



People and Communities

Taking forward
our National
Conversation

Choosing Scotland's Future

A National Conversation

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Foreword

Health, housing, law and order, transport and issues relating to children are all areas where Scotland has seen major progress since devolution. The ban on smoking in public places, free personal care, the transformational change programme Getting it Right for Every Child – ensuring every child in Scotland gets the help they need, when they need it, an internationally acclaimed approach to homelessness, and record numbers of police are just a few of the examples covered by this paper.

Despite such achievements and the wide extent of devolution in these areas the Scottish Parliament is constrained by the current devolution settlement in how it can tailor policy to suit Scottish needs and circumstances. The Scottish Parliament does not have responsibility for setting National speed limits or drink-driving limits, or firearms all of which are crucial to the safety and health of communities. Nor does it control the social security system or the taxation levers which are crucial to the management of the housing market and to the provision of financial support with the costs of childcare.

The Scottish Government believes that independence is the best way forward for Scotland, but we recognise that a range of views on Scotland's future and the type of government that will best equip Scotland for the future exist. This paper explores the implications of various options ranging from the status quo, through increased devolution and full independence. As part of the National Conversation we welcome and encourage discussions on the issues raised.

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Executive Summary

- *Choosing Scotland's Future* began a National Conversation on the type of government which will best equip Scotland for the future. This paper continues that conversation, discussing health, children, housing, law and order, and the safety and social policy aspects of transport. These are areas where the devolved responsibilities of the Scottish Parliament and Government are extensive but are nevertheless constrained in some respects by the limitations of the current devolution scheme.
- Scotland's law and legal system have been distinct from that of the rest of the British Isles since long before the Union of 1707. Their integrity and independence were enshrined in the Treaty of Union. The distinctiveness of Scotland's education system is also long-established, with different examination systems from those in the rest of the UK and longer degree courses. More recently, devolution has seen different Scottish approaches to the National Health Service – avoiding the competitive model developed south of the border – and to law and order, housing and transport policy.
- All these areas have seen significant progress during the ten years of devolution. Examples include the ban on smoking in public places, free personal care for the elderly, an ambitious policy on homelessness, Curriculum for Excellence, the Air Discount Scheme and record investment in policing giving Scotland the highest ever police numbers and lowest levels of recorded crime in almost 30 years.
- Despite these successes, gaps in the range of policy levers available to the Scottish Parliament have been evident. These include the reservation of social security benefits, which for example, limit the Scottish Parliament's ability in housing to provide solutions to distinctly Scottish challenges – such as our colder climate and more people living in rural areas. In addition reservation of the appropriate penalties for offences results in the Scottish Parliament not being able to take account of, and address Scotland specific patterns of drug consumption.
- The report of the Commission on Scottish Devolution, although constrained in its remit from considering the opportunities of more substantial constitutional reform, made some modest but welcome proposals for additional devolution. These include responsibility for restricting use of air guns, Stamp Duty Land Tax and powers relating to drink driving limits. The Commission also recommended that when dealing with asylum seekers, relevant UK authorities recognise the responsibilities of Scottish authorities for the well-being of children in Scotland.
- The Scottish Government has welcomed these proposals and pressed the UK Government for early implementation. However, in the view of the Scottish Government these recommendations do not go far enough. It seems inconsistent, for example, that under the Commission's recommendations Scottish Ministers would have the ability to determine a drink driving limit in Scotland, but not that to set differential limits and that the Scottish Parliament should be responsible for legislation of airguns, but not firearms generally.
- It also seems inadequate that while the Commission proposed devolution of Stamp Duty land tax the majority of Scottish tax revenue would continue to be determined by the UK Government. In practice, the devolution of only a small subset of taxes

could increase uncertainty in Scotland's finances, because the Scottish Government is not allowed to borrow or adjust other taxes should the tax base change.

- “Devolution max” would enable the Scottish Parliament to enact primary legislation on almost all issues. Foreign affairs, defence and aspects of macro-economic policy would remain reserved. While many of the opportunities for the policy areas in this paper delivered by devolution max, would be similar to those delivered by independence, in practice, the real level of autonomy provided may be limited, given the implications of the UK and not Scotland, being the sovereign state. Constraints on Scottish policy making would remain for key aspects of economic policy and the negotiation of international agreements would remain reserved.
- It is the Scottish Government's belief, therefore, that independence presents the best future for Scotland. An independent Scotland would have a full set of policy making tools, allowing it to ensure alignment of all policy in Scotland. For example, currently, housing policy is affected by decisions on Housing Benefit, and children and childcare policy is influenced by levels of support for carers. Housing Benefit is decided and managed at a UK Government level, while support for carers is determined at a Scottish and UK Government level. This mix of responsibilities is confusing for those in receipt of social security benefits, and at times results in Scottish government policy and the design of social security benefits being misaligned.
- Independence would of course not inhibit mutually beneficial cooperation agreements with the residual UK, building for example on the existing cross-border arrangements to enable specialist health treatments.

