

The Government of Scotland: Recent Proposals

Research Paper 95/131

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The period around St Andrew's Day, 30 November, provided probably the clearest and most detailed distinction between the two mainstream strands of reform of Scotland's government within the UK. The proposals of the Scottish Secretary, Michael Forsyth, in his Commons statement of 29 November, for the further transfer of Scottish Parliamentary business to the Scottish Grand Committee, were built upon the 1994 *Taking Stock* reforms. The House will be asked to approve these on Tuesday 19 December. On St Andrews Day the Scottish Constitutional Convention, in which Labour and the Liberal Democrats play a leading role, unveiled detailed plans for the creation of a Scottish Parliament. This Paper examines these two contrasting sets of proposals, as well as the SNP's proposals for an independent Parliament and Mr Forsyth's proposals for reform of local government functions.

Members wishing background to these issues should consult Background Paper 261 (16.6.92) *The government of Scotland* and Research Papers 94/85 (8.7.94), *Proposed changes to Scottish Parliamentary business* and 95/95 (6.9.95) *The West Lothian Question*.

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Summary

The debate over the government of Scotland has been at the forefront of British politics for almost thirty years, linked, at least in part, to the rise of the SNP and its policy of independence from the United Kingdom. This paper considers two pro-Unionist strands of policy which have been developed in the 1990s, the devolution policy of the Scottish Constitutional Convention (comprising Labour, the Liberal Democrats and other Scottish bodies) and the Government's policy of improving the procedures for Scottish Parliamentary business. It seems clear that these two policies, along with the independence option of the SNP (also examined here), will ensure that the government of Scotland will be an important issue in the run-up to the next general election, and, perhaps, beyond.

To some extent, the two policies are mutually exclusive in that the existence of a Scottish Parliament, as envisaged by the Convention, could remove much, if not all, of exclusively Scottish Parliamentary business from Westminster. Indeed it could be suggested that the effect of the 1994 reforms and the current proposals would be to give the Scottish Grand Committee at least some features of the procedures and proceedings of the Westminster Chamber.

The Convention's proposals have now reached a final form in its publication *Scotland's Parliament, Scotland's Report*. This Paper provides a summary and gives a brief assessment of the implications, together with information on Government initiatives and the latest set of constitutional proposals from the SNP contained in *Citizens not Subjects* also published on St. Andrew's Day.

On the same day the Scottish Secretary has made a variety of proposals for the deregulation of local government in Scotland, linking these moves with his plans for the reform of Scottish Parliamentary business. The deregulation proposals are considered here in the context of Mr Forsyth's overall approach to local government in Scotland, which he set out in an earlier speech under the headings *partnership, standards, deregulation* and *decentralisation*. The Government's decision to retain council tax capping has been criticised in some quarters, and the capping regime for 1996/7, together with two new proposals for the control of local government finance in Scotland, are also discussed.

This Paper sketches out the post-election developments arising out of the *Taking stock* exercise, and the March 1993 White Paper, *Scotland and the Union: a partnership for good*, which led to changes in the conduct of Scottish Parliamentary business, mainly through the medium of the Scottish Grand Committee. An appendix to this Paper sets out the work of the Grand Committee since the new procedures came into effect at the start of the 1994-95 session. The continuing importance of the 'West Lothian Question' in recent discussion of Scottish government is also examined.

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I A Scottish Parliament: The Scottish Constitutional Convention's Proposals

Library Background Paper no. 261 *The Government of Scotland* describes in detail the creation of the Scottish Constitutional Convention on March 30 1989 following the publication of *A Claim of Right for Scotland* in 1988 by the Campaign for a Scottish Assembly. The Convention is attended by two major parties: Liberal Democrats and Labour but boycotted by the Conservatives and SNP. Representatives from a wide range of Scottish civil society have also participated in the Convention: local government, churches, business groups, Scottish TUC, universities, Scottish Convention of Women and from ethnic minority communities. The principle of proceeding by consensus was established at a very early stage by the Executive Committee. Following a consultation document, *Towards a Scottish Parliament* approved on 20 September 1989. On St Andrews Day 1990 the SCC presented its report to the Scottish people *Towards Scotland's Parliament* which laid out a broad framework. The proposals were:

- a directly elected Scottish Parliament with a defined range of powers and responsibilities which would encompass sole or shared responsibility for all functions except those retained to the United Kingdom (defence, foreign affairs, central economic and fiscal responsibilities and social security policy);
- a representative office in Brussels, with a statutory entitlement to be included in UK delegations to the Council of Ministers;
- Scottish expenditure to be financed by a system of "assigned revenues" ie all Scottish income tax, and if possible Scottish VAT to be assigned to Scotland; a power to vary the rate of income tax up or down within a defined limit, and there would be a element of equalisation based on a needs assessment starting from the present Barnett formula. (The Barnett formula is described in *Scotland in the Union: a partnership for good*.¹ Briefly, it is used within the course of a public expenditure survey to adjust the spending plans for the three territorial departments to reflect changes in comparable programmes in England (or Great Britain in the case of Northern Ireland). It applies only to the Scottish Office 'block'.);
- an electoral system to be assessed in terms of the following principles: that results be broadly related to the number of votes cast; that effective positive action be taken to bring about equal representation of men and women and to encourage fair representation of ethnic and other minority groups, that a real link between the

¹ Cm 2225 at paras. 2.13-2.16

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member and his constituency is made; that it be as simple as possible to understand; that it ensures adequate representation of less populous areas, and that the systems be designed to place the greatest possible power in the hands of the people.

Other issues discussed were the possible entrenchment of a Parliament, and special protection for fundamental rights and freedoms within a Scottish law, by a Charter of Rights.

This broad framework was accepted by the plenary session of the SCC. Two working parties were set up to work on preparation and procedures for Parliament, and to consider an electoral system based on the above principles. In January 1992 the SCC executive committee agreed an additional member system as the basis of the proposed new voting system with the ratio between seats elected by first past the post to those by additional member system to be decided in the future. Further work was, however, required on the details.²

The working party on procedure and working arrangements made a series of recommendations, including fixed term Parliaments, the extensive use of Parliamentary committees, public appointments as a responsibility of Parliament, and the Westminster model of the executive in Parliament so that membership of Cabinet would be drawn from the party or parties with a working majority in Parliament. The recommendations from both working parties were approved by the Convention on 27 February 1992.

After the 1992 Election

After a period of relative silence following the 1992 Election, the Convention set up the Scottish Constitutional Commission in October 1993 to report to the Convention on some detailed aspects of the devolution proposals. The members of the Commission were ten eminent Scots at that time not active in party politics. In particular, it was to make recommendations on proposals for a method of electoral system for the elections to a Scottish Parliament, and gender representation, and the constitutional implications of the establishment of a Scottish Parliament.

The Commission reported in October 1994, with a recommendation for an additional member system of proportional representation (AMS) whereby each elector casts two votes, one for a constituency MP, and one for a candidate from a party list. Individual Members of the Scottish Parliament (MSPs) would be elected on a first past the post basis for the 72 constituencies, plus 40 MSPs elected from a party list on a Euro-constituency basis with 5 additional MSPs allocated for each of the 81 existing Scottish Euro constituencies. This made a total of 112 seats.³

² Scottish Constitutional Convention *Electoral System for Scottish Parliament* January 1992

³ *Further steps: Towards a Scheme for Scotland's Parliament: A Report to the Scottish Constitutional Convention* by the Scottish Constitutional Commission October 1994

The Commission did not endorse a statutory quota system for gender representation, considering that it would raise serious civil liberties issues involving the rights of political parties as free and self-organising structures in a civil society. Instead it recommended the adoption of a target system for the representation of women and ethnic minorities. Each party would be invited to set itself a target to be achieved within five years.

On the more general constitutional issues, the Commission Report rejected proposals to reduce the number of Scottish seats at Westminster, proposing instead that the Convention should promote a general debate on patterns of Westminster representation in the context of decentralisation. It recommended a diminution of the powers of the Secretary of State for Scotland and an investigation of the possibility of entrenchment of the proposed Scottish Parliament.

The Scottish Constitutional Convention met on 2nd December 1994 to consider the report, but took no decision on whether to accept the recommendations. Instead private discussions continued within the Convention. The Liberal Democrat party appeared to favour a larger number of seats (145) and the Labour Party 112 seats.⁴ An eventual compromise of between 120 and 136 was forecast in June 1995.⁵ The issue of size has been seen as crucial for the Liberal Democrats because the larger the Parliament the greater the chance of achieving proportional representation and avoiding the dominance by one party. Tensions also emerged over the summer over the proposed methods of financing the Scottish Parliament, Labour favoured replacing "assigned revenues" with a block grant. Assigned revenues means the assignation to Scotland of income tax paid by Scottish revenues and VAT paid in Scotland on goods and services.

The compromise of 129 seats was arrived at in September 1995; 73 to be elected by first past the post, and 56 through a party list with 7 coming from each of the 8 European constituencies.⁶

A. Key Proposals

On 17 October 1995 the executive committee of the SCC published *Key Proposals for Scotland's Parliament*, the final document incorporating proposals for the Parliament.

⁴ *Scotsman* 25/4/95 "Labour proposal upsets constitutional harmony"

⁵ *Scotsman* 9/6/95 "Labour concession on assembly"

⁶ *Scotsman* 8/9/95 "Rivals hail devolution deal"

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The key proposals were:

- the Scottish Parliament powers to include all areas currently within remit of Scottish Office, so that the Parliament would have sole or shared responsibility for all functions except those retained to the Westminster Parliament ie. defence foreign affairs, immigration, nationality, social security policy and central economic and fiscal responsibilities;
- the subsidiarity principle to apply where a function was shared between the Scottish Parliament and Westminster;
- Scotland's Parliament to be represented on UK Ministerial delegations to the EC/EU and to have the power to appoint representatives to the Committee of the Regions and the Economic and Social Committees;
- the Scottish Parliament to be responsible for the system of local government in Scotland, its financing and its provision of local services. The Convention supported Article 4 of the European Charter of Local Self Government that local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority;
- the role of quangos operating in Scotland to be examined by Scotland's Parliament which would 'bring their activities under democratic control where it considers this necessary'. The Parliament would also have powers to ensure that where such bodies remained they would be subject to greater accountability and accessibility.
- one Member of Parliament each for Orkney, Shetland and Western Isles to ensure separate representation.
- acceptance that entrenchment could not be achieved within the concept of supreme Parliamentary sovereignty but in advance of the relevant Scottish legislation. There would be a clear commitment by the Westminster Parliament made through a Declaration that the Act founding the Parliament should not be repealed or amended without the consent of the Scottish Parliament and people directly consulted through general election or referendum.

- an existing body in first instance such as the Appellate Committee of the House of Lords or the Judicial Committee of the Privy Council to resolve disputes as to the relative powers of the UK and Scottish Parliament;
- a Charter of fundamental rights to be adopted by Scotland's Parliament encompassing and improving on prevailing international law and conventions. An expectation that a *Freedom of Information Act* be passed by Scotland's Parliament;
- a Parliament of 129 Members to be established, electors to have two votes, one for 73 constituency members of the Scottish Parliament (MSPs) elected from Westminster constituencies with the addition of two separate Orkney and Shetland constituencies on a first past the post system, and for 56 additional members from a local party list, with seven from each of the eight European constituencies. The votes cast for each party would be counted within the eight constituencies and the seven seats from each would be allocated so that the total representation from each area - including MSPs returned for individual constituencies would correspond as closely as possible with the share of the votes cast for each party in the area;
- a review of the electoral system by the Parliament after the first election, with the assumption that the main principles remain intact;
- endorsement of the cross-party Electoral Agreement which accepts that there should be equal numbers of men and women as members of the first Parliament, and commits the parties to select and field an equal number of male and female candidates for election distributed with a view to the winnability of seats. (the cross party agreement has been signed by Scottish Labour and the Scottish Liberal Democrats only.)
- a single chamber legislature with no role for an upper chamber like the House of Lords;
- a Speaker to be elected by vote of the full Parliament;
- a fixed term of four years for the Parliament unless two thirds of MSPs agree otherwise;

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- the Executive to be headed by a chief Minister normally (but not necessarily) being the leader of the largest party; Cabinet membership to be drawn from a party or parties forming a working majority in Parliament.⁷ All Ministers would need to be confirmed by simple majority of the full party. Their role would be to administer Government departments, and to initiate legislation (to be shared with Parliamentary Committee) and to represent the Scottish Parliament;
- adoption of standing orders to provide for the Parliament to operate through a system of Parliamentary committees, for MSPs not to take fulltime outside jobs, and to make appointments to public bodies as open and democratic as possible. Only on the first term of the Parliament would MSPs be able to hold a dual mandate (ie. be a member of the Westminster Parliament, or European Parliament, or a local authority councillor);
- the principle of financial equalisation to be embodied in the establishing Act, with the Barnett formula being used as the basis of the allocation; this would be known as the assigned budget, which would not require annual negotiation;
- the Scottish Parliament to take over the powers currently exercised by the Secretary of State over public expenditure in Scotland;
- a power to increase or decrease the basic rate of income tax by a maximum of 3p in the pound to be given to the Scottish Parliament, but any tax cuts would have to be financed from within the assigned budget. There would be no powers to vary corporate taxation.

