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The *Scotland Bill*: the Scottish Parliament and Local Government

The *Scotland Bill* [Bill No. 104 of 1997-98] would create a Scottish Parliament and Scottish Executive which would inherit the current powers of the Westminster Parliament and the Secretary of State for Scotland over local government. Thus the new Parliament would have the power to make primary legislation affecting local government (including the power to alter the existing arrangements for local taxes) and the Scottish Executive would inherit the Secretary of State's powers, including the power to make secondary legislation.

The Government intends to create an Independent Commission to make recommendations on the relationship between local government and the Scottish Parliament: proposals for the Commission's terms of reference are discussed in this Paper. The current review of local government finance and other developments in local government are also examined, together with some of the reactions to the proposals for a Scottish Parliament from the local government perspective.

Other aspects of the *Scotland Bill* are dealt with in Research Papers 98/1 to 98/4.

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I Summary

The *Scotland Bill* [Bill No. 104 of 1997-98] would create a Scottish Parliament and Scottish Executive. This paper considers the relationship between the Scottish Parliament and local government. Other aspects of the Bill are dealt with in Research Papers 98/1 to 98/4. Part II examines the legal framework while Part III discusses other aspects of the central–local relationship, post-devolution. The Scottish Parliament and Executive will inherit the current powers of the Westminster Parliament and the Secretary of State for Scotland in respect of local government. Thus the new Parliament will have the power to make primary legislation affecting local government in any non-reserved matter (ie. any power the UK Government and the Westminster Parliament have not reserved for themselves under Schedule 5 to the Bill). This will include the power to alter the existing arrangements for local taxes to fund local authority expenditure. The Scottish Executive will inherit the powers which currently reside with the Secretary of State for Scotland, including the power to make secondary legislation and take action against councils which are in default of their statutory duties. The Executive will also inherit various duties, such as the duty to fund local authorities. Actions of the Executive towards local government will be subject to scrutiny by the Scottish Parliament.

The White Paper **Scotland's Parliament** set out the Government's expectation that the Scottish Parliament and the Scottish Executive will operate according to the principle of subsidiarity, ie. "that decisions should be made as close as possible to the citizen" [Cm 3658, para 6.2]. In August 1997 the Government issued a consultation paper on the terms of reference for an Independent Commission on "how to build the most effective relations between the Scottish Parliament and Scottish Executive and a strong and effective local government." The consultation paper proposes that the Commission, which is due to be created shortly, will also investigate the way in which local authorities operate, with the aim of improving their democratic accountability.

Developments in local government finance and the options which will be open to the Scottish Parliament and Executive are discussed in Part IV. A review of local government finance, including business rates, council tax and council tax capping, is currently taking place in England and the Secretary of State for Scotland is examining finance issues affecting Scotland in parallel with the English Review. The Scottish Parliament will not be bound permanently by the results of the current review. The issue of which mechanism the Scottish Executive should choose to distribute funds to councils is likely to prove highly controversial. Other developments in local government, including the replacement of Compulsory Competitive Tendering with a new duty to achieve "best value," are discussed in Part V.

Other Research papers cover selected aspects of the *Scotland Bill*: 98/1 *The Scotland Bill: Devolution and Scotland's Parliament* gives an overview of the devolution debate. 98/2 *Some*

Operational Aspects of Scottish Devolution looks at the position of Scottish ministers, the legislative competence of the Scottish Parliament, the disputes resolution procedure and the standing orders. 98/3 examines the impact of devolution on the constitution of the UK and the continuing West Lothian question. 98/4 *The Scotland Bill – Tax-Varying Powers* examines the power given to the Scottish Parliament to vary basic income tax.

II The Legal Background

The legal nature of the relationship between local government in Scotland and the new Parliament and its Executive will be very similar to the current tripartite relationship involving local government, Parliament and the Secretary of State for Scotland.

