

28. Devolution and EU policy making in the UK

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Formally under the devolution settlements EU policy is reserved to UK government as the member state government, but in practice the 'devolveds' are responsible for seeing that EU requirements are carried out on their territories. As a result EU policy making is effectively shared and the devolveds are drawn into the process of UK EU policy making. Thus UK EU policy making is an interesting area to study if one seeks to chart the impact of devolution. For Europe not only affects many aspects of domestic policy which now have a more territorial focus but it is also an area in which policy discretion is considered to be limited by the opportunities allowed to any member state under EU arrangements. Hence if there is evidence of substantial change in this area then it can be taken to indicate that devolution *is* having a significant impact on the way things are done.

However the question of the impact of devolution remains a debated issue. So far no one is arguing that devolution has had a major impact on the content of UK EU policy. Rather discussion centres on two views. One emphasises that devolution has had little impact on the nature of EU policy making and outcomes, while the alternative holds that it has had a big impact on policy making and this provides the potential for it to have a big impact on policy content. Though how that potential works through depends on time, what opportunities for action arise and how these are exploited.

In this paper I review these views and examine the changes that have taken place in the handling of UK European policy and the potential for further change. Most of my remarks relate to Scotland, Wales, Whitehall and the English regions. For obvious reasons Northern Ireland still remains the odd case.

The impact of devolution?

No change in policy content

Let us first consider the reasons for setting aside, for the moment, any argument about impact on policy content. To any policy analyst what matters is the content and ultimate outcome of policy: its impact on you and me. This is an evident effect that can be seen and calculated. The fact is that the evidence for significant impact is not *yet* there. There have been some distinct territorial proposals, such as the calf-processing subsidy extension in Wales, and the

culled ewe scheme in Scotland, the pursuit of both of which within the EU were in the end dropped by the relevant devolved. There have also been some small variations in application such as those affecting timing and those affecting how EU directives are carried out as in the cases of water quality and disposal of refrigerators. In addition there has been one big victory in achieving substantial match funding for structural funds. An outcome much influenced by effective lobbying by the Welsh Assembly, its executive and the Secretary of State. None of these developments would have happened, at least to the extent that they did, had it not been for devolution. However, such examples are still few in number, often concern marginal aspects of policy and do not yet make up a steady and substantial trend. Overall, though our research suggests that the number of such instances is increasing, the evidence does not allow us to say that there is *yet* a significant impact on policy outcomes.

Little Change in Policy Handling

The alternative 'small impact' view - that devolution has had little impact, not only on policy outcomes, but also on the nature of EU policy making - can draw on two lines of interpretation. Both rely crucially on maintaining that change brought about by devolution is marginal so that it is unlikely that any significant impact on outcomes will be evident in future. The first highlights the limited opportunities for regional variation in the application of European policy. It is an approach that emphasises 'Euro-constraint' and 'Euro-creep' factors, arguing that there is little discretion even for the member state to exercise, never mind the devolved territories. Furthermore, over the period since the late 1990s, this discretion has diminished. Within this broad picture, regions are especially and increasingly constrained in their policy role as European integration has effectively meant that what in some member states (especially Germany) were established regional competencies have been drawn up more extensively to the national level. Clearly this 'nationalisation' argument is more difficult to apply to a newly devolved country such as the UK. There is also some evidence that the EU is in policy making terms opening up more opportunities for regional involvement and variation in policy. By, for example, extending the partnership and programming principles from structural funds to other areas such

as rural policy, while recent reform proposals, notably concerning the CAP, suggest more flexibility about variations in payments applications within the nation state.

The second line of interpretation holds that the EU UK policy making process itself has not really altered in any significant way as a result of devolution. The policy process, apart from some minor superficial changes, at the informal level, where policy is really determined, remains much as it was. So the 'hidden wiring' (Hennessy 1995), the informal Whitehall system, is still there sparking away. Understanding that informal system and how it operates is the key to the real politics of the situation and that has not changed. In any case Whitehall still dominates the process as it did prior to devolution and ever since the UK joined the European project in 1973. So really there is no significant change, power is still vested in Whitehall and in London, consultation with the devolveds, which appears to be extensive, is in reality a sham, and any new arrangements consequent on devolution are in fact designed to preserve the situation as it was prior to devolution rather than to transform it.

A key problem with this argument is that it fails to fully consider the extent to which those changes that have taken place do in fact alter the general character and disposition of the system. And the extent to which, over time, the informal system of UK EU policy making based on shared understandings developed in a Whitehall context, may come under stress.