Scotland's Parliament, Scotland's Right, the final document of the SCC was presented on 30 November 1995. It incorporates the plans in *Key Proposals for Scotland's Parliament*, noting in its final section (The Way Forward) that "the Convention fully recognises that detailed work of both a political and legal nature remains to be done to draft the Scottish Parliament Bill. That responsibility rests ultimately with the UK Government, and with the political parties in Westminster."⁸ The Convention would take part in that process where appropriate and in particular would work towards the creation of a set of standing orders in consultation with organisations and individuals. For the immediate future the Convention's two key objectives are:

⁷ Law Officers need not be MSPs

⁸ p.30

- "(i) to increase public awareness of how widely the powers of Scotland's Parliament will range; of their implications and of the impact they will make on key areas of concern; and
- (ii) to facilitate and heed informed public debate about the expectations people have of constitutional change, any reservations they harbour, and any ideas they wish to advance."⁹

A series of events targeted at specific groups is planned.

Bernard Crick and David Millar have produced a revised version of their proposed standing orders for a Scottish Parliament *To Make the Parliament of Scotland a Model for Democracy* (John Wheatley Centre, November 1995). These have not been officially endorsed by the Convention but are intended to be a contribution to the debate. The report recommended a maximum of ten Ministers for the Cabinet, a Steering (or Business) Committee to determine Parliamentary business; a new Public Appointments Committee to scrutinise appointments; the use of standing orders which recognise a political party, a Parliamentary information service to assist both MSPs and the public, and proposals to govern relations between the Scottish and Westminster Parliaments (such as Conciliation or Joint Ministerial Committees) and relations with Europe.

Assessment of the Proposals

The SCC proposals therefore encompass some of the changes foreshadowed in early 1995, notably the compromise number of 129 Members, and the change from "assigned revenues" to "assigned budget" while any attempt to achieve gender balance by statutory intervention has been ruled out. An attempt at solving the entrenchment dilemma has been made by means of a special resolution at Westminster. However, the final proposals do not mention the 'West Lothian Question' or the role of the Secretary of State. Commentators have also doubted whether the proposals, as currently formulated, offer sufficient detail on the resolutions of dispute between the UK and the Parliament of Scotland, and relations with local government and Europe.¹⁰ There is little information on the operation of the assigned budget and the equalisation formula. The Convention has stated that further work is now necessary, but it is not clear whether a draft Bill will be published by another organisation or political party in advance of the General Election.

⁹ p.30

¹⁰ See in particular pp 1-8 of *To Make a Parliament of Scotland a Model of Democracy* by Bernard Crick and David Miller

In all, the SCC proposals do not address the future relationship of Scotland within the UK specifically the nature of 'devolution' being offered. Devolution as has been discussed for Scotland since the war is generally seen as a way of transforming the present system of substantial administrative autonomy into one of legislative autonomy with the UK, and is not a true federal system. George Robertson has characterised the plans as

"democratising an existing level of government. A Scottish Office that's got fifteen and a half thousand civil servants, covers nine departments of State, is run by four Ministers who enjoy thirteen per cent in the opinion polls in Scotland. It's a question about returning power to the people..... its about democracy not breaking up this country".¹¹

On the other hand, when the Convention first met on 30th March 1989 it adopted a declaration that the Convention acknowledged "the sovereign right of the Scottish people to determine the Government best suited to their needs"¹² The Liberal Democrats still wish to see a move towards a federal or quasi federal structure for the UK to deal with purely federal matters such as defence. However, the SCC proposals envisage a large number of functions shared between Scotland and Westminster with little detail of how sharing will operate. A Scottish Charter of Rights would need to co-exist with the UK wide Prevention of Terrorism Act.¹³ No independent constitutional court is provided for; countries with experience of operating federal systems such as the US, Canada and Australia have developed judiciaries which are used to determine whether Parliaments or Ministers have acted within their powers.

The SCC proposals bear some resemblance to the earlier twentieth century attempt at devolution - the Northern Ireland Parliament at Stormont. Of course the Northern Ireland experiment was not designed to deal with the "centrifugal" pressures of nationalism¹⁴ but nevertheless under the 1920 *Government of Ireland Act* Stormont was given broad powers to make laws for the peace, order, and good government of the inhabitants of Northern Ireland, with residual powers at Westminster, including defence, external trade and foreign affairs. Power over income tax also remained at Westminster, although S.25 of the 1920 Act gave the Northern Ireland Parliament power to give rebates on income tax or surtax; this power was never used (Northern Ireland found it impossible to finance from her revenue a level of services equal to those in the UK and a succession of agreements with Westminster determined Stormont's finances by needs, not revenues). Although there were powerful statutory constraints on the autonomy of Stormont, in practice the constitutional relationship with Westminster was quasi-federal as Westminster did not take an interventionist role. In particular it did not attempt to regulate the form of electoral system used, so that in 1922 proportional representation in local government was abolished, followed by PR in elections

¹¹ Transcript *On the Record* BBC1 12/11/95

¹² SCC Minutes of Meeting, Item 9, 30.3.89

¹³ See Malcolm Dickson in *The Herald* 18/10/95 "A blue print in shades of grey"

¹⁴ see Vernon Bogdonor *Devolution* (1979) p.47

to Stormont in 1929.¹⁵

The *Scotland Act 1978* devolved legislative powers to a directly elected Assembly, and executive powers to a Scottish Executive appointed from the Assembly. The Act attempted in elaborate detail to define the areas of devolved powers and to control the exercise of those powers in contrast to the approach of the *Government of Ireland Act 1920*. No delegation of the power to raise taxation was made. The 1978 Act gave numerous supervisory powers of a constitutional kind to the Secretary of State for Scotland who remained responsible to Westminster for the matters of Scottish Government not devolved to Scotland (e.g. police). The Secretary of State was given the power to examine any Scottish Assembly Act and consider whether it was lawful. In contrast, the SCC have so far avoided the complex list of UK statutes which a Scottish Assembly was empowered to amend under the 1978 Act. However, an attempt to give a detailed interpretation to the SCC proposals might replicate the 1978 schedules. Bernard Crick¹⁶ has advocated a short Bill transferring the powers of the Secretary of State of Scotland to a Parliament in Scotland rather than the 1978 precedent.

Budget and Taxation

The shift from assigned revenues to assigned budget was foreshadowed in *A Parliament for Scotland: Labour's Plan*¹⁷ which proposed the system subsequently adopted by the Convention. There was some concern within the Convention that the change was adopted to suit the electoral fortunes of the Labour Party. Labour has noted that the assignment of taxes to Scotland would have left a shortfall on current Scottish Office expenditure requiring a top-up grant from the Treasury, and considers that a well-established formula-driven public grant would be more stable. However, the change raised fears that the tax-raising powers of the Parliament might be under attack.

The Conservatives have also criticised the "assigned budget" and the proposed power to vary taxation as assuming that the Barnett formula would continue. Kenneth Clarke, Chancellor of the Exchequer, has said that identifiable public expenditure in Scotland was 21 per cent higher than in England - equivalent to more than £600 per person a year - and that English taxpayers would wish a devolved assembly to bear more of this burden.¹⁸ On the same day, in response to a PQ from Ian Davidson, John Major placed in the Library the basis for the calculations for his statements that the Scottish Parliament could cost the average Scottish family £6 a week.¹⁹ Another document²⁰ placed in the Library in March 1995 gives the basis for calculations used by the Secretary of State for Scotland in his interview with Jonathon

¹⁵ see B. Hadfield, *The Constitution of Northern Ireland* (1989) for a detailed discussion.

¹⁶ in "Ambushes and Advances: The Scottish Act 1998" *Political Quarterly* Oct/Dec 95

¹⁷ approved and published by the Scottish Labour Party in March 1995

¹⁸ *Scotsman* 25/3/95 "Clarke's tax warning to Scots"

¹⁹ Dep 1363 (3s)

²⁰ Dep 1444

Dimbleby on 12 February 1995: if identifiable public expenditure per capita in Scotland were to be reduced to the same level as the UK average then a sum equivalent to an extra 19p in the pound on income tax in Scotland would need to be raised. In response Tony Blair said that "in the UK resources are pooled at the centre and then distributed according to need. That is what dictates Scotland's level of public expenditure now and the same principle will apply when devolution is in place."²¹

Other objections have been raised on the basis that a Scottish Parliament should have fuller tax-raising powers. Ferdinand Mount, in an article sympathetic to devolution, has argued as follows:

The novelty in Scotland is that Parliament will have "revenue-varying powers to raise or cut the base rate of income tax for Scottish taxpayers by a maximum of three pence in the pound". This has a pleasantly prudent sound to it: a nice wee modicum of responsibility but nothing too onerous. It is better than nothing, but it is not enough.

For the dumbest demagogue in the new Parliament will quickly find the way to the new style of rhetoric required: "Why", he will keen, "should we tax our fellow Scots more heavily when it is the stingy English who are denying us our just share of the revenue they squeeze out of us?" Besides, to give the Scottish Parliament the power to vary income tax rather than council tax is to jumble up local and national responsibilities, so that a Scottish Parliament could claim, say, to be cutting the contribution to national defence, although the effect would be felt on local social services. In fact, that is just what a peacenik majority in Edinburgh might wish to claim: "We are cutting three percent off your income tax bills, so that you will no longer be contributing towards the evil nuclear submarine bases in Scottish waters."

The difficulty remains one of principle. The power that spends the money ought to raise the lion's share of it. Three pence up or down is not enough to engender that proper sense of responsibility which makes a real democratic assembly. This isn't easy, since Lady Thatcher destroyed the domestic rates, that ancient and ingenious tax which could have had a useful part to play; the new council tax will take years to work up to any such role. But in the long run, it could offer an effective source of revenue for the Assembly. A first step might be to remove the present cap on local authority expenditure and reduce the central government contribution, thus making the existing local authorities more dependent on local revenue. Then, at a later stage, a Scottish Parliament or Welsh Assembly could be given the power to precept upon the council tax, which would then be a two-tier local tax (as it already is with two-tier local authorities), clearly distinguishable from national taxation.²²

Alan Young, former special adviser to Ian Lang when Secretary of State for Scotland, has argued that the Barnett formula should be reassessed since it was no longer self-evident that Scotland has a higher need for public spending than other parts of the UK, and has called for an objective assessment of public spending needs.²³

²¹ *Scotsman* "Blair rounds on 'Tory lie machine' tax warning"

²² *Times Literary Supplement* 11.8.95 "Homage in Caledonia"

²³ *Scotland* 30/8/95 "Magic formula that keeps the cash balance"

Recently George Robertson and Tony Blair have emphasised that the power to vary taxation would be exercised prudently, and at present Labour has no plans to raise income tax.²⁴

B. Devolution : The Government Response

The Government case against a devolved assembly has been consistent since before the 1992 General Election.²⁵ Briefly, the Conservatives have sought to equate plans for a Scottish Parliament with the separatist case, and to cast the SNP arguments for independence as a more intellectually rigorous approach than the SCC proposals arguing that support for a devolved assembly would inevitably weaken the Union. Secondly, they have maintained that public expenditure per head in Scotland might need to be reduced to the UK average if a Scottish Parliament were established, and that Scotland's allocation of 72 MPs would need to be reviewed.