Local government in the United Kingdom is subject to the doctrine of *ultra vires*: literally, "beyond the powers". That is to say, it is a creature of statute and its powers derive from its governing legislation. It may only undertake activities which are explicitly or implicitly sanctioned by that legislation, although within those limits it has discretion to act in the way it chooses (subject to observing certain principles of administrative law such as reasonableness). The Scottish Parliament will, in turn, be limited by its own governing legislation; in particular, the reserved matters specified in Schedule 5 of the Bill will be outwith the competence of the Scottish Parliament, but matters directly affecting local government will not be reserved to Westminster.

The main statutes governing the institutional aspects of local government in Scotland are the *Local Government (Scotland) Act 1973* (as amended) and the *Local Government (Scotland) Act 1994*, which reorganised local government into a single-tier or *unitary* structure of 32 councils having most of the responsibilities previously exercised by the old regional and district councils during the period 1975-1996. The powers and duties of local government regarding particular services are set out in separate Acts of Parliament such as the *Social Work (Scotland) Act 1968* and the *Education (Scotland) Act 1980*.

The nature of the Scottish Parliament's powers over local government will be as follows:

- The Scottish Parliament will have the power, under Part I of the Bill, to make primary legislation affecting local government in any non-reserved matter.
- Various powers currently reside with the Secretary of State for Scotland under the body of legislation described above, including the power to make secondary legislation. The Scottish Executive will inherit these powers under Part II of the Bill. The Executive will also inherit various duties, such as the duty to fund local authorities. Actions of the Executive towards local government will be subject to scrutiny by the Scottish Parliament.

The Bill does not amend the existing body of local government legislation. The practical implications of these powers are summarised in the White Paper: "The Scottish Parliament will have general responsibility for legislation and policy relating to local government. The Scottish Parliament will have the power to set the framework within which local government

operates and to legislate to make changes to the powers, boundaries and functions of local authorities. The Scottish Executive will be responsible for supporting local authority current expenditure and for controlling and allocating capital allocations to Scottish councils. It will also be responsible for the system of local taxation."¹

In addition the Scottish Executive will inherit various "default powers" which will enable it to take action if a local authority is deemed to be failing in a named statutory duty.² The Executive will also have the power in certain circumstances to order public inquiries into named local authority functions. The widest-ranging default power is contained in section 211 of the *Local Government (Scotland) Act 1973*, under which the Secretary of State may:

- establish a local inquiry into the performance by a council of any statutory duty; and if he is then satisfied that the council is in default of that duty,
- make an order, enforceable in the Court of Session, giving directions as to how it must remedy the default.

Section 211 was used by the previous Government on 11 July 1995 to order an inquiry into recruitment practices in Monklands District Council. In the past the Government's default powers have been used very rarely, although in England there has been a growing readiness to countenance direct intervention by central government to enforce educational standards.

The Scottish Parliament will be bound by the Council of Europe's Charter of Local Self-Government which the UK Government signed on 3 June 1997 and intends to ratify, subject to the views of Parliament, early in 1998.³ The Charter lays down standards for central-local relations which are designed to protect the autonomy of local government. It has been suggested that the Charter is sufficiently loosely worded to present central government (or the Scottish Parliament) no great difficulty in complying, but commentators on local government have tended towards the view that ratifying the Charter would be "an expression of trust that could help underpin central-local relations".⁴

¹ Scotland's Parliament, Cm 3658, July 1997, para 6.5

² A PQ of 11.4.84 set out a long list of the default powers which applied in Scotland at that time. HC Deb 20.12.84 cc 332-7W

³ DoE Press Notice 199, 3.6.97 "Working in partnership with local government"; HC Deb Vol 302, 2.12.97, c115W

⁴ Professor Gerry Stoker, SLGIU conference "A Scottish Parliament: Friend or Foe to Local Government" 15-16 Feb 1996: notes for plenary session

III Other Aspects of the Relationship

There is a delicate balance in the relationship between local and central government which is underpinned by, but by no means restricted to, the legal relationship described above. As Martin Loughlin puts it, "Local government has become a powerful agency of government within the administrative State, but... the price of this power is that the affairs of local government have become inextricably bound up with those of the centre."⁵ Central government has entrusted to councils responsibility for providing many of the "front-line" services of the welfare state, for example, and is consequently reliant on local government to implement policy and maintain standards. Loughlin notes that "In the course of business, certain informal 'rules of the game' or conventional understandings emerge and these tend to provide a better explanation of behaviour than the formal legal position" [op cit, p71].

