

1. Mr. Holliman 19/10
2. Mr. Johnson 20/10
D.R. Smith DHSS (NI)
5264/10

From: A J. Whysall
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Date: 5 June, 1998

Mrs. Bayl 18/10
LDC
ME
19/10

- cc Mr Gray
- Ms Wheldon, HOLAB -e
- Mr Stephens -e
- Mr Watkins -e
- Mr Ferguson -e
- Mr Hill -e
- Dr Power
- Mr B Smith, DHSS
- Miss Wooldridge -e
- Mrs Devlin
- Ms Healy
- Mr Warner

Murriel
To see + then file
in Abortion file
19/10

MRS ROGERS

ABORTION: NO 10 INTEREST

1. As I mentioned, Paul Britton from No 10 phoned. Pat McFadden, who deals with devolution in the No 10 policy unit, had apparently gained the impression that abortion was not to be a reserved matter in Northern Ireland. I think this am misunderstanding follows a discussion with Ms Healy, of uncertain date. I tried to discuss this with Ms Healy, but she is away this afternoon.
2. You are preparing a submission on this. Someone might at an early point tell No 10 that, contrary to what they might understand, abortion is at present a reserved matter in Northern Ireland; and that Ministers are shortly to consider in detail the position under the settlement Bill.
3. I learned something of the background to this issue. I understand the Prime Minister himself insisted on the abortion reservation in Scotland. His position has its roots in conflicts with a Scottish cardinal over the issue before the last election. The reservation is defended on grounds that it would be inappropriate to have different laws North and South of the border, and would lead to cross-border abortion traffic. That argument is clearly inapplicable to Northern Ireland, since our law is different from that in Great Britain.

A J Whysall

Ms Maine

I attach DSWR papers from May '97 on abortion. Unfortunately we can't seem to locate the Lord Chancellor's minute of 21 May to the PM but, as you can see from our Secretary of State's letter of 18 June his points were conceded and it was agreed that abortion should be reserved.

NO AGREEMENT WAS REACHED
THE LORD CHANCELLOR AGREED TO
RESERVE MATTERS.

The PM first became publicly involved in the abortion/NI issue in March this year. He replied to a PQ supplementary (copy attached) in a way which was interpreted in some quarters as agreeing that abortion could be devolved to NI and Scotland. No. 10 later issued a 'clarification'.

The issue was raised again during debate on the Bill and we provided a further line to take for No. 10 (I don't think it was actually needed).

I also attach the note on amendment we used in July when an amendment was tabled during Lords committee which proposed to remove abortion from the list of reserved matters in Schedule 5 of the Scotland Bill.

Joanne McDougall
0131 244 5540
(GTN 7188 5540)

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DSWR(97)4
15 May 1997

Copy No. 24

CABINET

MINISTERIAL COMMITTEE ON DEVOLUTION TO SCOTLAND AND WALES
AND THE ENGLISH REGIONS

POWERS AND FUNCTIONS OF A SCOTTISH PARLIAMENT

Memorandum by the Secretary of State for Scotland

Decisions required

1. This memorandum invites the Committee to approve proposals for matters to be reserved to the Westminster Parliament and Government and matters to be devolved to a Scottish Parliament and Executive.

Introduction

2. The Manifesto commitment is to a Scottish Parliament which "will extend democratic control over the widespread responsibilities currently exercised administratively by The Scottish Office".¹ Taken together, the areas of devolved competence must contribute to a logical, coherent, stable and deliverable settlement.

3. This memorandum describes proposals which would achieve such a settlement. It discusses functions and responsibilities. The relevant legislation will define corresponding powers and might specify either those reserved or those devolved. This memorandum's proposals could be effected by either method.

4. Paragraphs 5 to 7 below set out general considerations. Paragraphs 8 to 10 below and Table 1 of the Annex propose matters to be reserved. Paragraph 11 below and Tables 2 to 8 in the Annex describe matters to be devolved.

¹ *New Labour: because Scotland deserves better* (the Scottish Labour manifesto), 1997, p.33. This position is based on the report of the Scottish Constitutional Convention (SCC).

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General considerations

5. **Devolving The Scottish Office's current responsibilities should result in a generally acceptable settlement.** The settlement will need to be adjusted at the margins (as discussed below) to avoid unacceptable anomalies; and it will be necessary to take into account both The Scottish Office's wide-ranging policy role and the extent to which it relies on UK/GB bodies for advice and the delivery of services in Scotland. Within areas of devolved competence, the Parliament may choose to act differently from the rest of the UK, but it will have to accept the political, financial and other consequences of doing so.