In March 1993 the Government White Paper *Scotland in the Union : a partnership for good* was published (Cm 2225). As well as proposals for enhancing the treatment of Scottish business in Parliament the White Paper also contained suggestions for "improving the dialogue between the Scottish Office and the public it exists to serve" (para. 8.5). A central enquiry unit for the Scottish Office was proposed together with outlying Scottish Office information points. The White Paper also highlighted policies to devolve more decision-making within Scotland such as parent-led school boards and the new single tier all purpose local authorities. It concluded by considering that ways had to be found of ensuring that Scotland played a bigger part in the United Kingdom as a whole, and that the White Paper marked 'the start of a continuing reappraisal by the Government of the way the Union works and how it can be improved' (para. 10.13).

Much of the White Paper provided background information on, for instance, the development of the machinery of government for Scotland and the separate nature of the Scottish legal system designed to demonstrate that the Union was a partnership "for good" in both senses of the term. Chapter 7 set out a number of ways in which administrative devolution was to be extended in Scotland, in the fields of training, industrial support schemes, Highland and Islands airports, Scottish Arts Council and relocation policy amounting to 'a significant transfer of decision-making power from London to Scotland' (para. 7.15). Critics have noted that in many cases responsibility is being transferred from other government departments to the Scottish Office, rather than a devolution to local authorities or other public bodies in Scotland.

²⁴ *The Herald* 8/12/95 "New Labour and the New Union". See also *The Herald* 9/12/95 "Tartan tax"

²⁵ It has been detailed in Library Background Paper no. 291, *The Government of Scotland - the Debate after the 1992 General Election*

During the debate on 11 July 1994 on the new standing orders for Scottish Parliamentary business proposed in *Scotland in the Union : a partnership for good*, George Robertson said for the Opposition that "the panoply of powers controlled directly by the Secretary of State has increased dramatically and the only accountability that we are being offered is through the new standing orders."²⁶ Jim Wallace for the Liberal Democrats said that the taking stock exercise had 'produced a mouse.'²⁷ In his statement to the Commons on 29 November 1995 Michael Forsyth, Secretary of State for Scotland, emphasised that "the Union was a constantly growing and living relationship, in which we must all continue to invest. It is strengthened by devolution for people not for politicians. That means devolving power downwards from central Government through local authorities to community councils, school boards, housing associations and all other representative local groups, and ultimately to the families and individuals. The Government utterly reject a tax-raising Parliament that would damage Scotland's jobs and prosperity."²⁸

Mr Forsyth announced a number of non-Parliamentary initiatives in his next speech on 30 November 1995. The most important of these initiatives relate to reform of local Government and is dealt with separately in this paper.²⁹ The other main proposal was to revitalise the Scottish Economic Council: the membership would be broadened, and the council will meet more frequently with a fuller session chaired by the Secretary of State. He also promised a consultation paper on the ownership of crofting estates currently in the hands of the Secretary of State, and to consider how forestry could be brought under community control. Mr Forsyth also argued that it was the Conservative Party which first began to examine the question of a devolved assembly in 1968, and had been unable to find a scheme which did not undermine the Union. He criticised the SCC proposals, in particular the method of election, and the power to adjust the basic income tax by 3p using the term 'the Tartan tax'. He argued that a reduction in Scottish representation at the UK Parliament would be inevitable and commented the absence of a revising chamber, concluding that "The Convention's scheme is a formula for eventual separatism" (p.9).

C. The Nationalist position

The SNP launched a new policy paper on 30 November 1995 *Citizens Not Subjects: the Parliament and Constitution of an Independent Scotland*. Background to the SNP position is given in Library Background Paper 291 *The Government of Scotland - the Debate after the 1992 General Election* which described the development of the SNP 'Scotland in Europe' policy in the 1980s. The *Citizens Not Subjects* proposals were summarised as follows:

SUMMARY OF PROPOSALS

1. A written constitution will be incorporated in the Independence Settlement to be

²⁶ HC Deb vol.245 c773

²⁷ HC Deb Vol 245 c780

²⁸ HC Deb Vol. 267 c1228

²⁹ The Richard Stewart Memorial Lecture

placed before the Scottish people in a referendum.

2. The written constitution will include a Bill of Rights, guaranteeing fundamental rights and liberties and will over-ride all other laws. These rights and liberties will include the right to housing, health and education, the right to liberty and will reinforce the rights of minority communities. The bill of rights will also guarantee the freedom of the press. The rights shall be enforceable at law

3. Sovereignty in Scotland rests with the people, not in Parliament. That clear legal situation must be reflected in the constitution and in the operation of government. The people will be Scottish citizens, not British subjects.

4. Scottish citizenship will be offered to all those resident in Scotland on the date of independence and to those who were born in Scotland but are resident elsewhere. The Parliament of Scotland will enact legislation to allow naturalisation as a Scottish citizen and to protect the residency and other rights of those living in Scotland who do not take Scottish citizenship or are citizens of other nations.

5. The Queen and her successors will remain Head of State, but the role of the monarchy will be re-defined to reflect the proper role of the monarch in a modern democracy.

6. The Chancellor of Scotland (the elected presiding officer of the Scottish Parliament) will act as Head of State in the Queen's absence from Scotland.

7. The Parliament will be a single chamber. The notion of a revising chamber with a membership present by accident of birth or by political patronage is deeply repugnant to the Scottish sense of democracy.

8. The Parliament will have 200 members. The first Parliament after the first General Election will have 144 members - two from each existing constituency elected by the alternative vote system, and 56 members who will be drawn from party lists by the additional member system. The additional member system will allow each party in a political balanced parliament to reflect Scottish society 'm terms of gender, ethnic origin and geographical diversity in the balance of its representation. Subsequent Parliaments may have their composition altered following a comprehensive review.

9. Legislation will be initiated by means of Government proposal, Committee proposal and by means of public petition. The people of Scotland will have a participatory role in Scottish democracy and Scottish democratic institutions.

10. The Parliament will have a constitutional mechanism to defer and delay contentious legislation either through a blocking mechanism in the Parliament and the option of a referendum or by means of a consultative body made up of MEPs and Councillors.

11. The Scottish Judiciary will be independent of the Executive and appointments to the judiciary will be made by a Commission established for that purpose.

12. The Parliament may freely enter into international treaties and obligations, acting on behalf of the people of Scotland.

13. Scotland, as one of the successors states of the United Kingdom, will be a member of the European Union.

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14. As a member of the European Union Scotland will elect 16 members to the European Parliament by proportional representation, appoint a Commissioner to the EU and participate fully in the Council of Ministers, taking its turn at the Presidency.

15. Scotland will become the 186th member of the United Nations, and will participate fully in UN institutions and activities, including peacekeeping.

16. Scotland will promote, and co-operate in the formation of, an Association of States of the British Isles which will aim to maintain close links amongst the former parts of the United Kingdom and other nations and parts of these islands and to co-operate, where appropriate, in matters concerning the EU and other international bodies.

17. Scotland will inherit the treaty obligations of the United Kingdom including membership of NATO but under an SNP government will not participate in the command structure of NATO and would adopt a non nuclear policy.

18. Scotland, as a successor state of the UK, will be a member of the Commonwealth.

19. Scotland will establish diplomatic relations in the normal international manner and maintain embassies and consulates in relevant foreign states,. Many of these diplomatic missions will be commercially orientated.

20. The fundamental provisions of Scotland's constitution will only be able to be changed by the win of the people expressed in a referendum, which would take place after three fifths of the Parliament had approved such a change.

Assessment

These SNP constitutional proposals are more radical than those of the Convention parties in promoting an independent Parliament, but there are some similarities with the SCC model, in that the SNP proposes a single chamber, Parliamentary committees with an important role in the initiation of legislation, a Westminster-type executive and a Bill of Rights. However, there is more emphasis on the belief that sovereignty should rest with the people not in Parliament, reinforced by the use of the referendum device to underpin independence. Two types of PR, the alternative vote, and the additional member system will be used to elect a Parliament of 200 Members, with the voting age lowered to 16.

Alex Salmond, SNP leader, has criticised the Convention proposals as having insufficient power to change Scotland.³⁰ Alex Salmond himself faced some criticism at the SNP party conference in September 1995 over comments interpreted as suggesting that the SNP might take part in alliances should a devolved Parliament be set up after the next General Election.³¹ There has been internal debate in the SNP between those who view devolution as a half-way step to independence and those who believe that devolution would negate that option.

³⁰ 'Second Coming of Convention is even weaker than the first' *Scotsman* 20/10/95

³¹ *Scotsman* 25/9/95 "SNP critics round on Salmond over offer to Labour"

An SNP working party ('Highway to Independence' group) including non-SNP academics will publish early next year plans on how the SNP will use a devolved assembly to achieve independence³²

II Local Government

A. Partnership, Standards, Deregulation, Decentralisation... and Finance

Michael Forsyth became Scottish Secretary at an important and difficult time for local government in Scotland. The *Local Government etc. (Scotland) Act 1994* provides for the replacement of the current two-tier structure of local government (district and regional councils) with a single tier of most-purpose or *unitary* authorities. The Act was passed despite strong opposition from many councils and the reorganisation will take effect on 1st April 1996. Preparation for the change is currently the single overwhelming preoccupation of most authorities. At the same time, however, concerns have arisen over the conduct of a number of councils, notably Monklands and the shadow unitary authority North Lanarkshire.

On 7 September 1995, not long after taking up his post, Mr Forsyth gave a speech to the Scottish conference of the IRRV³³ in which he set out four watchwords for local government: partnership, standards, deregulation and decentralisation. These watchwords encapsulate quite neatly the tensions which are in all probability inevitable in the role of central government towards local government. The desire to promote partnership and deregulation is tempered by the expectation that the government must also promote and to some extent enforce standards. Decentralisation, of course, can mean the giving up of powers by central or by local government (eg devolved school management). The government has on occasion shown itself willing to force local government to decentralise if it will not do so voluntarily. To this list of goals could be added the determination of central government to maintain financial controls over local government if these are seen as being necessary for the health of the national economy, a theme taken up by Mr Forsyth in his later St Andrew's Day speech (see below). The issues involved in Mr Forsyth's overtures to local government are discussed below.

B. Partnership

³² *Scotland on Sunday* "Step by step stumbling block" 24.9.95

³³ The Institute of Revenues, Rating and Valuation

The Scottish Secretary suggested in his IRRV speech that although the new councils would be powerful bodies, power did not necessarily imply taking the leading role in every activity in which local authorities engaged:

They need to think carefully and objectively about how they can best secure the particular results they are pursuing. In some areas it will be through influence rather than direct action, in some areas pump-priming may be the answer, in other areas what may be needed is a strategic lead. In all these areas effective partnership will be the key to success.

Mr Forsyth listed co-operation between councils, with the Scottish Office, with LECs (local enterprise companies), health boards and the voluntary sector and "last but not least" with the private sector as being of particular importance for local government.

I do not think that there are any Scottish authorities which mean to be anti-business. I believe all Scottish authorities want to see their local businesses thrive (although I sometimes wonder, as a constituency MP, whether my local assessor shares that objective). I do think however that too many authorities ignore, or set their faces against, the contribution which the private sector could make to the efficient delivery of local authority services. Particularly at a time when resources are tight it is, quite simply, daft to turn a blind eye to what the private sector could offer. You have a session tomorrow on the scope for out-sourcing in the revenues area.³⁴ It is not for me to say whether that is or is not the right answer in your authority, but I am quite clear that it is the sort of option which the councils must be prepared to look at objectively, rather than ruling it out on doctrinaire grounds.

C. Decentralisation

On 7 September Mr Forsyth described this as being, like subsidiarity, a long word to describe a simple idea - that decisions should be taken at as local level as possible.

Between the individual and the local authority there is a whole variety of local bodies - community councils, residents' associations, tenants' associations, school boards and local management committees. Often they attract little interest and support. But that is because they are not given enough to do. Their potential is not being exploited by local authorities. There is enormous scope to involve them more in local decisions and in the running of local facilities, and to leave matters of detail to them instead of resolving them in the council chamber.

