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Delivery Structures and Policy Development in Post-Devolution Scotland

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The policy process in the devolved Scottish system reconciles the Scottish themes of delivering social policy from the centre, through channels of advice and professional direction, and the New Labour theme of broad social policy strategies aiming at better service delivery and employment outcomes. Beneath the surface issues there is a trend to re-structure some services. The Scottish Executive's strategy Social Justice*, set out in annual reports, relates devolved and non-devolved responsibilities in a way that has implications for the structure of Executive departments and the policy-making demands made upon civil servants. The research reported here uses interviews with officials to explore the structures of policy making in the Executive within a context of expectations about ministerial and official roles inherited from the previous administrative devolution.*

The devolved Scottish government (known as the Scottish Executive) that assumed its powers on 1 July 1999 is a policy system with incomplete responsibilities focusing on the delivery of non-cash social services to individuals (health, education, housing, social work and the judicial system). At the same time, the major party in the Labour–Liberal Democrat coalition has been influenced by the New Labour theme of broad social policy strategies aiming at better service delivery and employment outcomes, and supports much of the rhetoric and policy of the Blair administration. During its first two years, the Executive has been exploring the possibilities of devolution, but has proceeded cautiously. The environment has been one of political tension, as competence on particular issues has become a test of the new constitutional structure. There has been confusion between the Scottish Parliament and the Scottish Executive, and some surprise at the inevitable reproduction of government versus opposition and frontbencher versus backbencher patterns found at Westminster. This article, drawing upon recent interviews with civil servants as part of a continuing project on the Home Civil Service after devolution, explores the relation between the structural framework of devolution and the policy outcomes it is producing.

Policy divergence

There have been some very visible post-devolution policy issues in Scotland that have been handled in a different way from what would have happened before:
Tuition fees: the decision in January 2000 to abolish student tuition fees was forced by the Liberal Democrats against the objections of Labour in the knowledge that they were

backed by all other parties in the Parliament and following the report of the Cubie Committee (Cubie report, 1999); a student contribution after graduation is required but this is used to endow a reinstated system of student grants.

Long-term care of older people: in a similar process a coalition of the Liberal Democrats and other parties forced Labour into conceding (with slight ambiguity) in January 2001 the principle of free personal care for older people in long-term accommodation as recommended by the Sutherland Royal Commission (with plans for implementation of the policy remitted to an expert Care Development Group chaired by a minister which reported in August 2001 (Scottish Executive, 2001) and the policy due to take effect in July 2002).

Teachers' pay: again as a result of a committee report (McCrone report, 2000), the Executive secured support for a three-year pay deal of January 2001 which bought out the poor industrial relations and resistance to structural change of the teaching profession.

School examinations: in the greatest policy disaster of the Executive, examination results issued by the Scottish Qualifications Agency in August 2000 were seriously flawed; the Executive forced a clearout of officers at the Agency and produced a satisfactory process in 2001 (Paterson, 2000).

Housing stock transfers: the Executive has backed large-scale transfers from local authorities to other social landlords, including winning a referendum among Glasgow tenants for a transfer proposal that would relieve the city of its housing debt, against much local opposition.

The variables determining policy outcomes

We can suggest a model of social policy making in the devolved Scotland with three variables: *the location of responsibility between devolved and reserved areas*; *the political control of the Executive*; and *the mechanisms of public and social administration* the Executive is using. Within each variable, we can sense a dynamic of the extent to which the potential of devolution is being used.

1 Location of service responsibility

(a) Devolved

The Scottish Parliament has responsibility for the main areas of social policy – education at all levels, health, housing and social work (the Scottish name for personal social services, which includes criminal justice services). Much of this category draws upon not just the new rights given by devolution but on a long-standing Scottish tradition of independent action, especially in education where the whole examination system and associated standards-setting has developed on different lines. But in some areas there are strong tie-ins with Britain-wide developments in health (the end of internal markets) and housing (stock transfers from local authorities to housing associations).