The Scottish Parliament and Executive may, then, inherit the legal framework wholesale, but the day to day intricacies of the relationship with local government will have to be built up from scratch. The White Paper states that this relationship "is particularly crucial to the good governance of Scotland and the effective provision of services to its people" [para 6.4]. The transfer of civil servants from the Scottish Office will doubtless assist in smoothing over the transition, but it will be up to the Scottish Executive, COSLA (the Confederation of Scottish Local Authorities) and local authorities themselves to establish the tone of the relationship. The Government has said that it will set up an Independent Commission to look into "how to build the most effective relations between the Scottish Parliament and Scottish Executive and a strong and effective local government" [para 6.4]. In August 1997 it issued a consultation paper on the terms of reference for the Independent Commission.⁶

The White Paper sets out the Government's expectation that the Scottish Parliament and the Scottish Executive will operate according to the principle of subsidiarity: "In establishing a Scottish Parliament to extend democratic accountability, the Government do not expect the Scottish Parliament and its Executive to accumulate a range of new functions at the centre which would be more appropriately and efficiently delivered by other bodies within Scotland. The Government believe that the principle that decisions should be made as close as possible to the citizen holds good within Scotland as it does within the United Kingdom" [para 6.2]. Nevertheless, neither the White Paper nor the current Bill contain specific proposals to give additional powers to councils (including those removed at the time of the 1996 reorganisation).⁷ This may be an area that the Scottish Parliament would wish to consider in the future, of course. Nor does the Bill contain a Clause formally embodying the principle of subsidiarity or requiring the Scottish Parliament to "secure and maintain a strong and effective system of local government" as proposed by the Scottish Constitutional

⁵ Legality and Locality, 1996, p 60

⁶ Independent Commission on Local Government and the Scottish Parliament: A Consultation Paper. The establishment of the Commission will honour a commitment in the Labour Party's 1997 Scottish Manifesto [p34].

⁷ The issue of quangos in Scotland is dealt with in Research paper 98/1

Convention.⁸ Clause 110 of the Government of Wales Bill, on the other hand, requires the Welsh Assembly to "sustain and promote local government in Wales." The question of whether there should be any degree of "constitutional entrenchment" for local government is returned to briefly in Part VI below.

The consultation paper on the proposed Independent Commission reiterates the White Paper's position on subsidiarity, and also extends it to the way in which local authorities operate:

"The same principle... is also applicable to the way in which local authorities themselves carry out their work. The best guarantee that local government will enjoy its proper place under the Scottish Parliament is a system of local government able to demonstrate that it is fully responsive to the electorate which it serves. This was recognised in the Scottish manifesto on which the Government was elected, which emphasised the importance of enabling councils to serve their communities and be accountable to them, and stressed the need to improve participation in local elections. That is why the Government proposes to link the two questions - of relations between local government and the Scottish Parliament, and of the democratic accountability of local government itself - in the remit of the Commission" [para 4].⁹

The consultation paper therefore proposes two main tasks for the independent commission [para 6]:

1. "to draw up a practical and procedural framework within which the Scottish Parliament (and Scottish Executive) and local government may work together on the development of policy and legislation. The Commission's report on this would be presented to the Parliament, possibly in the form of a draft concordat with local government which the Parliament would be invited to adopt."
2. "to inquire into the ways in which councils make themselves responsive to, and democratically accountable to, the communities they serve, and how these might be further developed. The Commission could for instance:
 - study how councils are already making themselves responsive and accountable to the people they serve;
 - look more widely at ways in which the democratic accountability of local government might be enhanced. It could examine the ways in which councils organise themselves to go about their business, the demands made on councillors

⁸ Scotland's Parliament. *Scotland's Right*. November 1995, p17

⁹ John Fairley seems to support this analysis when he suggests that "in much of urban Scotland voter participation is so low that it calls into question the democratic legitimacy of the councils. The Scottish parliament must prioritise this issue, learning from practice in other parts of the world": *The Democratic Reform of Scotland, Scottish Affairs*, No. 18, Winter 1977, p22

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and the perceptions which councillors themselves have of their role, and how to ensure that more people vote in local elections.