Authorities seem to find these ideas threatening. I do not see why this should be so. They are likely to give the local member a higher profile and an opportunity to provide a lead in his or

³⁴ The contracting out of council tax and business rates collection

her local area. The standing of the council will improve if decentralisation makes the services reflect local needs more accurately. And helping these local groups deal with local problems must be more rewarding than sitting in interminable headquarters committee meetings.

As part of their preparations for local government reorganisation the shadow unitary councils (and the three existing unitary island councils) must publish draft decentralisation schemes for their areas, for local consultation.³⁵ A scheme may include arrangements for holding council meetings in different places within the council's area; setting up neighbourhood committees and/or neighbourhood offices; and providing advice on council services at particular places within the council's area. Although the permission of the Scottish Office is not required before a draft scheme is finalised, councils must take account of guidance on the form and content of decentralisation schemes which may be issued by the Secretary of State.

Guidance on decentralisation had been issued on 24 July 1995.³⁶ In his IRRV speech on 7 September Mr Forsyth said that the guide did not tell authorities what to do:

The circumstances of the new authorities are too diverse for that. Instead it is designed to provoke thought and offer ideas.

The guidance identifies three key objectives of decentralisation [p5]:

- To bring services and decision making closer to the public where this will result in an improvement to the service
- To enable the public to influence and shape the design of those services and the way in which the council serves its community
- To provide more effective and responsive local government

The Secretary of State acknowledged in his speech to the IRRV that

More decentralised arrangements may well cost money to set up. But if it leads to more

³⁵ *Local Government etc (Scotland) Act 1994*, section 23

³⁶ Decentralisation - A Guide. Scottish Office

effective services at local level it will be money well spent, and it should be accompanied by savings in headquarters costs.

D. Standards

In recent months a number of controversies concerning the conduct of local government have received widespread attention from politicians and the media. On 28 June 1995 the Secretary of State announced that a statutory inquiry³⁷ would be held into allegations of nepotism in Monklands District Council, following the publication of a report by Professor Black QC which was commissioned by the council.³⁸ William Nimmo Smith QC was appointed to conduct the inquiry and the taking of evidence from witnesses in public commenced on 13 November.

A further section 211 inquiry was ordered in November 1995, into the appointment of staff by the shadow unitary council for North Lanarkshire.³⁹ The inquiry will be conducted by D I K MacLeod, a solicitor who specialises in employment law. In addition there has been persistent concern over the activities of a Paisley-based company, FCB Securities, which has links with local government.⁴⁰ On 24 July 1995 George Kynoch, Minister for Local Government, invited COSLA⁴¹ to form a joint task force with the Government to look into the effectiveness of current safeguards on conduct in local government, saying he was concerned that "the slow drip of allegations, often unfounded, about local government will cause damage to the public's confidence in all those who serve their needs and are trusted with their votes and money".⁴² The task force reported early in December 1995.⁴³

Against this background, the Secretary of State's comments at the IRRV conference on 7 September amounted to a warning to that local government as a whole would suffer if it was seen to act irresponsibly:

³⁷ under section 211 of the *Local Government (Scotland) Act 1973*

³⁸ HC Deb Vol 262, c884

³⁹ Scottish Office Press Notice 1511/1995 "Inquiry into staff appointments by new North Lanarkshire council" 10.11.95. See also *Local Government Chronicle* "Kynoch acts to stem N Lanarks jobs row" 17.11.95

⁴⁰ See *Scotland on Sunday* 23.4.95 "Labour acts to halt scandal"; *Scotsman* 25.4.95 "Inquiry on Paisley firm refused"; *Scotland on Sunday* 16.7.95 "Renfrew members face surcharge in security firm investigation"

⁴¹ The Convention of Scottish Local Authorities

⁴² Scottish Office Press Notice 0923/95, "George Kynoch seeks COSLA support for local government conduct task force"

⁴³ Report of the Task Force on the Conduct of Local Government in Scotland. Scottish Office/COSLA, 4.12.95. Dep 2444 (3S)

Local government will not however be strengthened, and will not acquire new powers and influence, if it cannot maintain high standards of conduct. I take no pleasure in the fact that we have had to institute a formal inquiry into appointments in Monklands. Nor in the fact that even while that inquiry gets under way we have further controversy about appointments made by some of the new councils. These disputes undermine popular confidence in local government.

Nor do I find it satisfactory that the ruling group on some existing councils, and on some new councils, seems to find it necessary to do down the minority parties at every turn, whether it is over representation on committees, allowances or nominations to outside bodies. Such pettiness discourages potential partners from working with local government. And it dismays those of us arguing the case for giving it more responsibility.

Nor are the problems confined to elected members. Officials need to remember that they are appointed to serve the council as a whole. They must not be afraid to give unpopular advice even to those who appointed them. They must avoid any suspicion that they are beholden to a particular party. I do not suggest we should go back to the days when, I am told, elected members deferred unquestioningly to the town clerk or the county clerk. But there are clear dangers if elected members have no source of objective advice.

I have a particular concern about political balance on council committees. I know the Scottish National Party have complained about the treatment they have received from at least one Labour council. There is legislation on the statute book which would impose new obligations on authorities in this area, and enable me to make regulations, but it has not been commenced in Scotland because it did not appear to be necessary.⁴⁴ I know that COSLA advised the new authorities that their interim committees should be politically balanced. I hope that they will now move to extend that guidance to the generality of local authority committees, and that the Labour Party will give them enthusiastic backing. I have no wish to introduce extra controls over local government - far from it - but I will be obliged to act if minority parties continue to be maltreated.

Having said that I know that the general standard of conduct in Scottish local government is high. Indeed that is why most elected members and most senior officials privately share the concerns I am airing. I am glad that COSLA responded willingly to my suggestion that we establish a joint task force to view the existing controls on the conduct of local government, and I look forward to studying and acting on its report.

The report of the joint Scottish Office/COSLA task force set out a number of general principles on the conduct of local government.⁴⁵ In the first instance, the task force concluded, it was for local authorities themselves to ensure that misconduct did not occur and to investigate and remedy any irregularities. Councillors and officers would consequently

⁴⁴ section 15 of the *Local Government and Housing Act 1989*

⁴⁵ Report of the Task Force on the Conduct of Local Government in Scotland, 4.12.95, p2

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need ready access to clear rules or guidance about what was expected of them in all aspects of their official conduct. Each council should have well publicised complaints procedures which would enable any allegations about misconduct to be thoroughly investigated within the council. Dissatisfied complainants should be able to refer the matter to an independent external adjudicator for further examination, and councils which were the subject of allegations should be able to invite an independent external adjudicator to examine these allegations. Finally, the prime role of the Secretary of State was to keep under review the various legislative provisions which have a bearing on conduct. Nevertheless, in exceptional circumstances he needed to be able to act where the normal framework of controls appeared to have failed.

The task force identified a number of options for change. Among the more far-reaching suggestions were:

- a special procedure which would have to be used if it was proposed to dismiss chief executives, designed to strengthen their ability to offer totally objective advice on matters of propriety or legality [p17]
- a Scottish Code for local government appointments [pp21-2]
- additional powers for the local government ombudsman [Chapter 6]
- additional powers for the local government finance watchdog, the Accounts Commission [Chapter 7].

The task force rejected the option of revoking the Secretary of State's powers to hold inquiries into local government [pp 46-7]. It canvassed the possibility of extending the scope of his powers to include circumstances other than failure to carry out a statutory duty. At the time of writing the Secretary of State was considering the report of the task force.

E. Deregulation

In his IRRV speech the Secretary of State challenged local authorities to match the Scottish Office's "campaign against red tape and bumph". He stated that he was "determined to reduce the amount of unnecessary interference in local authority decisions" and gave a commitment to publish before the end of 1995 proposals on areas where central reporting requirements and

centrally imposed burdens could be eased. He also said that he had invited the Convention of Scottish Local Authorities for ideas "for which shackles they would like to throw off. No doubt they will mention capping."

This prediction proved correct. On 21 November 1995 COSLA issued a list of 52 different controls which it claimed could be removed or relaxed to make local government operate more effectively.⁴⁶ In making COSLA's submission to the Secretary of State, its President Rosemary McKenna said:

We need to replace the unstable environment of the recent past, agree the respective roles of central and local government and secure a stable environment in which central and local government can work in partnership.

The submission was summarised as follows in COSLA's press release:

COSLA's 52 proposals cross 17 different areas of local government ranging from finance to licensing powers dealing not only with controls which have come into force in recent years but also controls dating as far back as 400 years.

They fall into two broad categories - those aimed at removing minor controls in order to speed up the process of decision making and secondly a range of controls and responsibilities exercised by central government.

The recommendations include:

- Education - the removal of central government's controls in relation to school closures, amalgamations and catchment areas
- Housing - councils should be given the right to bid for stock being transferred from other landlords
- Roads - the responsibility for trunk roads should be devolved to local government
- Finance - 11 proposals for change are listed including the abolition of capping and a change to a capital expenditure system based on a single consent over three years

⁴⁶ COSLA Press Notice, 21.11.95, "More than 50 ways to improve local government"

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- CCT - a move from Compulsory to Voluntary Competitive Tendering is suggested
- Burial grounds - the provisions of the Kirk Dykes Act 1597 should be abolished
- Licensing - Licensing Boards should have the freedom to set fees locally subject to guidance being provided by COSLA

On 30 November 1995, St Andrew's day, the Secretary of State delivered the third Richard Stewart Memorial Lecture. He responded to COSLA's submission and set out his own proposals for deregulation. Some of the proposals are very detailed and will not be described comprehensively here. Mr Forsyth promised to issue a consultation paper drawing together his proposals; the Scottish Office hoped that the paper would be published before the end of 1995.

Mr Forsyth stressed that devolution of power to local authorities would have to take place "within a proper framework of financial control": council tax capping would therefore be retained. This topic is discussed in the section below. Nevertheless, he emphasised that each council should have maximum freedom to determine its priorities within overall limits set by the Government [p21].

A key conclusion which we reached in our review concerns capital expenditure. I intend that for next year each of the new authorities will receive a single capital allocation covering education, social work, roads and transport, and general services, as well as capital expenditure on housing outside the Housing Revenue Account. Instead of 6 figures, therefore, the new authorities will receive 2; one for the Housing Revenue Account and one for the other services. So we will no longer be directing, or seeking to influence local priorities for capital spending. It will be up to authorities to decide what they think the most important projects in their areas are and to defend the decisions they take.

The Secretary of State also discussed specific grants, the element of Government support for local authorities which is "ring fenced" for specific purposes [pp 22-3].

In the same spirit of giving councils more freedom I considered whether the specific grants should be abolished and included within the general grant distribution arrangements. I am in favour of doing so in respect of teacher-training and social work training and shall incorporate these proposals in the consultation paper.

He said that the ring fenced police grant would remain and that he was reluctant to abandon the specific grant for the Urban Programme but would put this proposal (which had been put forward by COSLA) out for consultation.

Other proposals for deregulation included the following:

- removal of upper limit on improvement grants which councils can pay to individual households [p24]
- removal of controls on price at which councils may sell land [p24]
- removal of controls on making of local byelaws [p24]
- removal of requirement for Secretary of State's approval of certain planning cases [pp 24-5].

On the subject of COSLA's deregulation proposals, Mr Forsyth said that he was favourably disposed towards more than half of the 52 suggestions and rejected only nine at this stage.

I do not object to removing the statutory capital expenditure ceiling on new school building. I am also persuaded that we should devolve responsibility for the Capital Grants Scheme for community facilities, and have noted COSLA's proposal. COSLA's suggestion that the restrictions preventing local authorities from billing and collecting council tax with rent from local authority tenants should be abolished is a sound one. It strikes a favourable chord with me on grounds of value for money and cutting bureaucracy.

In other instances, very careful consideration will have to be given to COSLA's proposals, in wide-ranging consultation with all interested parties. For example, COSLA has asked me (it was the very first item in their letter) to withdraw from school closures, school amalgamations and controls over school catchment areas. That is a pretty radical demand and it has implications for denominational schools. Since, however, the Labour-controlled authorities for whom COSLA speaks clearly attach great importance to securing this freedom, I shall meet COSLA's wishes to the extent of putting this proposal into the consultation paper [pp25-6].