(b) Reserved but interfacing with devolved

The reservation of social security to Westminster has been a fundamental design feature of devolution. The area (administratively devolved until 1948) was never sought by

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Scottish Office ministers as an area of political business and caseload. It was always known to the Treasury that devolution would require mechanisms to prevent Scottish central and local government from transferring clients to the UK budget, and this has been done by reserving policy responsibility for housing benefit and council tax benefit while carrying the expenditure in the Scottish budget. It has also been impossible for the Executive to reclaim the saving in attendance allowances that would accrue to the UK budget if Scottish beneficiaries moved on to support for personal care costs. Although the Executive has responsibilities for employment and training policy, the benefit implications of this are reserved and in effect Scottish MP Alistair Darling presided over a Britain-wide Department for Work and Pensions. There are also some minor reservations, such as the regulation of the medical professions and the research councils, which are a reminder of the tie-ins of the Scottish and English health and education systems.

The Executive's strategy *Social Justice*, set out in an initial document of December 1999, relates devolved and non-devolved responsibilities in a way that has implications for the structure of Executive departments and the policy-making demands made upon civil servants. The annual report of 2000 states that 'the shared commitment to tackling poverty provides the basis for the partnership between the Scottish Executive and the UK Government' (Scottish Executive, 2000b: 9). A similar emphasis was evident in the report for 2001 (Scottish Executive, 2001). A further document on economic policy, *The Way Forward: Framework for the Economic Development of Scotland*, was issued in June 2001. By ranging widely into the poverty and social justice agenda, the Executive has produced some ambitious policy documents combining devolved and reserved powers, but has used the New Labour motif to advance aspirations that run beyond its legislative, policy making and spending resources.

(c) Reserved and having few implications for devolved social policy

Foreign affairs and defence were never going to be devolved, and the potentially difficult issue of the Scottish Executive presence in EU processes was defused by the accommodating Foreign Office under Robin Cook. The definition of areas for EU industrial assistance was an important devolution issue for Scotland and Wales soon after the new administrations took office in 1999. An important reserved area is commercial and employment law.

In general, the structure of devolved and reserved powers has not been problematical. A quite elaborate structure of dispute resolution had been put in place in 1998/9 but has not needed to be invoked, because the sense of collegial working between ministers and officials at the various levels has been carried over from the old system of administrative devolution. Ministers in the devolved administrations are within the Labour club, and officials are within the civil service club. Although much was made of the continued membership of Scottish and Welsh devolved officials in the Home Civil Service, this is not of itself the key variable, not least because the Northern Ireland Civil Service remain honorary members of the club. This was very evident in the handling of foot-and-mouth disease in 2001. The greatest threat to the resilience of the Scotland Act 1998 would come from two other variables: change in the political control of the Executive that took it outside the Lab–Lib consensus, and any challenge to the norms of public and social administration they inherited.

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2 Political control of the Executive

(a) In alignment with Westminster

The political purpose of devolution was to prevent Scottish policy from becoming the victim of a UK parliamentary majority that did not enjoy political consent in Scotland. But if New Labour is right for Scotland, what could the Scottish Parliament do after 1999 that the Labour Scottish Office could not have done between 1997 and 1999? Part of the answer is that under any kind of political control the new Parliament offers greater legislative capacity to implement policy that would have had to compete for time at Westminster; but even here under the 'Sewel convention' Holyrood has accepted that new Westminster legislation can make non-contentious changes in devolved Scottish statutes. The first legislative programmes have been cautious – matters like land reform and national parks rather than restructuring of the welfare state – and there is a lack of salience for Holyrood business in a Scottish media which, football apart, is still tempted to focus on the stories that are playing big in London.

(b) In partial alignment with Westminster

It was important that the design of Scottish devolution – through a Constitutional Convention – coincided with a rare historical period of Labour interest in proportional representation. The PR (regional list) element in the Scottish Parliament is not only large (56 seats out of 129) but also corrects as far as possible the first-past-the-post outcome. In 1999 the 53 Labour constituency MSPs were matched by 53 list MSPs from other parties. While Labour had a huge majority at Westminster, the party, so strong in Scotland, had no overall majority at all. And, in a further irony, Labour in Scotland was forced into the kind of coalition with the Liberal Democrats that Tony Blair was thought to favour at Westminster.

A coalition government requires an agreed programme, and this was sorted out between Labour and the Liberal Democrats in several days of negotiations, with civil service support, after the Scottish Parliament elections. The resultant *Partnership for Scotland* was a quite detailed policy document that allowed the Liberal Democrats to maintain their position in favour of the abolition of student tuition fees while the issue was considered by the Cubie inquiry. Subsequent documents (notably *Making it Work Together* of September 1999, and an updated version in February 2001) have been more detailed but also less significant as they list policies already under way in a glossy pictorial presentation. The Liberal Democrat cabinet ministers in Scotland, Jim Wallace and Ross Finnie, are pillars of collegiality.