- Out of this study the Commission would be asked to produce recommendations, based on best practice in Scotland and elsewhere, to serve as benchmarks for local government in future. It might also make recommendations to the Scottish Parliament for developments to the way councils make themselves responsive and democratically accountable to the communities they serve which would require legislation for their implementation."

The consultation paper suggests that action to improve the accountability of local government in Scotland may commence before the establishment of the Scottish Parliament. Although the Commission will present its main report to the Scottish Parliament or Scottish Executive, it may choose, or be asked, to submit an interim report or reports to the Secretary of State: "The Commission may, for instance, wish to advise the Secretary of State and local government about measures which could be taken, possibly as pilot projects, to help local government to develop its democratic accountability in advance of the establishment of the Scottish Parliament" [para 7]. The Government intends that the Commission should consult interested parties and take evidence, both in writing and at oral hearings. "It might travel to see practical examples of the way in which local government is going about its business and to take evidence from local interests, and might look at relevant examples of good practice outside Scotland. It should take account of the particular needs and perspectives of different parts of Scotland, including Scotland's island communities" [para 8].

IV Local Government Finance

Schedule 5 of the *Scotland Bill* makes clear that although responsibility for fiscal, economic and monetary policy, including taxation, will remain with the UK Parliament at Westminster, the Scottish Parliament will be able to legislate to alter the existing arrangements for local taxes to fund local authority expenditure (for example, council tax and non-domestic rates). The consultation paper on the Independent Commission states that the Government will pursue local government finance issues, including the future of non-domestic rates (which is currently subject to consideration at a GB level), separately from the Commission's work [para 10]. The Confederation of Scottish Local Authorities (COSLA) has called for the Commission to be able to consider the finance issue.¹⁰

The Uniform Business Rate, which was introduced in England and Wales in 1990, was phased in gradually in Scotland under the *Abolition of Domestic Rates (Scotland) Act 1987* (as amended) and came into full effect in April 1995. At present all rates income collected by local authorities is passed to the Secretary of State and redistributed on the basis of adult population. Labour's Scottish manifesto stated: "We believe there is a strong case for returning control of the business rate to Scotland's councils, because local business concerns are critical to good local government. We will, however, consult with all interested parties before making any change and ensure that there are tough safeguards to protect the interests of local businesses" [page 34].

A comprehensive review of the local government finance system was announced shortly after Labour came to power. Department of the Environment, Transport and the Regions press release 297/ENV of 25.7.97, "Review to take a fresh look at local government finance," mentions "consulting with business fully about returning the business rate to local control". The Government's proposals for the reform of business rates are likely to be announced early in 1998, although the Scottish Parliament would not be bound permanently by any decision on rates taken by the UK Government. It is possible that the Government will decide to supplement the existing arrangements for business rates with a locally set element rather than returning the rates fully to local control. The Scottish Parliament may come under pressure from the larger towns and cities to allow them to keep all of their non-domestic rates income for local use, but the absence of any equalisation system¹¹ would probably lead to shortfalls in some other areas. Alternatively, Arthur Midwinter suggests that the Scottish Parliament may be tempted to keep business rates revenue for itself if it faces "severe fiscal squeeze" from the Treasury.¹²

¹⁰ COSLA press release "Commission should look at finance" 9.9.97

¹¹ ie. the redistribution of rates income from high-yield areas to low-yield areas in line with need.