The Secretary of State implied that he had reservations about COSLA's proposal to devolve responsibility for trunk roads to local government. He said that this would be put out for consultation, together with 12 other COSLA proposals relating to roads, nine of which he viewed favourably [pp 26-7]. He also agreed to consider COSLA's proposals that local authorities should be free to bid for housing stock being transferred from other landlords (eg. Scottish Homes). Nevertheless Mr Forsyth said that he would have to refuse some of COSLA's other proposals, bearing in mind the principles of responsibility, accountability and financial control. He commented that the proposal to replace Compulsory Competitive Tendering with Voluntary Competitive Tendering

looks like an attempt to retreat from a major local government reform. Probably I am being unjust. The onus is on COSLA, however, to explain how this would work [pp 27-8].

COSLA issued a press notice welcoming the Secretary of State's deregulation proposals. COSLA's Senior Vice-President, Councillor Keith Geddes, observed that Mr Forsyth "finally seemed to be demonstrating that he was committed to working in partnership with local authorities".⁴⁷ He suggested that the Scottish Secretary's willingness to accept COSLA's arguments on the 16 proposals which had been identified for further consultation would be "a test of his commitment". Councillor Geddes expressed his disappointment that COSLA's proposals for the abolition of capping and the creation of a power of general competence for local authorities⁴⁸ had not been accepted.

Without the removal of these controls, not only will the imbalance of power between central and local government not be addressed but the direct line of accountability between councils and their communities will continue to be distorted.

The Scottish Local Government Information Unit (SLGIU) developed a slightly more sceptical theme:⁴⁹

Within the context of yet tighter controls over both capital and revenue spending, the extension of CCT, the setting up of the three water quangos and the introduction of the Nursery Voucher Scheme, most of the proposals which have been accepted by the Secretary of State merely provide local authorities slightly more discretion and minor powers at the margins. The proposals which were rejected by the Secretary of State shows that there is unlikely to be any significant transfer of powers from central to local government. Giving local authorities the power to determine liquor licensing fees is hardly a substitute for retaining total control over the level of local authority expenditure and council tax capping powers.

The Shadow Scottish Secretary George Robertson was reported in the *Scotsman*⁵⁰ as saying:

The Scottish Secretary claims he is giving back a few powers to local councils. But with the financial noose tightening around Scotland's councils, those powers will be effectively

⁴⁷ "COSLA welcomes Scottish Secretary's proposals", 30.11.95

⁴⁸ Roughly speaking, this is the power to promote the interests of local people using any means which are not prohibited by law

⁴⁹ Scottish Local Government, Issue 79, December 1995

⁵⁰ 4.12.95 "Forsyth to toughen council rules"

meaningless. What Michael Forsyth gives with one hand he takes away with the other.

F. Council Tax Capping

The Secretary of State outlined the reasons for his refusal to abolish capping in his St Andrew's day speech [p21]:

Devolution of power to local authorities must take place within a proper framework of financial control. I regard it as inevitable and essential that central government will continue to control the overall level of both current and capital spending. We have not yet achieved a culture of prudence in Scottish local government. Current spending is still over 30% higher than in England, and capital spending 75% higher. Local authorities have incurred rapidly rising debt, increased loan charges and consequently a higher level of council taxes. We must therefore keep our capping powers and introduce a more disciplined regime, with effect from next April, which requires some receipts to be used to repay debt.

Mr Forsyth provided a more detailed justification of the Government's decision to tighten the capping regime in a Written Answer on 28 November 1995:⁵¹

Mr. Michael Forsyth: During the past 10 years, current expenditure by Scottish local authorities has increased in real terms by 20 per cent., even after adjusting for additional responsibilities on authorities. In the same period, there has been an increase in Scottish local authority manpower levels. Since 1987, those levels have increased by almost 6 per cent. In the same period, staffing levels have reduced in England by over 6 per cent., despite the fact that English authorities have also had additional responsibilities such as care in the community transferred to them.

Since its introduction in 1993-94, the council tax in Scotland has risen faster than in England. The average band D tax has increased from £559 to £624 in the current year in Scotland and from £569 to £609 in England. In

⁵¹ HC Deb Vol 267, c 584W

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other words, there has been an increase of 11.6 per cent. in Scotland as compared to only 7.0 per cent. in England.

The provisional capping criteria announced by the Secretary of State are reproduced in full below.⁵²

I have the power to cap a local authority either where I consider that its planned expenditure is excessive or where there is an excessive increase in its planned expenditure as compared with the previous year.

My provisional capping principles for 1996-97 are:

Mainland Councils

Any increase in budget for 1996-97 of more than 0.8 per cent. over the amount specified in relation to that council in a report under section 94A of the Local Government Finance Act 1992 will be an excessive increase if the resulting budget is above the council's grant-aided expenditure for 1996-97 -in the case of the Scottish Borders, Dumfries and Galloway, Fife and Highland councils - and the council's GAE for 1996-97 adjusted to take account of the transitional scheme to deal with the mismatch problem announced by the Minister with responsibility for industry and local government, my hon. Friend the Member for Kincardine and Deeside (Mr Kynoch), on 22 November *Official Report*, column 162,- in the case of all other mainland councils;

Orkney Islands, Shetland Islands and Western Isles Councils

Any increase in budget between 1995-96 and 1996-97 of more than 0.8 per cent. will be an excessive increase if the resulting budget is above the council's GAE assessment for 1996-97;

Any budget for 1996-97 more than 12.5 per cent. above the council's GAE assessment will be excessive save that if that budget is no greater than the budget set by that council for 1995-96, the council will not be capped.

The capping criteria will have the effect of limiting most authorities in Scotland to an increase in budgeted spending of 0.8% in the financial year 1996/7 (after taking into account

⁵² Ibid, cc 584-5W

adjustments for mismatches resulting from reorganisation). This is in marked contrast to the situation in England, where the tight capping regime of 1995/6 will be relaxed in April 1996 to allow all counties and London and metropolitan boroughs to increase spending by at least 1.5% *or* by the sum of the increases in their key standard spending assessments, whichever is the greater.⁵³

In addition to tightening the capping regime, the Government will introduce two important new controls on capital finance for Scottish local government. Mr Forsyth announced on 28 November that he would use his powers under section 94 of the *Local Government (Scotland) Act 1973* to limit capital expenditure financed from revenue (CFCR) to £62 million.⁵⁴ The CFCR total in 1995/6 was £132 million; the Scottish Secretary estimated that the new control would reduce the average band D council tax by £41, as compared with the level of budgeted expenditure this year. Mr Forsyth also announced that, for the first time, local authorities in Scotland would have to reserve part of their capital receipts for the repayment of debt. Similar controls have existed in England for some time. In 1996/7 the reserved portion of capital receipts in Scotland will be 25% but the Government's current intention is that this will rise to 50% on 1 April 1997.⁵⁵ The Secretary of State said that although councils' ability to incur capital expenditure at their own hand would obviously be curtailed, there was "plenty of opportunity for them to meet the needs of their communities by doing more to involve the private sector in meeting local needs". The Scottish Local Government Information Unit announced that this change would have major implications for local authority capital programmes.⁵⁶

⁵³ HC Deb, 30.11.95, cc 1337-8W. The new capping criteria in England are intended to give priority to the police, to education, to personal social services, including care in the community, and to the fire service.

⁵⁴ HC Deb Vol 267, c 584W

⁵⁵ HC Deb Vol 267, cc 586-7W

⁵⁶ Scottish Local Government, Issue 79, December 1995

III Scottish Parliamentary Business

A. Background

A full briefing on recent changes on Scottish Parliamentary business is contained in Research Paper 94/85, 8.7.94, prepared in advance of the Commons debate on the relevant draft Standing Orders. What follows is a brief summary of events, to provide a context for the current proposals, since many of the argument used in 1994 are being repeated in the present situation.

The Union was an important element in the Prime Minister's national campaign at the 1992 general election, and shortly afterwards he indicated that the Government would be reviewing the operation of the Union as it applies to Scotland. This became known as the *Taking stock* exercise, the results of which were published in a March 1993 White Paper, *Scotland in the Union: a partnership for good*⁵⁷. The title could be read as expressing the Government's belief in the twin pillars of the Union: its permanence and its value. The chapter on Parliament is relevant to the present debate.

The proposals, which were fleshed out in a Scottish Office Note published in February 1994,⁵⁸ concentrated on expanding the existing work of the Scottish Grand Committee by introducing a Question Time for Scottish Ministers; opportunities for ministerial statements; expanded consideration of primary and secondary legislation, and enhanced scope for general debates (including adjournment debates at the close of each sitting). It was also proposed that the Committee could meet more frequently in Scotland, and in places other than Edinburgh. In addition, the Government suggested that more use could be made of the 'special standing committee' procedure in appropriate legislative cases.⁵⁹

The proposals were debated by the House on 11 July 1994.⁶⁰ Opening the debate, the then Scottish Secretary, Ian Lang, described the policy set out in the draft Standing Orders as follows: "Our approach turns on providing an expanded role for the Scottish Grand Committee: in effect, we would be creating for it a mini-Order Paper, modelled, in many respects, on the procedures of the House".⁶¹ He described the "key change" as being the

⁵⁷ Cm 2225

⁵⁸ Dep. 10289; see also Ian Lang's written answer of 10.2.94, HC Deb vol 237 c419W

⁵⁹ The section on the 'special standing committee' procedure in the 1993 White Paper (paras 6.22-24) was referred to at the beginning of this session in discussion across the Floor between the Front Benches on the most appropriate Parliamentary consideration for the *Asylum and Immigration Bill*

⁶⁰ HC Deb vol 246 cc762-803

⁶¹ cc768-9

replacement of 'matter' and 'estimates' day debates to a general debates format, and concluded that the opportunities for general and legislative debates mean that "overall, the proposed changes will contribute to making the Scottish Grand Committee a more effective forum for debate." He rejected a criticism from John Home Robertson that the proposed reforms could not extend Scottish democracy because the Committee would remain a "talking shop" without an "effective vote" by claiming that democracy is more than voting, it is also about "debating and talking".⁶² His conclusion was as follows:⁶³

As I have said, I believe that the changes will provide a fuller opportunity for Scottish affairs to be debated in a Scottish context, although at the same time fully within the framework of the procedures of this House and the existing constitutional arrangements, which have served Scotland well. I commend them to the House.

For the Opposition, George Robertson considered the fate of the Conservative Party in Scotland since the 1992 election, and the dilemma the Government faced in governing Scotland from a minority position. He denounced the proposed procedural reforms as "pathetic and a totally inadequate response to the overwhelming public demand for a directly elected Scottish Parliament in Scotland," and said that the new Standing Orders "in no way remove the obligation to look much more radically at what the people of Scotland want.."⁶⁴ He did welcome the changes as measures which would "improve the handling of Scottish Parliamentary business"; the new opportunities to question Ministers "constitute a small but valuable step forward", and he also welcomed the proposals on debates and on the use of special standing committees.⁶⁵ He claimed that cross-party agreement on the procedural changes had been reached at the end of 1993 and blamed the Government for failing to introduce them earlier than July 1994. He concluding by asserting that "the tide of history will see the cosmetic changes offered as purely tinkering at a system that needs radical change." They were "a superficial and unconvincing ... attempt to hide the depth of the centralisation that is sapping our national strength."⁶⁶

James Wallace, for the Liberal Democrats, said that they would support these "pragmatic" measures, though "they fall far short of anything that will address the malaise within the Union arrangements."⁶⁷ He also commented critically that "there will be no real votes in the Grand Committee. No matter what we debate, or how passionately we debate it, we will ultimately only be debating whether to adjourn or whether to report to the House that we have considered an issue."⁶⁸

⁶² c770

⁶³ c771

⁶⁴ c773

⁶⁵ c774

⁶⁶ c777

⁶⁷ c779

⁶⁸ c781

The new Standing Orders (and the amendments to existing S.O.s) were agreed by the House without a division. The Standing Orders currently in force are *S.O. nos. 94A-H*, as well as some amendments to existing Orders, such as *S.O. no. 91* on special standing committees.⁶⁹