6. **In a limited number of areas it may be desirable to devolve executive responsibilities but reserve legislative competence,** a combination known as 'executive devolution' as discussed in DSWR(97)3. Options for achieving this are: devolving competence for secondary but not primary legislation; agreeing a non-statutory UK framework for the discharge of relevant functions and responsibilities; and agreeing arrangements under which the Scottish Executive might act as the agent of the UK Government. These arrangements have advantages and disadvantages: in all these cases the Scottish Executive would need to remain subject to scrutiny by and accountable to the Scottish Parliament for its actions within the relevant primary legislation, framework or agency agreement. It would also be accountable to the UK Government under agency agreements.

7. **Certain other general considerations are relevant.**

There should be a mechanism for *changes to devolved powers* with the consent of both Parliaments: these are likely to be necessary to correct mistakes in the initial settlement and in the light of experience and unforeseen developments. The mechanism should be developed and agreed in parallel with the drafting of legislation defining reserved and devolved powers.

There should be a mechanism (or a number of different mechanisms) for *consultation* between the UK Government and the Scottish Executive reflecting the present role of The Scottish Office, under collective responsibility, in relation to the formation of UK policy positions. These mechanisms will also be of significance in areas where the responsibilities of UK Departments in reserved matters (eg social security, the Employment Service) have a particular impact on devolved competencies; or where the exercise of devolved competencies would have a particular impact on UK Departments' responsibilities eg in relation to the implementation of EU law..

Much *UK/GB legislation* governs the current activities of The Scottish Office in areas to be devolved. In general, such legislation will remain in place and will provide statutory authority for the Scottish Executive's activities unless and until a Scottish Parliament enacts its own legislation.

Many *UK/GB bodies* provide advice or discharge functions in devolved areas. In general, such bodies should continue to have a UK/GB remit, subject to suitable arrangements for the Scottish Parliament and Executive to: participate in appointments to such bodies; approve their remits, corporate or strategic plans and

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work programmes; commission work and receive and scrutinise reports from such bodies; and generally have access to their expertise, services, capabilities and outputs. These arrangements can be agreed in discussion between Departments.

Where devolution leads to a transfer of responsibilities which are not presently held by The Scottish Office, it will be necessary to agree an appropriate *transfer of resources* including running costs and programme provision.

Reserved matters

8. **Certain key functions and responsibilities should be reserved to Westminster.** Underlying these is the need to maintain (a) a UK foreign and defence policy, including policy towards Europe; (b) a UK defence and national security policy; (c) a stable UK fiscal, economic and monetary system; (d) a broadly level playing field for trade, against the background of EU legislation and (e) uniform protection of GB external borders, recognising that there will be no internal borders.

9. **Table 1 of the Annex lists functions and responsibilities which should be reserved.** Most of these follow from the principles stated above. Most will be widely accepted. Some proponents of an active and responsible Scottish Parliament will argue that some of the matters listed in Table 1 should be devolved rather than reserved. This group of functions will include some relating to trade and industry matters, for example monopolies and mergers and the oil and gas industry. The proposed reserved powers are those judged necessary to ensure a continued single market within the UK in the light of European requirements.

10. Some functions listed in Table 1 do not form part of the Scottish Office's present responsibilities and should not be devolved at the outset, but may be considered for later devolution in the light of experience of the new arrangements. This group includes matters relating to social security and employment benefits and services. Devolution of these matters at this stage would involve substantial additional administrative complications. The Committee will wish to note, however, that the SCC proposed that the Parliament should have an interest in the "strategic planning of welfare services"² and that there will be very close links between some policies which will be devolved (eg training) and some which will not (eg employment). Arrangements for consultation and in some cases reporting to the Scottish Parliament will need to reflect this, and there will need to be flexibility to take into account further changes in policy on employment and training.

Devolved matters

11. **Other matters should be devolved,** in line with the SCC's desire to ensure accountability in Scotland for Government actions in Scotland at the minimum to the extent that they fall within the present responsibilities of The Scottish Office. The remaining tables in the Annex list these grouped by the present Scottish Office departments. The tables are summarised below, with attention drawn to areas in which the proposals go beyond the

² *Scotland's Parliament, Scotland's Right* (the report of the Scottish Constitutional Convention), 1995, p.32.

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existing responsibilities of the Scottish Office or are otherwise likely to attract particular interest.

Agriculture, Environment and Fisheries Most functions and responsibilities should be devolved. There is a significant European dimension to policy-making and administration. Here and elsewhere it will be necessary to devise acceptable mechanisms for agreeing UK negotiating positions and ensuring implementation of agreements, which will fall to the Scottish Parliament as part of its devolved responsibilities for these policy areas. The Intervention Board for Agricultural Produce (IBAP) should remain a UK body and certain of its powers will need to be reserved. Responsibility for forestry should be devolved, which may have institutional implications for the Forestry Commission.