¹² Local Government in a Devolved Scotland, *Scottish Affairs*, No 18, Winter 1977, p30

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The local government finance review in England is also looking at "how we can improve the fairness of the distribution of the council tax burden" [297/ENV, op cit]. John Fairley has suggested that "councils need local taxes which are more equitable, less regressive and more effective than the current Council Tax".¹³ There was no manifesto commitment on council tax reform, however (apart from the issue of capping) and the Government is unlikely, therefore, to give this as high a priority as the reform of business rates. If the Scottish Parliament inherits the current council tax legislation unchanged, it will have the power to alter the banding system using secondary legislation. Section 74 of the *Local Government Finance Act 1992* contains a "Henry VIII Clause"¹⁴ enabling the values of the council tax valuation bands and the relative amount of tax payable for each band to be altered by order of the Secretary of State. Changing the valuation bands would, however, require a revaluation of domestic properties in Scotland.

The English local government finance review is considering "the balance between central direction and local discretion, including the arrangements which will need to be put in place to abolish crude and universal capping while retaining reserve powers to control excessive council tax rises."¹⁵ A Scottish Office press release of 4.7.97¹⁶ stated that the issue of capping in Scotland would be "taken forward alongside parallel work in England and Wales. There are implications for public expenditure which require careful consideration." The Government is likely to take the view that capping should remain in place until measures to improve the accountability of local government, such as "best value" (see Part V below), have been introduced. Under the current primary legislation¹⁷ capping is a discretionary power, so if no change is made the Scottish Executive will be able to decide whether to specify capping limits in advance, and whether to continue to use capping at all. An article by David Scott in *The Scotsman* of 19.12.97¹⁸ suggests that a large rise in council tax income would lead the Treasury to question the level of the block grant to the Scottish Parliament. This could, he speculates, lead the Scottish Executive to retain capping in order to protect its own finances.

The Scottish Executive will be responsible for funding local authorities. The annual local government finance settlement for Scotland would have to be approved by the Scottish Parliament before taking effect. At present around 85% of local authorities' budgets are financed by central government, so the total amount of grant and the basis of its distribution among the unitary councils is a highly sensitive area. The ultimate dependence of Scottish local government on the Treasury for much if not most of its funding will continue, leaving it extremely vulnerable to future changes to the arrangements for allocating the block grant to the Scottish Parliament (ie. the Barnett formula). Alan Alexander concludes that "It is possible that the need to influence the annual public spending round will lead Scottish local

¹³ The Democratic Reform of Scotland, *Scottish Affairs*, No. 18, Winter 1977, p22

¹⁴ A provision within an Act enabling specified changes to be made to the Act by means of secondary legislation

¹⁵ Department of the Environment, Transport and the Regions press release 297/ENV of 25.7.97, op cit

¹⁶ 0867 of 4.7.97 "Donald Dewar highlights priority for education"

¹⁷ *Local Government Finance Act 1992*, s94 and Schedule 7.

¹⁸ "The Scotland Bill: Pulling the purse strings on Scotland's councils"

government to lobby at Westminster and Whitehall as well as Edinburgh. If that were to happen, the value and stability of devolution might be called in question."¹⁹

The current legislation on central funding of local government will give the Scottish Executive wide scope for changing the basis of distribution of the Revenue Support Grant, without the need for primary legislation,²⁰ and it is likely that the Scottish Parliament and Executive would want to examine this issue. The Scottish Executive would also be able to switch funds between, say, the health service and local government, but moves of this kind would be fraught with political difficulty.

The abolition of capping and/or the return or partial return of business rates to local control would give authorities the power to determine a greater proportion of their budgets. A paper produced by the Scottish Constitutional Convention in 1994 stated that "local authorities should raise a considerable share of their own resources. If this were the case, it would give them a degree of independence from the Scottish Parliament, which would not be able to exercise control by simply turning the resources tap on or off."²¹ The current Bill would enable the Scottish Parliament to introduce additional local taxes (such as a sales tax, tourist tax or transport-related taxes) to increase the independence of local government. Nevertheless, it seems unlikely that the Treasury would be content to see the block grant to the Scottish Parliament remain at the same level if local government had access to significant additional tax income.

Whatever arrangements for local government finance are decided upon by the new Parliament, the distribution of grant to local government is likely to remain one of the most controversial subjects it has to deal with.

