland they will only be used for reserved matters.

Most of the divergences show Scotland cleaving to liberal social values and social democratic welfare-state attitudes abandoned in England, rather than pioneering new ideas. This is itself significant and may show greater democratic responsiveness than Westminster where, ironically, foundation hospital and top-up fees, rejected by English MPs, were forced through with Scottish Labour votes.

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On the other hand, there are strong pressures to follow England and signs that the Scottish Labour leadership, left to its own devices, would like to do this. There are also practical limits. To the degree that England moves away from universal services and towards differentiation and fees, the Barnett transfers to Scotland will be reduced. At that point welfare state divergences will require fiscal autonomy, so re-opening an important part of the settlement.

*This Devolution Briefing was written by Michael Keating of the University of Aberdeen and the European University Institute, Florence. It is based on research supported by ESRC grant L219 25 2020 under the programme on Devolution and Constitutional Change. A fuller treatment is given in Michael Keating, *The Government of Scotland. Public Policy Making after Devolution* (Edinburgh University Press, 2005).*

The Devolution and Constitutional Change Programme was set up by ESRC in 2000 to explore the series of devolution reforms which have established new political institutions in Scotland, Wales, Northern Ireland, London and the other English regions since 1997. It has commissioned 35 projects around the UK to carry out top-class academic research and to contribute to the policy debates surrounding devolution.

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