Development Most functions and responsibilities should be devolved. Transport responsibilities should be aligned to produce a coherent set of responsibilities in Scotland, notably in relation to bus regulation and the railway industry. Inland waterways currently a DoE responsibility, should be devolved. Housing should be devolved but relevant taxation matters (eg MIRAS) will be reserved as will associated benefits matters (see paragraph 10 above). Legislative and executive responsibility for local government should be devolved, subject to any overall expenditure controls, and possible reservations to ensure that the Parliament's powers to legislate on local taxation do not disrupt the national taxation system.

Education and Industry Most functions and responsibilities should be devolved in line with the clearly established Scottish Office responsibilities in these matters. Industry matters would of course be subject to the reservations discussed at paragraph 9 above. Research Council funding should continue to be administered at the UK level although the Scottish Executive will be able to fund research in the higher education sector, as now, through SHEFC and research associated with the Parliament's other competencies. Benefits and other matters relating to the Employment Service should be reserved for the time being (see paragraph 10 above). Financial assistance to industry should be devolved subject, where appropriate, to consultation with other UK industry departments.

Health The administration of the National Health Service in Scotland should be devolved, along with the pay and training of relevant professionals. Where professional regulation is governed by UK statute, it should be reserved. Certain highly sensitive areas of policy, covering such matters as abortion, human embryology and genetic research, would logically be devolved along with responsibilities for the health service and Scots civil and criminal law. It would be surprising not to give the Parliament responsibility for matters of such close interest to the Scottish community but it is to be expected and important that the existing UK-level advisory and executive machinery would remain.

Home Policy relating to most civil and criminal law, the judicial system and the police, probation and associated matters including the responsibilities of the Lord Advocate for the Courts, the legal system and criminal prosecution should be devolved. The fire service should also be devolved. There would be some

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reservations in key areas including national security, elections to the UK and European Parliaments and other constitutional matters, some aspects of commercial law and controls on drugs, medicines and firearms.

Others Responsibility for official statistics (including the Census) and for civil registration should be devolved, subject to appropriate consultation to ensure provision of harmonised UK/GB statistics and the maintenance of standards.

Summary and conclusion

12. The Committee is invited to:

- (a) agree the basis for determining the **powers and functions of a Scottish Parliament set out at paragraph 2;**
- (b) note the general considerations at paragraph 7 concerning the handling of **changes to devolved powers, consultation, UK/GB legislation and bodies and transfers of resources;**
- (c) give general agreement to the basis for and description of **reserved powers** set out at paragraphs 8 to 10 above and Table 1 of the Annex;
- (d) give general agreement to the description of **devolved powers** set out at paragraph 11 above and Tables 2 to 8 of the Annex; and
- (e) invite officials urgently to complete the detailed work where this is required.

D.D.

The Scottish Office
15 May 1997

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Mr Blair



Mr Thompson

Prime Minister

He has played his

Card!

R 25/6

B/S BHM L20B HTE

B/S

Mr J Brown

B/S/S

D. J. ...

B/S/DH

Mr Blair

B/H/D

Ms Alexander

CP

Solicitor

Mrs Stewart

Ms Munro

Mr Gordon

Mr O'Connell

Mr ...

DEVOLUTION: POWERS AND FUNCTIONS - HEALTH SERVICE ETHICAL ISSUES

I have seen the Lord Chancellor's minute to you of 21 May, recording the outcome of discussion in DSWR on 20 May. I am very glad that we have been able to reach general agreement on our proposals for reserved and devolved matters (subject to some further detailed work) and I am very grateful to colleagues for their positive and helpful approach.

I fully appreciate that there are strongly held views on the highly sensitive areas of health policy which the Lord Chancellor discusses in his minute. I indicated at the meeting that I could see the case for reservation of human embryology and genetics (including xenotransplantation and cloning) but that the subject of abortion should be devolved given that it is integral to health provision in Scotland and an issue on which the community in Scotland would expect to have its voice heard.

I accept, however, that the arguments are very finely balanced, as the range of views in the Committee indicated. I have reflected carefully on this with my own Ministerial colleagues and I have concluded that a credible case can be sustained for reserving the subject as long as we can demonstrate that adequate account will be taken of Scottish opinion through the establishment of procedures which ensure that the Scottish Executive is fully consulted on developments in abortion policy; and as long as it is clear that what is being reserved is the regime set out in the Abortion Act 1967 and not the relevant offences which are governed by the criminal law of Scotland, as the Solicitor General notes in his letter of 22 May to the Lord

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Chancellor I suggest, therefore, that the way forward should be to agree that we reserve abortion policy but that there are further discussions between officials on the precise arrangements for ensuring consultation of Scottish interests.