¹⁹ Scotland's Parliament and Scottish Local Government: Conditions for a Stable Relationship, *Scottish Affairs*, no 19, Spring 1997, p25

²⁰ *Local Government Finance Act 1992*, s108 and Schedule 12. The current equalisation system, based on Grant Aided Expenditure, is described briefly in Research Paper 97/127, p19

²¹ Local Government: a new partnership, quoted in A. Midwinter, Local Government in a Devolved Scotland, *Scottish Affairs*, No 18, Winter 1977, p27

V Other Developments in Local Government

The August 1997 consultation paper on the Independent Commission on Local Government and the Scottish Parliament described some of the Government's other priorities for local government. These will not be included in the Commission's remit because the Government is already taking action on these areas. One of the subjects highlighted in the paper is local government finance, which is dealt with in Chapter IV above. The other subjects are "best value" and community planning. The Labour Party's manifesto commitment to introduce a power of local competence is also discussed briefly below.

A. Best Value

The Government is in the process of replacing Compulsory Competitive Tendering with a new duty for local authorities to achieve "best value." This will involve "a comprehensive system of performance plans to improve quality, enhance efficiency and reduce costs to taxpayers for local authority services".²² The Government's intention is that the best value system would require continuous improvements in councils' performance. The Principles of Best Value published in England on 2.6.97²³ state that there should be provision for "intervention at the direction of the Secretary of State on the advice of the Audit Commission when an authority has failed to take agreed remedial action, or has failed to achieve realistic targets for improvement." In Scotland a Best Value Task Force has been established by the Government, COSLA and the Accounts Commission (the Scottish sister organisation to the Audit Commission) to develop guidance on good practice for councils in the implementation of best value.

Local authorities in Scotland which are judged by the Government to have made sufficient progress in the development of a local best value plan will have their post-reorganisation CCT exemption extended on a yearly basis. The Government hopes that all councils in Scotland will be able to demonstrate compliance with best value by the end of 1999. To date, the Government has announced that 16 councils will have their CCT exemption extended for one year from the end of July 1998.²⁴ A Scottish Office press notice of 4.7.97 states that "Consideration will have to be given to the extent to which Best Value needs to be enshrined in legislation."²⁵

²² Scottish Office press release 19 December/2079/97 "Calum Macdonald announces a further nine council exemptions from CCT."

²³ DETR News Release 197 "Better value for local authority services"

²⁴ Scottish Office press release 19 December/2079/97, op cit. The exempt authorities are Angus, Dundee, Highland, Midlothian, Moray, North Lanarkshire, Renfrewshire, Scottish Borders, South Lanarkshire, Clackmannanshire, East Lothian, East Ayrshire, Edinburgh, Falkirk, Perth and Kinross and Stirling.

²⁵ 4 July/0867/97 "Donald Dewar highlights priority for education"

Statements made by the English Local Government Minister Hilary Armstrong have made it clear that the Government does not intend the introduction of best value to lead to the total abandonment of competition by local authorities.²⁶ Labour's 1997 Scottish manifesto stated: "We reject the dogmatic view that services must be privatised to be of high quality, but equally see no reason why a service should be delivered directly if other more efficient means are available. Cost counts but so does quality" [p34]. To what extent the development of best value in Scotland will be compatible with Arthur Midwinter's hope that the Scottish Parliament will reflect what he refers to as "the mainstream Scottish consensus over public provision"²⁷ (ie. the belief that local authorities should be direct providers of services rather than "enablers" which issue contracts to external bodies, including the private sector) remains to be seen, therefore.