A big change in policy handling

This starts with the view that there is already an evident impact on policy handling processes. This is especially reflected in changes in Wales and Scotland where there has been internal restructuring in both executives to better handle Europe both within the UK system and beyond, plus an augmented and refined representation in Brussels. There are also some changes in Whitehall which serve to facilitate the input of the devolveds into policy making. Of course a problem with this line of argument is that it emphasises activity in the devolveds without reference to outcomes. The devolveds could be doing more than they did prior to devolution but having no more, or even, less effect.

Given that the evidence on outcomes is as yet unconvincing, in order to work at all the BIG impact line has to fall back on evaluating the shift in potentialities that post devolution changes entail. The argument runs like this. A big impact is not yet fully evident but the potential is now there to ensure that it can happen. The institutional opportunity space has changed significantly, but the implications of that change are bound to take time to work

through into actual practices, activities, policy initiatives and outcomes. How this new potential is then exploited will depend on a number of factors including circumstance, opportunity and agency (see Burch and Holliday 1996: 7-8 and 149-51). Certainly the process of change thus far has been less evident than it might have been because the political and economic contexts within which devolution has emerged have been benign with a period of economic growth and stability and of Labour dominance at devolved and national level.

In the rest of the paper I explore this BIG impact view further by looking briefly at changes in three aspects of policy handling: key participants; policy handling networks; and in the understandings governing practice in this area. Have there been significant changes in the pattern of potential involvement in the shaping and taking of policy decisions? For, if such changes have taken place, then one can expect that potential to ultimately work through into outcomes.

Before I do that, two preliminary points deserve note. First, we need to be aware of the problem of disentangling the devolution effect from other influences. A test to apply here is whether the change would have happened at all or even in the way it has without devolution? Secondly, not only do we need to distinguish what is new and distinctive as a result of devolution, we also need to judge what that amounts to. Ideally we need to elaborate criteria for distinguishing between change that is significant and change that is not. This is a matter we have taken-up extensively in our work and it is raised rather than demonstrated in this paper.

What has changed since 1999?

Changes in key participants and the resources available to them.

The key new participants are the devolveds' ministers who are drawn in to the process of policy making at all levels. Also the devolveds' civil servants are more extensively and formally drawn in at a high level in some policy areas, as in, for example, agriculture. In general devolved ministers and officials are better resourced on Europe and their priorities are more focussed on a Wales and Scotland agenda. Underlying their efforts and informing their priorities are interests and a public opinion which are now more organised and expressed on a territorial basis. In the English regions there is increasing involvement of RDAs and Assembly personnel especially on structural funds implementation. Indeed personnel from these agencies, especially the Assemblies, are beginning to be seen by parts of Whitehall as a kind of emerging representative lobby, though they are not part of the formal EU policy process. Other than

aspects of structural funds application, they have no formal responsibilities re Europe and thus limited engagement and access into the processes of handling EU business. There are some new participants in Whitehall as a result of devolution but they are few in number, junior in status, and most of them are involved in co-ordinating devolution matters at departmental level.

General oversight of the devolved systems engagement in EU policy making is undertaken by members of the Cabinet Office's European Secretariat. Also the relevant devolved ministers are drawn into the FCO's MINECOR Committee net. So far the personnel of the Scottish Parliament and Welsh Assembly European Committees' have had little impact, though in the early days the Welsh Committee played a crucial role in overseeing the development of a distinctive Wales stance. Representation in Brussels has been augmented for all the devolveds, whose personnel enjoy a special relationship with UKRep. Equally all the English regions now have a presence in Brussels, though the effectiveness of these and the way they are organised varies enormously.

Change in policy handling networks

Policy handling networks relating to European matters have become more numerous, more complicated and more tied back into territorial interests and priorities as a result of devolution. A key change is the creation of three networks in place of the one network that operated prior to devolution. So that nowadays there is an exclusive Whitehall network, a Whitehall and the devolveds network, and a devolveds only network. Under the old system the Welsh and Scottish offices had as of right full access to the Whitehall network, though they were peripheral players within it. In reality they were part of the information net, but were not always capable (partly for reasons of lack of resource and lack of direction and priorities) of playing a full part in shaping policy, nor were they well placed at key points of decision. Under devolution the devolveds are still party to the flow of information, though they may be excluded for some items. They still help to shape policy, though they are giving it a more territorial twist. They are still able to access most of the points of decision such as ad hoc Whitehall groupings (though not Cabinet ministerial and official committees), the Friday meeting, and the relevant European Council formations. Through each of the devolveds territories secretaries' of state they have a further channel available to affect policy making in Whitehall. However, they do not have access to these information, policy shaping and policy deciding networks as of right. Access is allowed to them on a concessionary basis and on terms which are conditional on maintaining traditional Whitehall

understandings about how European business should be handled.