Assuming that this point can be settled on this basis, this will leave us with a very satisfactory agreement on the general shape of the matters to be reserved to the Westminster Parliament and the matters to be devolved to the Scottish Parliament and Executive.

I am copying this minute to members of CRP and DSWR, to the Minister without portfolio and to Sir Robin Butler.



DD

18th June 1997

...the example of one European... that he will fight successfully to... United Kingdom presidency of... Does he understand that if he... it will show that he has no

another and now we make a regulatory system... matches the needs of consumers. What impact that will... have on fares in the long term it is too early to say, but... that approach is the right one—rather than leaving it to... market forces—and I hope that it will be welcomed by... the hon. Gentleman's constituents.

As a matter of fact, I can. Last... work done by my noble Friend... we have secured a considerable... telecommunications regime, which... getting rid of the European... indering the development of the... ope that we can join hands across... that.

Engagements

Q11.(30904) Mr. Bill Mitchell: I welcome my right hon. Friend's answer to the question asked by my hon. Friend the Member for Brent, East (Mr. Livingstone) on industrial relations and the forthcoming Bill. May I draw my right hon. Friend's attention to... which concerns 350 workers who have been sacked by management even though they went through the proper legal procedures? Will the new legislation ensure a level playing field for workers and employers and prevent the present problem of the unions having to obey the law while, for some strange reason, employers can flout it?

the Prime Minister agree that the... extremely worrying? Does he also... me the worst thing that Europe has... my right hon. Friend tell the... when he meets Mr. Milosevic... leave him in; no doubt that the... has learnt the lesson of... and that we will not stand idly by... ethnic war in Europe?

The Prime Minister: The purpose of the proposals is... to make it clear that there has to be fairness in the work... place. I know about the Magnet dispute since it happened... just outside my constituency. I very much hope that the... Advisory, Conciliation and Arbitration Service can be... involved. I know that it was at one point but it is not at... present. I hope that the negotiations can resume. That is... easily the best way to resolve the dispute.

The Foreign Secretary will give... Milosevic very strongly. The situation... is grave. That is why the Foreign... ended his programme to see... now and he will deliver him that... again the importance of the role that... merely in Bosnia but in the whole... bringing peace and attempting to... ing. I have no doubt that if there is... ere, or indeed in Bosnia, it will have... on the whole of Europe as well as

Dr. Fox: Responsibility for abortion is not to be devolved to the Scottish Parliament, yet on 29 January, Hansard reported the Under-Secretary as saying—

Ministerial Visits

When he next plans to visit... ky.

Madam Speaker: Order. The hon. Gentleman knows that he may not use quotations at Question Time.

IF THERE WAS TO

Dr. Fox: The Under-Secretary said that if... be change to the abortion law in Northern Ireland, it should be considered by a devolved assembly. Why should there be such a difference between Northern Ireland and Scotland?

I fear that I must give the hon. reply as I gave him last time. I have... constituency yet. I am sorry about

The Prime Minister: Scotland and Northern Ireland need not necessarily be treated in the same way across the various programmes for devolution. One of the points of devolution is that what happens in Northern Ireland or in Scotland is a matter of debate and can be decided in different ways.

disappointed and I shall keep trying... cause many of my constituents who... sport would like to meet the Prime... re that since 1974, the cost of rail... l by 78 per cent. above inflation and... d has increased by 57 per cent. above... st of private car travel has decreased... not that an indistment of the previous... green tax in reverse? Will the right

Q12.(30905) Ms Beverley Hughes: Does my right hon. Friend agree that the deal brokered by Kofi Annan to allow access to presidential sites must be tested as soon as possible to ensure that Saddam Hussein does not renege on commitments that he has entered into? Does my right hon. Friend also agree that it is important that the policy of diplomacy backed by force remains in place?

TeamMail - Received Mail

Sender.....: Colquhoun J (Jayne)
Recipient.....: Kernohan N (Norrie)
Subject.....: RE:RE:RE:I - Abortion and devolution
Sent.....: 05/03/1998 12:51

To 10 line on abortion:

Spokesman said:

'The Abortion Act 1967 established common arrangements for abortion in England, Scotland and Wales.

'The Government believes it makes sense to stick to that principle and will be doing so.

'The PM was highlighting the fact that there has always been a different abortion regime in Northern Ireland.'

The subject was not raised at this morning's lobby briefing.

Maean '98