B. Community Planning

Ministers have commissioned a joint working party with COSLA to develop the concept of community planning. The consultation paper states that "the ultimate objective of this is to facilitate co-operation and co-ordination between local authorities and other public agencies, as well as with the private sector and voluntary bodies, in meeting the needs of the communities they serve. The development of this policy will help to strengthen the link between councils and their communities and their responsiveness to community needs".²⁸

C. A Power of Local Competence

The consultation paper does not mention Labour's 1997 Scottish manifesto commitment to create a restricted 'power of local competence' for local government (this has also been referred to as a 'power of community initiative'): "We will place on councils a new duty to promote the economic, social and environmental wellbeing of their area. They should work in partnership with local people, local business and local voluntary organisations. They will have the powers necessary to develop these partnerships" [p34]. Douglas Sinclair, the Chief Executive of COSLA, has stated that such a power is important if local government is to develop its "community leadership" role²⁹ and the Constitution Unit has suggested that "Perhaps the best approach... is to learn from the experience of other European countries and allow local authorities to participate in experimenting with wider powers (eg. involving exemption from national legislation or regulation) with the consent and support of central government."³⁰

²⁶ See for example *Municipal Journal* 12.12.97 "Partnership networks spell best value success"; *Local Government Chronicle Best Value Focus*, 12.9.97 "Pilots sail into uncharted waters"

²⁷ Local Government in a Devolved Scotland, *Scottish Affairs*, No 18, Winter 1977, p34

²⁸ Independent Commission on Local Government and the Scottish Parliament: A Consultation Paper, op cit, para 10

²⁹ Local Government and a Scottish Parliament, *Scottish Affairs*, no 19, Spring 1997, pp16-17

³⁰ Scotland's Parliament: Fundamentals for a New Scotland Act, 1996, p124. This approach was advocated in a report prepared for the Commission for Local Democracy by Hilary Kitchin of the Local Government Information Unit: A Power of General Competence for Local Authorities in Britain in the Context of European Experiments, CLD Research Report No 16, 1995

VI Reactions to the Creation of a Scottish Parliament: the Local Government Perspective

The Confederation of Scottish Local Authorities (COSLA) has reacted positively to Labour's plans for a Scottish Parliament. COSLA's president Keith Geddes stated that the proposals contained in the July 1997 White Paper "set the framework for a positive partnership between councils and the Scottish parliament. I believe that partnership will lead to the more effective delivery of services, a renewal of strong and effective local government and systems - including finance - based on local accountability and local control."³¹ He particularly welcomed the commitment to establish an Independent Commission on relations between local government and the new Parliament. COSLA also issued a press release welcoming the publication of the *Scotland Bill*.³²

Nevertheless, some within Scottish local government also regard the creation of a Scottish Parliament as a potential threat. This ambivalence is described well by Alan Alexander, Professor of Local and Public Management at the University of Strathclyde:³³

"The structure and processes of a Parliament for Scotland will not be written on a clean sheet. The new institution will have to find an effective and credible place in the pattern of existing Scottish institutions. Of these institutions, one of the most significant, because it has a role in the development of public policy and the delivery of public services, and because it is popularly elected, is local government. There is a degree of apprehensiveness in Scottish local government about the effects of the establishment of a Parliament in Edinburgh and of a Scottish Government on the powers, autonomy and position of local authorities. This apprehensiveness is shared even by many, including the present author, who are enthusiastic about the devolution project."

The *Local Government Chronicle* reported "a source close to COSLA" as saying that "once a parliament is instituted it will have a constitutional position that local government has never had and it will be in a position to suck powers from local authorities."³⁴ There were fears that the Scottish Parliament would be in a position to attack some of Scotland's "old Labour" councils.

A number of commentators have highlighted the potential for the Scottish Parliament to take powers away from local government. It has frequently been observed, with some irony, that

³¹ COSLA press release 25.7.97 "Better Scottish government - better local government"

³² "COSLA welcomes Scotland Bill" 19.12.97

³³ Scotland's Parliament and Scottish Local Government: Conditions for a Stable Relationship, *Scottish Affairs*, no 19, Spring 1997, p22