In general, New Labour is comfortable with the safely progressive policy themes of the Lib–Lab coalition. But the student fees and long-term care issues did illustrate the way that partial alignment can result in conceptual challenges to the Blair/Brown orthodoxy – in this case, that the welfare state should not be allowed to benefit the middle-class too much and that means-testing is a good way of releasing money for other service priorities. Labour ministers have made great attempts to influence opinion on these lines but have ultimately conceded most of the Liberal Democrat position. The crucial point is that this has been backed in the Parliament not just by the Scottish National Party but by the Conservatives (in a mixture of electoral pragmatism and a residual attachment to Scottish collectivist welfare).

(c) In political opposition to Westminster

Much of our analysis of devolution is waiting for the real action to start – when the Holyrood majority opposes Westminster and tries to use the instruments of devolution in pursuit of wider political objectives. The Scottish National Party has a strong presence in Holyrood (35 seats against Labour's 55) and in opinion polls regularly matches Labour's support in voting intention on the regional list vote. But for 30 years it has failed to make the breakthrough to majority status and its assumption of power at Holyrood would depend on coalition-building with the Liberal Democrats and Conservatives. This is implausible, but not impossible if there is a strong enough feeling that Labour has lost a future Holyrood election. The SNP's policies reflect its position of the 1970s that oil revenues flowing to an independent Scotland would fund generous public investment and income transfers, and convey the sense of a left-of-centre, old Labour type of party. Unlike Labour, the SNP wants to use the limited power to raise income tax given to the Scottish Parliament. Its policies are opposed to quangos and generally in favour of trusting professionals with service delivery.

The SNP's rationale is independence, and its 1999 Scottish election manifesto contained sections headed 'on to independence' alongside its proposal for devolved government. But the party has conceded that a referendum would need to be won before independence could happen, and so are implicitly seeking the votes of the 75 per cent or so (in recent polls) who are not in favour of it. This sets the stage for a long period of Québec-style politics in which the SNP would seek to deliver policies proceeding from their notion of Scottish traditions and expectations. Westminster-derived themes would be repudiated, and there would be political skirmishing as the party sought to push out the envelope of the devolution settlement and choose the right time for a referendum on independence.

3 Mechanisms of administration

(a) Traditional British patterns

The Scottish Parliament has full powers to reshape the territorial pattern of government in Scotland and to transfer powers from local to central government. Where it is constrained is in the civil service. This is a reserved function, and Scottish Executive officials remain part of the Home Civil Service. The constraint is greatly minimised by fact that since 1996 all civil service departments have delegated powers over their own pay and grading for levels beneath the Senior Civil Service. Scotland and Wales are also free of Treasury control over their total administrative costs. The reputation of Scottish Office senior officials as being authentically Scottish in background and commitment, and stout defenders of Scottish interests, survived the Conservative era and sometimes obscures the Whitehall angle of their preoccupations.

Whitehall-style departmentalism had been overcome in the collegiate, cross-cutting Scottish Office where the departments did not have finance and personnel functions. Pains were taken in 1999 to avoid the creation of 'ministries' (Parry and Jones, 2000). The new ministers had to fit into the existing departmental pattern, typically relating to more than one head of department. The pattern in 2001 is now more coherent, but this is largely because of the realignment of ministerial portfolios. There are two main social ministers – Health and Community Care, and Social Justice (including housing and social

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inclusion, and part of the Development Department). Education is split between the Ministers for Education and Young People, and Enterprise, Transport and Lifelong Learning. The latter department is an attempt at a holistic bridge between industry, skills and post-16 education, but the addition of transport to its minister's portfolio in November 2001 further compromises the social focus of the department.

The Executive has attempted to build up its central policy-making capability but it faces problems of scale and of reconciling political and administrative variables (Parry, 2001). A Policy Unit was established in 1999 headed by a special adviser (Brian Fitzpatrick, now an MSP) and with a civil servant deputy. This produced several reports (including an interesting one on policy co-ordination (Hogg, 2000)) but fell apart after Donald Dewar died and most of his special advisers were replaced. The new structure under Henry McLeish was of a 'Head of Strategy' (special adviser John McTernan) supported by the Head of the Executive's Central Research Unit (Andrew Scott). Further changes were made after Jack McConnell replaced McLeish, with academic Mike Donnelly coming in as Principal Special Adviser. There are also small teams in the Executive secretariat looking at equality issues and liaising with Whitehall on social security issues.