Moving down from the level of overall European policy making to particular policy areas (where most discussion and decision takes place), the same principles apply, involvement has been sustained but with the devolveds bringing a more territorial focus to their input. But there are substantial variations across policy areas and departments. In some areas the devolveds have not always been kept fully informed or engaged, in others, for example agriculture (through DEFRA), they have been fully integrated into departmental processes. On occasions the Whitehall network has deliberately operated exclusively of the devolveds especially on EU matters concerning spending questions. Sometimes exclusion has been inadvertent and unintended. So far as the network between the devolveds is concerned, this has not yet been exploited extensively, but the potential is there and it could certainly be pursued more effectively by, for example, regularly reaching common positions on issues prior to engaging Whitehall.

For the English regions involvement on European policy is largely consultative. The regional networks connecting into UK policy handling are tentative and are in the process of emerging rather than yet being fully established. The extent to which they are exploited varies across the regions. An important channel can be the relevant government office (RGO) connecting through to specific Whitehall departments or the Regional Co-ordination Unit in the ODPM, though it deals little with European issues. An important grouping is the RGOs structural funds network drawn together by one of the regional Directors and this is paralleled by networks centred on the RDA chief executives and on their chairs who sometimes exploit connections through to Whitehall ministers. In general, however, the English regions are largely outside the formal policy process on Europe. They are not part of the Whitehall European information network, they are not drawn into the formal shaping of policy, unless called on, and an English regional presence is not present at points of decision. In essence they are having to use the lobbying tactics of the outsider in order to make their voice(s) heard on European and other issues.

Change in understandings governing the handling of policy.

It is here that there has been the least change. Established Whitehall ways of doing business based on sharing information and involvement, and relying on norms of trust and reciprocity, have persisted. Indeed these understandings are reflected in the concordats outlining relations between Whitehall, its departments and the devolveds (Cabinet Office 1999, Scott 2001). There is no sign yet that these

tacit understandings, especially amongst officials, have been significantly weakened. Though as the devolveds draw into themselves, despite the existence of a unified UK civil service, the socialising effect of Whitehall is proving ever more distant. And as the devolveds recruitment patterns draw more heavily on home based personnel this shift in perceptions and loyalties is likely to become more evident (Parry 2003: 9). There is also an attempt to make Whitehall more regionally aware by mainstreaming devolution AND the English regional dimension in Whitehall. This initiative is currently taking place and is yet to be evaluated. A key point to note is that it is UK government that *allows* access to the UK EU policy process. And a key question to ask is – what happens if mutual trust breaks down?

Conclusion

The impact of devolution on UK EU policy making varies across different aspects of policy handling as well as across territory and policy area. There is more change taking place in policy networks and participants than in understandings about how policy should be handled. The impact of Wales and in Wales is different to that of Scotland. The English regions are a distinctive case. The evidence on agriculture and say environmental policy is quite distinct. So it is difficult to generalise about the pattern that is emerging. Nevertheless it is clear that devolution is opening up the policy space and allowing a more territorial take on European policy to be articulated and pursued. The potential is there to significantly impact on outcomes, though it still remains to be seen how effectively such potential will be exploited. Initially we may note three points.

- Understandings are the key to the pre-devolution system and if key participants and networks continue to change these understandings are likely to be placed under stress.
- Scotland and Wales (and Northern Ireland) presently enjoy a *privileged* if *dependent* position. Will a more autonomous stance undermine that position?

- English regions at best are getting their act together but lack access. Their best avenue for impact is initially to be a lobby. Hence more political than policy skills are needed at present.

In all this it helps that Whitehall is becoming more regionally aware, albeit slowly and patchily.

So overall, devolution is having an impact on EU policy handling, though this is not yet fully reflected in outcomes. But, given the change in the potential for acting that devolution has and is bringing about, it seems likely to have a more evident effect on outcomes in the future. The critical questions are not whether but when will this happen? And what will be the likely trigger factors? Certainly the 'benign circumstances' of economic success and political stability surrounding the introduction of devolution cannot be expected to last indefinitely.

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