³⁴ 4.8.97 "Proposed Parliament worries members"

the previous Government's reorganisation of Scottish local government into a system of small unitary councils paved the way for devolution by creating, allegedly, a strategic vacuum and weakening arguments about unnecessary layers of bureaucracy.³⁵ Nevertheless the post-reorganisation arrangements for strategic local government services give rise to concern in some quarters. Arthur Midwinter, Dean of the Faculty of Arts and Social Sciences at the University of Strathclyde, suggests that the weakness of the new system may well tempt the new Scottish Parliament to re-examine questions of local government structure and functions, bearing in mind evidence of economies of scale in the provision of local services.³⁶ He concludes: "Those who favour strong local government... cannot be fully convinced that devolution is a necessary precondition of more favourable policies towards local government. It would be sad if a measure intended to decentralise power should lead to further centralisation, but that is clearly a possibility which cannot be discounted" [ibid, pp 33-4]. Nevertheless he goes on to suggest that there are likely to be real benefits to local government from the Scottish Parliament's "capacity to reflect the mainstream Scottish consensus over public provision,³⁷ and reduce much of the ideological hostility [the previous Government displayed] towards local government."

The Constitution Unit has also hinted that the issue of local government structure and functions could be re-opened by the Scottish Parliament. By the time the new Parliament is established, there will have been around four years' experience of the unitary structure: "The present preoccupations relating to the delivery and planning of services in the absence of a regional tier will have moved from discussion of structures to criticism of any obvious practical failings in the patchwork which will by then have developed. Ad hoc arrangements for joint-committees, joint working, inter-authority agreements and other forms of co-ordination will have evolved. They will not be uniform by any means, either in terms of geographical coverage, or in terms of function. Some arrangements will be working better than others."³⁸ Graham Leicester, then a senior research fellow with the Constitution Unit, suggested early in 1996 that "Deficiencies in the joint committee arrangements that have developed will need to be remedied. Boundaries may have to change too, at least at the margins, and perhaps to move the unitary authority system closer to the 15 authority model rejected in the present reorganisation. These changes must be made in the light of experience: they cannot be prescribed now."³⁹ COSLA's Chief Executive Douglas Sinclair has warned that "If, for some reason, local government can't make joint arrangements work, there must be the possibility that the parliament will wish to assume direct responsibility for the planning of these services."⁴⁰

³⁵ See for example Douglas Sinclair, Local Government and a Scottish Parliament, *Scottish Affairs*, no 19, Spring 1997, pp 19-20

³⁶ Local Government in a Devolved Scotland, *Scottish Affairs*, No 18, Winter 1977

³⁷ but see discussion of "best value" above

³⁸ Scotland's Parliament, 1996, p121

³⁹ SLGIU conference "A Scottish Parliament: Friend or Foe to Local Government" 15-16 Feb 1996: notes for workshop

⁴⁰ *Scotsman* 13.6.96 "Councils warned on the dangers of devolution." See also *Scottish Affairs*, no 19, Spring 1997, pp 19-21; and Alan Alexander, *Scottish Affairs*, no 19, Spring 1997 [op cit], p28

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The possibility of conflict over the appropriate level at which strategic services should be performed etc. may place additional burdens on whatever mechanism is put in place to govern relations between the new Parliament and local government. As noted above, the August 1997 consultation paper on the Independent Commission on Local Government and the Scottish Parliament suggests that the Commission should draw up a draft concordat on central-local relations, setting out the "practical and procedural framework within which the Scottish Parliament (and Scottish Executive) and local government may work together on the development of policy and legislation" [para 6].

The idea of a concordat had already attracted support. For example, the Constitution Unit's 1996 report **Scotland's Parliament** suggested that the adoption of a concordat between local government and the new Parliament might be preferable to an attempt to embody the principle of subsidiarity in the Scotland Bill.⁴¹ Douglas Sinclair⁴² had pointed out parallels between the proposal for a concordat in Scotland and the Hunt Committee's recommendation for Great Britain as a whole that there should be a formal concordat between central government and each of the local authority associations.⁴³ He went on to suggest that another of Hunt's proposals, the establishment of a permanent, independent body to oversee central-local relations [op cit, para 2.69] would be useful in the Scottish context.

⁴¹ 1996, p127

⁴² Local Government and a Scottish Parliament, *Scottish Affairs*, no 19, Spring 1997, pp 15-16

⁴³ Report of the Select Committee on Relations Between Central and Local Government: "Rebuilding Trust," HL 97 of 1995-96, Vol I, para 2.67