Another mechanism inherited from Whitehall – the Next Steps executive agency within the civil service – has been making something of a comeback under devolution. The Schools Inspectorate became one in 2001, as did the national housing agency, Scottish Homes, under the name Communities Scotland. This reflects a new favour for direct ministerial command rather than an arm's length structure of appointed boards.

Beyond the central administration, the attempt in the 1970s to create strong local government has now been rolled back. The reorganisation of local government into 32 single-tier authorities in 1996 weakened its capability for specialised and strategic roles. The regulation and inspection of social care is going into a national agency and criminal justice services are likely to be consolidated into consortia of local authorities. Best value is being pursued in a slightly kinder way than in England, but it remains the policy. A Committee under Neil McIntosh reviewed the relations between the Scottish Parliament and local government in 1999, but was unenthusiastic about transfers of functions back to local government. In the NHS, the approach has been to consolidate board responsibility at the level of the 15 Health Boards, which under the *Scottish Health Plan* of December 2000 will absorb the strategic functions of the 28 NHS Trusts.

(b) Adaptations of traditional patterns

A consequence of the reservation of the Home Civil Service is that the Scottish Executive has committed itself to the implemention of the *Modernising Government* White Paper programme (1999, but pre-devolution), including delivery of better public service, information age government, best practice in the delivery of better public service, and the 'better regulation' programme, and to involvement in cross-cutting issues, including anti-drugs policies, social exclusion/inclusion (the English and Scottish terms respectively), and the work of the Women's Unit and Performance and Innovation Unit in the Cabinet Office.

Potentially this represented a clawback at the managerial level of responsibilities devolved at the policy level. But what has happened is that the devolved administrations have been allowed to 'brand' their own programmes (21st Century Government in Scotland and Delivering Better Government in Wales). Because they represent con-

sensual modern thinking about the relations of government and citizens, they have proved popular with the most successful ministers and officials in the administrations. The Scottish programme, launched in December 2000, stresses joint working with local authorities, and is lubricated by giving them money for projects. This includes attempts at one-stop shops at the local level that break away from sectoral divides, especially health and social work.

A parallel example of adaptation is in budget-making, one of the few areas where there was reform of administrative process as part of devolution planning. A Financial Issues Advisory Group of the Consultative Steering Group on the Scottish Parliament included former Treasury and Scottish Office civil servants and their report, implemented in the Public Finance and Accountability (Scotland) Act 2001, recommended a three-stage process with genuine space for consideration of the Executive's draft proposals. Plans for 1999/2000 and 2000/1 were largely carried over from the Scottish Office, and the first substantive Executive plans were not issued until September 2000 (Scottish Executive, 2000a) and were presented as an outcome of Gordon Brown's Comprehensive Spending Reviews.

The budget process in 2001/2 started with stage 1, the publication of the Executive's Annual Expenditure Report on 30 March 2001, which sets out the final plans for 2001–2 and provisional ones for 2002–3. After a time for general consultation and a report by the Finance Committee (on 25 June 2001) this was followed by a draft budget in September (stage 2), an evidence session with the Minister for Finance on 19 November 2001 and a final budget bill in January 2002 that took account of views of parliamentary committees (stage 3). This received the royal assent on 15 March 2002 as Budget (Scotland) (No 3) Act. With the total size of the devolved budget now known, this was the first opportunity for the mature system to work. The Finance Committee of the Scottish Parliament has attempted to get at greater spending detail, especially in real terms, and has expressed disappointment at the detail offered and the limited scope for re-alignment (Scottish Parliament Finance Committee, 2000).

It should not be surprising that in a parliamentary system the executive should want to reserve spending decisions to itself, and that a rather tight, Treasury-like process should develop, with spending ministers challenging the Finance Minister. In 1999 this was done through bilateral meetings, in 2000 through a small 'Star Chamber' committee (the Spending Strategy Group) on the model of Whitehall in the 1980s; in 2001 bilaterals came back. A recent step has been the creation of a Department of Finance and Central Services in June 2001.