B. The 29 November proposals

On 29 November, the day before St Andrew's day, Scottish Secretary, Michael Forsyth, made a statement on the Government's proposals for improving the government of Scotland within existing structures.⁷⁰ He claimed that the foundation of Scotland's economic success was "the constitutional stability guaranteed by the Union":

The Union is not a dry legality; it is much greater than the sum of its parts. It is a constantly growing and living relationship, in which we must all continue to invest. It is strengthened by devolution for people, not for politicians. That means devolving power downwards from central Government, through local authorities, to community councils, school boards, housing associations and all other representative local groups, and ultimately to families and individuals.⁷¹

Rejecting "a tax-raising Parliament that would damage Scotland's jobs and prosperity", Mr Forsyth said that the correct approach was that laid down in *Scotland in the Union*, "to work within the existing, successful framework of the Union to make Government and Parliament at all levels and relevant to the people." He said that the 1994 reforms had been "helpful" to Scottish Ministers and Members "and to the business of the House in general." He claimed that they have been "extremely well received in Scotland" where Grand Committee sittings in Scotland had "brought Parliament to the people, making for better government."⁷²

Mr Forsyth's proposals covered two general themes - the treatment of legislation and calling Ministers to account:

Legislation: "Scottish Bills coming to the House should have their Second Reading in the Scottish Grand Committee sitting in Scotland, whenever it makes sense that that should

⁶⁹ *Standing Orders (public business)*, HC 1 of 1995-96

⁷⁰ HC Deb vol 267 cc1228-42, 29.11.95

⁷¹ c1228

⁷² c1228

happen."⁷³ Third Reading - "the other key stage of consideration of principle" - of such Bills should also be debated in the Grand Committee "so that people can see what is being done at the stage of commitment to the approval of the Bill after the processes of detailed consideration and amendment."⁷⁴ Mr Forsyth said that these proceedings in the Grand Committee "will mean that we can expand the Scottish legislative programme."⁷⁵ He also announced greater resort to the 'special standing committee' procedure in Scotland, as was used in the 1994-95 session for the *Children (Scotland) Bill*. "It is suited to uncontroversial Bills, and is especially relevant to Scottish circumstances, where professional bodies and other interest groups would have easier access to the legislative process in Scotland than they currently have in Westminster."⁷⁶ He announced that the Leader of the House of Lords, Viscount Cranborne, "was actively pursuing the possibility of establishing a new procedure ... to allow evidence to be taken in Scotland for Scottish Bills that are introduced in the House of Lords" and hoped it could be first used for the *Deer (Amendment) (Scotland) Bill* in the 1995-96 session.

Ministerial accountability: The Scottish Secretary noted that existing procedures already allow Scottish Office Ministers to be called to account in the Grand Committee, but recognised that other Ministers' policies also affected Scotland. "So it is only right that they too should have to explain to the Scottish Grand Committee why particular policies are being followed, and the benefits that they will bring." Standing Orders would be changed to give effect to an innovation "which offers the opportunity of adding a completely new dimension of accountability for Government business in Scotland." Senior Ministers, including the Prime Minister, the Deputy Prime Minister and the Chancellor, would take part in debates "in a forum accessible to Scotland."⁷⁷, and, subject to Parliamentary approval of the procedural reforms, the Prime Minister and the Chancellor would participate in Grand Committee debates "in the new year."⁷⁸ All Lords Ministers, not just Scottish Office Ministers, would be able to make statements to the Grand Committee.

Mr Forsyth said that new Standing Orders would be brought forward for approval "shortly". He tabled motions that day to provide for a sessional timetable for the Grand Committee, with 8 meetings to consider Government business, and 2 to consider Liberal Democrat and SNP business.⁷⁹ The full timetable, including the places of meeting, would be settled once the Opposition had decided upon the details of its Committee days. The relevant motion "will provide for the Scottish Grand Committee to meet much more frequently in Scotland, and I

⁷³ c1228

⁷⁴ cc1228-9

⁷⁵ c1229. He cited the *Licensing (Amendment) (Scotland) Bill* as an example in 1995-96

⁷⁶ This mirrors an argument for the use of such committees in the *Scotland in the Union* White Paper (Cm 2225, paras 6.22-24, March 1993)

⁷⁷ c1229

⁷⁸ c1230

⁷⁹ See below

intend that that should involve more places in Scotland."⁸⁰

The Secretary of State concluded his statement as follows:

To sum up, the changes that I propose will greatly strengthen the role of the Scottish Grand Committee in considering legislation affecting Scotland, and will provide for an expanded Scottish legislative programme that will be examined in Scotland in ways that should produce better legislation, and involve the people of Scotland.

The proposals will provide a new focus for the role of the Scottish Grand Committee in scrutinising and calling to account not just Scottish Office Ministers but every Minister. The Scottish Grand Committee will thus assume an increasingly pivotal role in the parliamentary government of Scotland, in bringing Government closer to the people, and in underpinning the Union.

What the people of Scotland want is Government close to them, Government listening to them, and above all, Government accountable to them. This historic Parliament embodies our great Union. It is the only Parliament that can effectively and powerfully secure Scotland's interests and future.

The changes represent a significant step forward. They must be seen in the context of our plans to devolve power to local government, to create a new forum based on the Scottish Economic Council, and to give the people of Scotland more control over their own lives. The Government stand four-square behind the Union, and thereby behind Scotland and her people. I commend the proposals to the House.⁸¹

George Robertson, for the Opposition, derided the scope of the proposals, describing, for example, the increase in Ministerial involvement in the Grand Committee as "weekend breaks and awayday trips for the Cabinet, from the grouse moor to the Grand Committee", and the revamped Grand Committee as "little more than a rubber-stamp for non-controversial legislation."⁸² While welcoming the increased opportunity to debate with Ministers, he said that "this travelling circus is no substitute at all for a Scottish Parliament, elected by, and responsible to, the Scottish people." The Secretary of State's proposals "will mean that not a single extra decision will be taken by Scotland's Members of Parliament" and the Grand

⁸⁰ c1230

⁸¹ cc1230-1

⁸² c1231. He did promise continued Opposition support on such legislation "where consensus exists."

Committee "will continue to be no more than a toothless talking shop, with no real powers to change Scotland for the better." The package was "not real devolution ... The people of Scotland want a Scottish Parliament, and nothing less will do."⁸³

Mr Forsyth suggested that the shadow Scottish Secretary might have been proposing that the Grand Committee should be able to pass legislation without the approval of the Commons itself, and that an 'English Grand Committee'⁸⁴ could have the same power for England. Unlike such "nationalist" talk, he claimed his unionist proposals were designed "to strengthen the Union, to hold Ministers who are accountable to the House accountable within Scotland." The increased ministerial involvement in the Grand Committee would "result in their Departments having to wake up rather more to the Scottish dimension."⁸⁵

For the Liberal Democrats, James Wallace said that Mr Forsyth's response was an admission "that many UK Departments were not fully awake to the needs of Scotland when dealing with legislation,"⁸⁶ and argued that the Government's proposals would not involve the Grand Committee subjecting legislation to a vote or requiring Ministers to change their policies "in the light of Scottish opinion."⁸⁷

In reply Mr Forsyth assured the House that Ministers would "take account of Scottish opinion" and was "quite prepared to discuss through the usual channels which Bills have their second reading in the Scottish Grand Committee."⁸⁸

Alex Salmond, for the SNP, said that the Minister's "weak and belated concession" must be welcomed, but his statement risked not opposition but ridicule.⁸⁹ He claimed that "the absolute Westminster veto over Scottish business remains" and implied that if the enhanced Grand Committee had been in operation at the time of the poll tax legislation, any vote against it would have been overturned by the Government in the House.⁹⁰

The Secretary of State said "legislation is a matter for this House and this Parliament." A Scottish Parliament which could decide on legislation in Scotland was "the nationalist position", unlike the Unionist position that "this is the sovereign House."⁹¹

⁸³ c1232

⁸⁴ Presumably the Standing Committee on Regional Affairs, under *S.O. no. 100*

⁸⁵ c1232

⁸⁶ c1233

⁸⁷ c1234

⁸⁸ c1234

⁸⁹ c1237

⁹⁰ c1238

⁹¹ c1238. In a reply to Sir Hector Monro, he said, at c1234, that "the Scottish Grand Committee is not a Scottish Parliament."

In his St Andrew's day speech, the Secretary of State expanded on his proposals.⁹²

In anticipation of tonight's lecture some have been indulging in dismissive sloganising: the new proposals are 'only' a beefing-up of the Grand Committee, nothing really effective, and so on. If Labour had been present on Day One of Creation, they would have issued a press release denouncing Our Lord's efforts as 'inadequate,' without waiting to see what happened on the other five days.

The Grand Committee is a powerful arm of the Westminster parliament and it can be made more powerful still. The Grand Committee matters and George Robertson knows it. I have proposed more sittings of the Scottish Grand Committee, in Scotland. This is just a beginning. Parliament has been described as the 'cockpit of the nation'. From now on the Grand Committee will carry that intensity of debate into the heart of Scotland.

The principle is that subjects relevant to Scotland will be debated on Scottish soil, with the participation of the Scottish people. There are many towns in all parts of Scotland which could host Grand Committee meetings; local authorities will not be backward in putting in their bids. We could debate crofting, for example, in Inverness; inward investment in Hamilton; fishing in Lerwick; or tourism in Ayr.

Scottish Bills can have their Second and Third Readings in Grand Committee, meeting in Scotland. An all-party committee can take evidence in Scotland. These innovations will be invaluable in arousing Scottish interest and input into legislation and, as a result we will be able to get more Scottish legislation through the House of Commons - the Licensing (Scotland) (Amendment) Bill is an example.

The most significant change is that United Kingdom Ministers will from now on be able to take part in the Grand Committee's debates. The Prime Minister himself will come to Scotland [early in 1996] to participate in Grand Committee, as will the Deputy Prime Minister, the Chancellor of the Exchequer and other senior Ministers. The most senior Ministers of the Crown will be accountable to the Scottish people; in Scotland; in a public forum which is also an integral part of the United Kingdom parliament. In this environment, Whitehall must inevitably become more acutely sensitive to Scottish concerns, priorities and needs. In terms of real power, that is a far more potent mechanism than a

⁹² Transcript, pp13-16

tax-raising talking shop with no influence at Westminster. Whitehall civil servants will have to burn the midnight oil to prepare their Ministers for Scottish questions they have never had to face before.

Lords Ministers will also make statements and be questioned on them. The Committee can take Statutory Instruments, have Question Times and hold Adjournment Debates. These Grand Committee measures have the dual benefit of bringing government closer to the Scottish people while simultaneously reinforcing Scotland's position in the Union. We can achieve all of this without a Tartan Tax and without the £41.5m running costs of a Scottish parliament.

In addition, a Special Standing Committee taking evidence in Scotland is an important development in my goal of taking government closer to the people and making it more accountable to them. People in the front line of the war on drugs will be able to have direct input into the new legislation controlling raves. We also hope to establish a new procedure under which a committee of peers can take evidence in Scottish venues for legislation initiated in the Lords, and that the Deer (Amendment) (Scotland) Bill will be subject to this procedure.

Consider the significance of these changes. The most powerful members of the Government will come to Scottish towns to account for government policy and be questioned on it. The Chancellor of the Exchequer can explain the excise duty on whisky. The Labour Party has been trying for months to play down the importance of the Grand Committee. The reforms which I have announced could be used by a Labour government with a majority on Grand Committee, to pass legislation and hold the executive to account. There is nothing further which a Scottish parliament could do which could not be done by Grand Committee except raise a Tartan Tax. A Scottish parliament could not hold the Chancellor to account for a Scottish budget determined at Westminster and the Prime Minister would have a place only in the visitors' gallery.

These proposals are not the last word. I invite the Scottish people to consider them carefully and with open minds. When the fate of ourselves and our families is at stake we do well to follow counsels of prudence rather than the chauvinist instincts of the world of folksong.

These innovations are the first outcome of intense consultation. Consultation will continue; it is an essential and permanent feature of good government.