The early years of the devolved budgetary process have been eased by the generous supply of money from the UK government. The financing of public services is through a block grant whose year-to-year changes are determined by reference to changes in comparable English expenditure by the 'Barnett formula'. As these changes are calculated on the basis of shares of the British population rather than historical expenditure, they do imply a squeeze in Scotland's advantage. But far more important is that the UK Government's spending priorities coincide with devolved rather than reserved services. The population-based share of the UK money on health, education and the rest flow into Scotland in the form of a block grant, most of which comes for three years.

What changes does the new budgetary process make possible in social policy? The model of a rational consideration of alternatives by Parliament and the public, with demands for additional expenditure matched by suggestions of cuts, is unrealistic. The

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alliances between departments and subject committees evident in Northern Ireland have not built up, and in particular the input of subject committees has been inconsistent and not always helpful to the Finance Committee. Instead, the action has been internal to the Executive through in-year reallocations from underspends or new UK money. The likelihood remains that the budgetary process will resemble the legislative process – more an opportunity for reconsideration by the government than the forcing on them of unwelcome amendments.

(c) New structures breaking with central-local and perhaps public-private divides

The Executive has not developed new structures of its own on the boundary between central and local government and public and private sectors. It has rested on the position that Scotland scores well on cross-cutting and joined-up working (Hogg, 2000). The weakness of local government, the deference shown to professional interests, and a liking for national plans and strategies reinforce the centre's role in service delivery.

Labour's ideas of Public–Private Partnership receive equal levels of enthusiasm in the Executive as in the Treasury. It has won a market niche in school refurbishment, especially in Glasgow. But the concept uses Britain-wide financial mechanisms and producer supply. PPP proposals have to pay a political price imposed by the stronger public sector trades union influence in Scotland. Best Value outcomes that award business to private contractors are controversial, notably transferring trunk roads maintenance from local authority consortia to private contractors in February 2001.

The lack of new structures should not come as a surprise. The alternative to an incremental development of previous sectoral structures is likely to be a series of centralised delivery agencies run by the Executive, absorbing public employees and using private contracting more energetically than in the past. This is coming closest to fruition in housing, where a comprehensive Housing (Scotland) Act 2001 (derived from a pre-devolution 1999 Green Paper) has set the UK lead on a single type of tenancy for all 'registered social landlords'.

Conclusion

The general lessons for the policy process from the devolved Scottish system are that the full potential of devolution is constrained by a perceived need for compatibility with what was inherited. This is evident in the three variables examined here: policy reconciliation between devolved and non-devolved areas, the political alignment of Holyrood and Westminster, and the administrative styles of the civil service and other parts of the public sector. The most radical policy departures – tuition fees and long-term care – derive from coalition pressure from the Liberal Democrats. Health and education policies are matters of system maintenance in previously devolved areas. What has changed is the domestication of Treasury power to the Executive, fusing policy and financial control, which in different political circumstances could be a vehicle for significant policy change and constitutional challenge.

Scottish devolution is promoting two levels of centralisation: within Scotland and within Britain. The Scottish Executive gains itself scope by consolidating the field administration within Scotland and bringing functions back to the centre. Calls for efficiency and common high standards make this much easier to do, and local government lacks the political resources to resist it. At the British level, arguments about

the cross-cutting nature of issues brings the devolved nations on board to the work-orientated policies of Gordon Brown, who retains his Scottish base with care and is a much bigger political figure than any Scottish Executive minister.

What may be possible is programmatic development across the public sector as a whole – a clear theme of 21st Century Government, whose targets include 'public policies should fit within a shared overall framework with clear priorities on which delivery agencies can focus their energies and expenditure', and 'who provides public services is not important: what matters is that they should be delivered by the best supplier, at the best price' (Scottish Executive, 2000c: 2 and 44). This is also implicit in the Community Planning approaches that have been mandated on all councils. Elected provosts (mayors) have not been pursued, but Edinburgh Council has adopted a leader/cabinet system. A committee under Richard Kerley in 2000 suggested fewer, paid councillors and proportional representation and this is the direction the Executive favours.

The balance between social policy and constitutional policy is set to be relatively stable during Holyrood's first term from 1999 to 2003. The test will be whether the Scottish electorate gives a second term and more time to achieve objectives to the Labour/Liberal Democrat team, or expresses a wish for change. It is very likely that a different administration would not just promote different policies but would venture into structural questions about the devolution settlement and relations with London – and the two themes would interact in politically unpredictable ways.

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