C. The main changes to the standing orders

- (a) **Composition etc of the Grand Committee⁹³** : Any Commons Minister will be able to attend, speak and move motions, but not vote or count towards a quorum.
- (b) **Short debates⁹⁴** : The subject of such debates need not be restricted to the responsibilities of Scottish Office Ministers or Scottish law officers. Other changes relate to the proposed admission of any Minister to Committee proceedings.
- (c) **Ministerial statements⁹⁵** : These can be made by any Minister, although statements under (2) (a) must relate to that Minister's responsibilities "so far as they relate to Scotland", and the Committee can set a different time limit than the 45 minutes specified in that paragraph.
- (d) **Bills : consideration of principle⁹⁶** : Consideration of a Scottish bill in relation to its principle can take place in the Committee after its report stage for up to one and a half hours (over one or more days) or longer if extended on a Government motion. This is, in effect, the 'third reading' debate, although third reading itself is taken in the House without debate at any hour.
- (e) **Sittings⁹⁷** : The half-hour adjournment debate can begin before the set time for conclusion of main business ('moment of interruption'), if the business is concluded early, and will last for 30 minutes.
- (f) **Special standing committees⁹⁸** : The three sittings at which oral evidence is taken need not be held in the morning.

⁹³ S.O. no. 94A

⁹⁴ S.O. no. 94C

⁹⁵ S.O. no. 94D

⁹⁶ S.O. no. 94E

⁹⁷ S.O. no. 94H

⁹⁸ S.O. no. 91

At time of writing, the 1995-96 sessional timetable for the Grand Committee meetings in Scotland, as proposed to date, is:

meetings: At 10.30 am on the following dates and locations:

Monday 11 December 1995 - Edinburgh (City Chambers): substantive motion for the adjournment.

Monday 18 December 1995 - Glasgow (City Chambers): *Licensing (Amendment) (Scotland) Bill*: consideration of principle

in the New Parliament House, Edinburgh, on Monday 15th January 1996 to take Questions for oral answer and to consider a substantive motion for the adjournment of the Committee (*Government*: Law and order in Scotland);

in the Albert Halls, Stirling, on Monday 29th January 1996 to consider a substantive motion for the adjournment of the Committee (*Opposition*);

in the Highland Regional Council Buildings, Inverness, on Monday 5th February to consider a substantive motion for the adjournment of the Committee (*Liberal Democrats*);

in the Town and County Hall, Aberdeen on Monday 19th February to consider a substantive motion for the adjournment of the Committee (*Government*);

in Scotland on Monday 4th March to consider a substantive motion for the adjournment of the Committee (*Opposition*);

in Scotland on Friday 15th March to consider a substantive motion for the adjournment of the Committee (*Government*);

in Scotland on Monday 22nd April to consider a substantive motion for the adjournment of the Committee (*SNP*);

in Scotland on Monday 13th May to consider a substantive motion for the adjournment of the Committee (*Opposition*);

in Scotland on Monday 20th May to consider a substantive motion for the adjournment of the Committee (*Government*);

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in Scotland on Monday 10th June to consider a substantive motion for the adjournment of the Committee (*Opposition*);

in Scotland on Monday 17th June to consider a substantive motion for the adjournment of the Committee (*Government*);

in Scotland on Monday 8th July to consider a substantive motion for the adjournment of the Committee (*Government*);

legislation: *Licensing (Amendment) (Scotland) Bill* - 2R consideration of principle.

D. House of Lords

As Mr Forsyth indicated in his statement of 29 November, the Leader of the House of Lords, Viscount Cranborne, was pursuing the possibility of setting up a procedure allowing some of the Lords stages of Scottish bills to be taken in Scotland. On 11 December 1995 the Lords Procedure Committee produced a brief report on Scottish select committees.⁹⁹

SCOTTISH SELECT COMMITTEES

The Committee has considered a proposal by the Leader of the House that Select Committees meeting in Scotland ("Scottish Select Committees") should be empowered to take evidence on certain Government bills relating to Scotland. Thereafter the bills would be considered at Westminster either by a Committee of the whole House in the ordinary way or in the Moses room by a Committee with unlimited membership, where no divisions may take place. This further experiment in considering bills in committee off the floor of the House would be an alternative to the Special Public Bill Committee procedure (the "Jellicoe procedure") where the Committee has power both to take evidence and to consider the bill clause by clause. The Special Public Bill Committee procedure would remain an option for appropriate Government bills relating to Scotland and for other bills.

We recommend that one or more experiments should be conducted in the Scottish Select Committee procedure and make the following detailed recommendations:

- i) The Committee of Selection will nominate Members for each Scottish Select Committee whenever a bill is to be considered by this procedure.
- ii) A Scottish Select Committee should not have power to amend a bill.
- iii) The Committee should have 28 days (excluding recesses) from the date of its appointment to complete the taking of evidence.

⁹⁹ 2nd report from the select committee on procedure of the House, HL Paper 15, 11.12.95

iv) In accordance with Standing Order 63, any Lord who is not a Member of the Committee may attend and speak at the Committee's evidence sessions in Scotland. It is desirable that any such Lord should give notice of his wish to attend to the clerk of the Committee.

v) The written and oral evidence received by the Committee should be printed and available to the House for the committee (on re-commitment) stage.

We understand that in the first instance it is proposed that the Scottish Select Committee procedure will be used for consideration of the Deer (Amendment) (Scotland) Bill (HL).

The Committee will in due course review this further experiment in the consideration of legislation off the floor of the House.

IV The West Lothian Question

The issue, which has been known since the late 1970s as 'the West Lothian Question', has remained at the heart of the debate over the government of Scotland. It is discussed fully in Research Paper 95/95, *The West Lothian Question*, 6.9.95. This section briefly summaries the issue and discusses the Question as it featured in the statements around St Andrew's day.

'The West Lothian Question'¹⁰⁰ now encompasses a number of interrelated themes, but at its heart it is the alleged inconsistency, once a devolved Assembly/Parliament is operational in Edinburgh¹⁰¹ between the position of 'Scottish' MPs at Westminster, and their ability to participate in, and vote on *all* Parliamentary business, and that of 'English' MPs who would not be able to participate in Parliamentary business transacted in the Scottish Parliament. This has also brought in issues such as the claimed 'overrepresentation' of Scotland at Westminster, and whether the number of Scottish MPs should be reduced once a Scottish Parliament has been created.

The Question has been taken up by Ministers and other anti-devolutionists, on the basis that, as it appears to them to be insoluble, it is fatal to the devolutionist argument. Supporters of devolution, such as Labour and the Liberal Democrats, have deployed a number of arguments in an attempt to 'answer' the Question. The main arguments appear to be that (a) the Question simply describes one of the anomalies common in the UK's unwritten constitution;

¹⁰⁰ So named after the then constituency of Tam Dalyell, the Labour MP who consistently put forward these arguments during debates on the Labour Government's devolution bills in the late 1970s. Bernard Crick calls it the 'Tamnabable question', see p. 47 below

¹⁰¹ Or Cardiff, or even Belfast. As in Research Paper 95/95, the Question is discussed, for illustrative convenience, in terms of 'Scotland' and 'England'

(b) some form of regional devolution in England would smooth out any perceived geographical unfairness; (c) present principles of Westminster representation mean that Scottish legislation (and other Scottish business) can be determined contrary to the wishes of the majority of Scottish MPs by the 500+ non-Scottish MPs, and (d) the Government, while opposing a Scottish Parliament, is proposing some form of Northern Ireland Assembly as part of the peace process following the Downing Street Declaration.¹⁰² The 'overrepresentation' issue, which, for some non-Scottish MPs, has become (with the related 'fairness' issue of the distribution of public expenditure) a significant point, has arguments of its own on both sides.¹⁰³

The over-representation issue was put forward by English Conservative MPs during Mr Forsyth's statement. David Harris claimed that there was "massive over-representation of Scotland in this House" and that "Scotland gets an incredibly good deal from the Government and from the Union"¹⁰⁴ and Neil Hamilton said that he, with a constituency which strongly supported the Union, would be prepared to "put up with the over-representation of Scotland in this House, and with the favourable financial treatment that Scotland receives from the British taxpayer, on the basis of proposals which strengthen the Union."¹⁰⁵

In response to a similar question from Peter Luff, the Scottish Secretary used the opportunity to attack Labour's devolution scheme on West Lothian grounds as creating "an intolerable position ... After six years of deliberation, the Constitutional Convention and [George Robertson] still cannot answer the West Lothian question. Labour Members want to have their cake and eat it -- they cannot have it."¹⁰⁶

In the Scottish Secretary's St Andrew's day lecture, he said that he had some sympathy with the leaders of the Constitutional Convention because "they found the West Lothian Question and allied problems equally insoluble. Unlike ourselves, however, the Constitutional Convention persisted in a doomed project."¹⁰⁷ On Scottish representation at Westminster, he claimed that "that sovereign Parliament of the United Kingdom would inevitably have a smaller representation of Scottish MPs once a devolved parliament was established. The Liberal Democrats have already conceded a figure of 54 Scottish MPs instead of 72; if the Stormont precedent were invoked, it could be as few as 40 ... Scotland's voice at Westminster [would] be hugely diminished."¹⁰⁸ He continued:

¹⁰² On which see Research Paper 94/132, *Northern Ireland: the Downing Street Declaration one year on*, 19.12.94

¹⁰³ See section V of Research paper 95/95

¹⁰⁴ c1235

¹⁰⁵ c1236

¹⁰⁶ c1237

¹⁰⁷ Transcript, p5

¹⁰⁸ p8

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then, yes, I think, problems could begin to arise.

The following quotes from two English Labour MPs, John McWilliam and Tony Wright, provide a flavour of that perspective:

MCWILLIAM: I think, you've got to remember that any legislation that goes down is subject to amendment. And we could be very embarrassing, in terms of the way that legislation passes. We could, for instance, take out some of the powers until such time as we are given certain guarantees. That wouldn't deny the Scottish people their own elected Parliament, it would just deny them one that could do us damage, until such times as we can level up the playing field again.

and,

TONY WRIGHT MP: If we had, or were going to move towards a genuinely Federal or quasi Federal system, the West Lothian question would disappear. The problem is: we're not going to do that, in the foreseeable future. What you will not do is to persuade people in England and the English regions that simply because of the imperative of Scotland that there is a domino effect that has to happen in England, in order to solve the problem of Scottish representation. The arguments about English regionalism have to be made in their own terms.

Mr Wright also addressed the Westminster representation issue:

WRIGHT: The question is only with a seriously devolved parliament whether existing levels of representation can be sustained any more, and more important than that, whether it may not be necessary to have some adjustment to that, to carry through devolution itself. That I think is probably the biggest issue of all.

The centrepiece of the programme was an interview with George Robertson, who was consistently pressed by the interviewer, John Humphrys, on Labour's answer to the West Lothian Question. Mr Robertson referred frequently to the Question as an 'anomaly' of the sort which arises in the unwritten British constitution¹¹² and can be accepted as such, as was what he regarded as the anomalies of 500+ non-Scottish MPs having a decisive impact on

¹¹² See Research Paper 95/95 for Ferdinand Mount's interesting 'anomaly' argument

Scottish legislation (such as the introduction of the 'poll tax' in the late 1980s), or Scotland being governed by a Party with 10 MPs and 13% in the opinion polls: "I don't why therefore we should consider another anomaly but a lesser anomaly to be an obstacle to democratising the British Constitution." He also cited the Northern Ireland 'anomalies' of Stormont and the proposed Assembly, claiming that the latter was the Government's own proposal:

"the Prime Minister, the arch anti-devolutionist is now a devolutionist, so far as one part of the United Kingdom is concerned. And, he doesn't think that it will be a problem if Northern Ireland MPs simply continue to come to Westminster and to vote on all of the issues."

As regards Stormont, "there was never any grievance, not a whisper was raised":

So, we lived with that anomaly. well, either there's a principle or there's not a principle. We're simply saying: is the anomaly big enough to stop the democratisation of the United Kingdom, keeping the United Kingdom together because the Scottish people want to have a devolved Parliament in Scotland?

For the purposes of this Paper, the exchange on the level of Scottish representation at Westminster is of interest:

HUMPHRYS: Are you open minded on that one, then?
Are you prepared to pursue that?

ROBERTSON: Well, I think, that if Seventy-Two is the right number of MPs to represent the Scots in Parliament on the economy, on economic affairs, on Foreign and Defence policy and Social Security and Employment policy now. it would still be right.

HUMPHRYS: But it's not right now, is it? Because they're over-represented. We all know that. That is a statistic, an arithmetical fact.

ROBERTSON: Well, because of history, because of geography, because of a whole series of arguments. But, mainly one that says that one part of this union of nations should not disproportionately overwhelm the other parts of it, we've got the present representation. In 1986, the Home Affairs Select Committee with a Tory majority looked at this whole question and concluded that this was the right representation. And, so democratising the Scottish office is not an argument for raiding Scotland's ...

HUMPHRYS: But, it's interesting that you praised in Eighties - your own language - the Northern Ireland example earlier - when Stormont was operating, as its own Assembly in Northern Ireland, they cut the number of MPs. If the same sort of cut was to be applied to the number of Scottish MPs in a similar situation you'd be down to forty.

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ROBERTSON: If that was a principle that the Government agreed.....
HUMPHRYS: But, you're prepared to accept bits of the principle from Northern Ireland but not other bits of it. You've taken the bits that you like and not the rest of it.

ROBERTSON: John, John. The Northern Ireland proposal for devolution from the Prime Minister doesn't include any reduction in the number of MPs coming from Northern Ireland. Indeed, they're going to increase the number of MPs.

HUMPHRYS: But, what happened under Stormont that was the case.

ROBERTSON: They increased the number.

HUMPHRYS: Yeah.

ROBERTSON: When Stormont was abolished and when Direct Rule came they increased the number.

HUMPHRYS: Yes. Exactly. Because ... done here in fairness.

ROBERTSON: But, the Prime Minister is not suggesting now that they be reduced. He's saying that they will keep the same numbers of Members of Parliament despite the fact that they will have a legislative assembly in Northern Ireland. So, if there is a principle here, involving Northern Ireland, let the Prime Minister and the Government be utterly right in that we are convinced that the right to represent Scotland is seventy-two because in ten days' time we have a Budget and a Finance Bill. Votes on taxation, votes on Public Expenditure. They all apply to Scotland. Why should simply because we're going to have devolution and we're going to democratise the Scottish Office should the number of Members of Parliament from Scotland be reduced?

HUMPHRYS: There clearly are principles involved in this whole area but you are not prepared to look at them, because you are concerned only - you're blinded by the Scottish interest, that's the reality, isn't it?

ROBERTSON: No, I'm not! The nation's interest is my concern. I believe that Britain is a good country, that we are British. The Scots want to be Scottish and they want to be British, at the same time. They want to have a decisive say over their own affairs but they don't want the break-up of Britain. We're offering the only way in which Britain can remain united - safely and securely united - but the Scots will still have a democratic voice, decisive voice over their own affairs.

Bernard Crick has recently written an acute analysis of the West Lothian Question as part of an article on current debate on the government of Scotland, which deserves to be reprinted in full:¹¹³

¹¹³ B. Crick, "Ambushes and advances: the Scottish Act 1988" (1995) 66 *Political Quarterly* 237, 243-5

Problems: the Tamnable question

Yet the Bill will have a rough passage. Over-representation of Scotland in Westminster will be raised (and is a real problem), and so will the West Lothian question. The Tamnable question is by itself meaningless if it takes the form of asserting that something is unconstitutional; but it does raise some constitutional dilemmas. To say that it is anomalous for Scottish MPs to be able to vote on English matters whereas English MPs cannot vote on Scottish matters is to beg the question, anomalous to what? Presumably to some purported rule of the constitution ('natural justice' might be safer but vaguer): that it is wrong for some MPs to be able to vote on some matters and others not; or for some to have a general competence and others not. There is force in that if some component of justice is the generality of a rule's application. Even Mr Robin Cook was reported as saying, with rash spontaneous sincerity, that it would be wrong for him to hold responsibility for or vote on English health matters when health boards in Scotland became responsible to a Scottish parliament.

But this is to forget two things. First, it is to forget the fifty-odd years of the Stormont Parliament when the question was never raised against the twelve Ulster MPs (nor will it be if power-sharing comes in a new Northern Ireland parliament; just a huge sigh of relief in the Commons), not to mention the hundred-and-one other anomalous particularities that have been thought necessary to hold the United Kingdom together without provoking nationalist troubles. Consider the anomalous status of the Welsh language in public law, and how unjust, some say, to English immigrants to North Wales. If there were a written British constitution, the West Lothian question either would have to be resolved or would never arise. But just these anomalous concessions needed to hold the Union together were crucial elements in the old, unreformed, informal constitution. Consider that the old 'dependency culture' welfare state, attacked by Thatcher, despised by Portillo, still chugs along grinding out goodness in Northern Ireland for rather obvious political reasons-or, if 'politics' should not sully the constitution, then say for clear reasons of good government.

Secondly, it is to forget that even Scotland's over-representation, while it did not arise as a deliberate guarantee that its national institutions would be respected, yet can be justified as helping to serve that constitutive purpose in the absence of entrenchment in a written constitution. While there is not such a constitution, one's choice of offensive constitutional anomalies is likely to be a wee bit partial. Constitutional purism is found only in school textbooks where an exact answer is needed to every question. Tom Dalyell was against the Scotland and Wales Act anyway, remember? So was Enoch Powell who coined the phrase in tribute to Tam's forensic skills. But constitutionally one thing is reasonably clear: that Westminster is the *United Kingdom* parliament, so that elected Scottish MPs can debate and vote on any United Kingdom matter. If English MPs don't like that, the rational answer is a federal constitution with an English parliament as well as a United Kingdom one. James Cornford recently said that 'the problem here is that none of the answers which are constitutionally coherent are politically acceptable.' But this is really an argument for a coherent constitution, such as he (and I, and many others) advocate in principle (though in practice it is going to be one thing at a time and sort out the consequences later). Meanwhile Professor James Kellas's words are wise:

'It is a mistake to look for a one-dimensional answer to the territorial politics of the United Kingdom. What matters is a correct perception of what the constituent nations want at this time. Once that is known, then the system should adapt to accommodate their wishes.' Why should it adapt? The answer is the same as that Dicey and Ivor Jennings gave to the question why governments should not break *conventions* of the constitution when by law they may, namely the political consequences of so doing; or, to paraphrase Geoffrey Marshall, conventions are what those who want to play a game agree as the rules needed to play that game.

Westminster would still be able to debate anything it likes about Scotland (there was the occasional adjournment debate on Stormont matters), just as the Scottish parliament should be free to debate and pass resolutions on reserved matters; all that the two Speakers would rule out of order is asking Questions and moving Bills on devolved or reserved matters. But what can never be ruled out in the absence of a constitutional court is Westminster passing a Bill amending the Scotland Act 1998, even abolishing it-as Stormont was first prorogued and then abolished. The Scottish Constitutional Convention demanded that powers be entrenched and subject to change only with the consent of the Scottish parliament. But under our good old constitution the best brains can suggest no sure way how this can be done; only delays through parliamentary procedure. Here, indeed, is the residual incaning of 'sovereignty of parliament'. But equally, if the 'sovereignty of parliament' doctrine is invoked against the anomaly, the logical reply is that with this very sovereignty parliament can devolve or renounce its authority, and even legislate to surrender it entirely, for instance, to the result of a referendum. And the response to that reply is that 'any future parliament' (why not the same parliament?) could then legislate to repeal the Act and annul the unfortunate result of the referendum. And so on, in circles. 'Logic', says Kellas, 'has never been a feature of the British Constitution.' Conservative objectors 'on constitutional principle' should realise that such is the constitution we have got, rather than inventing new conventions as election cries, especially when they have felt somewhat free of late to break old ones. Such uses and abuses discredit what they wish to honour and preserve. But the Labour Party, especially its Scottish MPs, while knowing that a Scottish parliament will have to live without entrenchment, should consider what might happen if a Conservative government comes back in 2002. These night thoughts could lead to considering either comprehensive constitutional reform or simply electoral reform to achieve the same safeguard politically. But once in power and elated by power Labour will probably gamble once again on winner-take-all next time round in the tradition of sporting gentlemen. Constitutional reform can only take place by consensus or from commanding power, not as a belated reaction to fear of its loss.

The West Lothian question is usually raised simply to discredit the whole devolution project; but the alleged abuse will continue so long as entrenchment of devolved powers is impossible. In any case it is unimportant by comparison with more positive reasons for or even against the project. The anomaly will be lived with until such time as our anomalous constitution becomes numinous.

Other problems

The over-representation of Scotland is not something that the Conservative Party will let go away long after they have forgotten what the West Lothian question was, let alone that it had no answer. Nor has Labour always been entirely happy. When the party first converted to devolution, more or less, in August 1974 at the special conference in Glasgow, John Smith said that it would be 'dishonest' for Scotland to expect an assembly and yet retain the same number of seats at Westminster. The present number of seventy-two Scottish MPs would be reduced to fifty-seven if the two boundary commissions worked to the same criteria. This imbalance could be said to be Scotland's 'guarantee', in the terms James Callaghan used to try to justify his notorious increase in the Ulster seats (the surrender of a valuable political bargaining counter for what proved to be nothing). But it is unlikely that any future Conservative government would accept both over-representation and the continuance of Scottish devolution. They could use either as a weapon against the other. They are unlikely to let sleeping dogs lie as in the old days. We are in a time of heightened political passions and the breakdown of old conventions. Hard bargains will have to be struck at some stage, even if the Scotland Bill 1998 is silent on the matter. What bargains will be struck will depend at least as much on political circumstances as on constitutional imagination and inventiveness.

Appendix

SCOTTISH GRAND COMMITTEE
SESSION 1994/95

DAY	DATE	PLACE	CHAIRMAN	No. MPs	LENGTH OF SESSION
Mon	05.12.94	Edinburgh	Michael Martin & John Maxton	35	10.30am-2.29pm
Tue	13.12.94	Westminster	John Maxton	48	10.30am-1.30pm
Mon	19.12.94	Glasgow	Norman Hogg	39	10.30am-1.30pm
Wed	08.02.95	Westminster	Michael Martin	54	10.30am-1.30pm
Mon	13.02.95	Edinburgh	John Maxton	33	10.30am-1.30pm
Wed	01.03.95	Westminster	Michael Martin	49	10.30am-1.30pm
Wed	29.03.95	Westminster	Michael Martin & John Maxton	43	10.30am-1.25pm
Wed	03.05.95	Westminster	Michael Martin	41	10.30am-1.29pm
Wed	17.05.95	Westminster	Michael Martin	43	10.30am-1.30pm
Wed	14.06.95	Westminster	Michael Martin & John Maxton	41	10.30am-1.30pm
Mon	23.10.95	Aberdeen	Norman Hogg & Michael Martin	30	10.30am-1.21pm

QUESTION TIMES

08.02.95: 11 answered orally (+ supplementaries); 25 in writing.

14.06.95: 13 answered orally (+ supplementaries); 2 in writing.

BILLS REFERRED

05.12.94: Children (Scotland) Bill (consideration in principle)

STATEMENTS

13.12.94: Flooding in Strathclyde (Allan Stewart)

01.03.95: Community Care in Scotland (Lord Fraser of Carmyllie)

ADJOURNMENT DEBATES

A total of 24 debates were held on motions for the adjournment (list attached).

**SCOTTISH GRAND COMMITTEE
ADJOURNMENT DEBATES 1994/95**

SUBSTANTIVE MOTIONS FOR THE ADJOURNMENT (S.O. 94G)

Community care
Competitiveness in the Scottish economy
Financial and economic implications of independence for Scotland
Housing
Inward investment
Public expenditure
Rail services
Scottish economy
Scottish Homes

SHORT DEBATES (S.O. 94C)

Council tax
Local government
Nursery education
Water services

HALF HOUR ADJOURNMENT DEBATES (S.O. 94H6)

Anglo-Scottish rail services
Community care
Fochabers Bypass
Forth Valley Health Board
Homelessness in East Lothian
Lenzie Hospital
Lockerbie (2 debates)
Mearns Kirk Hospital
Psychiatric hospitals
Scotch whisky industry

*Note: Details of the work of the Committee can be found in **Minutes of Proceedings of the Committee, Session 1994-95 (HC 829, 1994-95).***

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95/83	Parliamentary Pay and Allowances: The Current Rates	04.07.95