1 Introduction

The National Conversation

- 1.1 *Choosing Scotland's Future*¹ is the basis for a National Conversation on the type of government which will best equip Scotland for the future. The aim of the National Conversation is to promote an inclusive, open and full debate about available constitutional options. This report is part of the ongoing debate². It is the Scottish Government's belief, however, that independence is the natural state for nations like Scotland and that only with complete responsibility for its own affairs and fiscal framework can Scotland reach its full potential as a truly successful nation in a global economy. As the culmination of this debate, the Scottish Government will publish a White Paper on St Andrew's Day 2009. The Scottish Government will then introduce a Referendum Bill to Parliament in 2010 so that a referendum can be held on Scotland's constitutional future.
- 1.2 This paper focuses on housing, law and order, children, health and aspects of transport – areas where the devolved responsibilities of the Scottish Parliament and Government come closest to a complete set of responsibilities to make laws and policy for Scotland, but which nevertheless are subject to important limitations under the 1998 devolution legislation.
- 1.3 The paper also considers the recommendations of the Commission on Scottish Devolution relating to these issues. The Commission's recommendations are essentially that there should be little alteration in Scottish Parliament responsibilities in these policy areas. The Commission's remit was, however, constrained and it could not consider independence. The National Conversation allows the opportunity to consider and to debate more fundamental options.
- 1.4 This paper is structured as follows:
 - Chapter 2 examines the implications of the current devolution arrangements;
 - Chapter 3 considers the potential impact of the Commission on Scottish Devolution recommendations;
 - Chapter 4 examines what the future could look like under more extensive devolution or complete independence; and
 - Chapter 5 presents conclusions.

¹ Choosing Scotland's Future <http://www.scotland.gov.uk/Topics/a-national-conversation/White-Paper>

² Choosing Scotland's Future www.scotland.gov.uk/Topics/a-national-conversation

2 Current Arrangements

Chapter Summary

- Most aspects of housing, health, policy relating to children, law and order and transport are already devolved.
- Since devolution much has been achieved in these areas, such as Curriculum for Excellence – the biggest reform of the education system for a generation, and the introduction of the Air Discount Scheme to promote inclusion in some of Scotland's most remote areas. In addition, Scottish approaches to health have seen the development of a mutual NHS, the ban on smoking in public places and free personal care.
- However, successive administrations have been constrained in policy-making through not having full responsibility for all policy implemented in Scotland, such as maximising the contribution of services to improve the lives of our children and young people.

Introduction

2.1. The Treaty of Union preserved Scotland's separate legal system within the United Kingdom. Scottish education has also developed a distinctive tradition, built on the foundations laid before the Union, and taken forward through measures such as the Education (Scotland) Act 1872, making education compulsory for those between 5 and 13. Since 1999 the Scottish Parliament has had devolved responsibility for most aspects of housing, health and transport. There are, however, significant exceptions to the Parliament's responsibilities. This chapter examines the achievements and limitations of the current devolution arrangements.

Housing and Regeneration

2.2. Scotland is able to take a distinctive approach to its housing and regeneration because large parts of policy-making are devolved, including funding, land-use planning, tenancy rights, housing quality, property law and regulation of landlords. Successive Scottish Parliaments and Governments have worked within their devolved responsibilities to improve Scottish housing and support regeneration. Significant progress has been made in the first decade of devolution, including internationally acclaimed homelessness legislation, a range of radical measures to improve the condition of housing stock in the social and private sectors, and introducing the first national mortgage support scheme for homeowners at risk from repossession.

2.3. The present Scottish Government has set out an ambitious framework to meet the housing needs of all of Scotland's people and communities and - crucially - to unlock sustainable economic growth. An adequate supply of housing is as essential for labour mobility as it is for quality of life. Investment in housing directly and indirectly contributes significantly to the Scottish economy – around £5 billion in 2006 or around 6% of GDP according to external sources³.

³ McKay Consultants "The Economic Value of the Housebuilding Industry in Scotland" (November 2007) Homes for Scotland.

2 Current Arrangements

2.4. Key achievements include:

- a record £644 million invested to deliver more affordable housing this year;
- £50 million provided to kick-start a new generation of council house building - the biggest programme in 30 years;
- 14,430 free central heating systems installed in older people's homes in 2008/09, a record number, helping many of the poorest and most vulnerable in society;
- the Home Insulation Scheme established, which will be underpinned by £15 million of Scottish Government money, complementing the new £60 million Energy Assistance Package;
- a £11.2 million ePlanning initiative put in place that will make Scotland's planning system simpler, faster and more accessible, providing a consistent level of service throughout the country;
- the implementation of the Home Report to bring better information on house condition and value into the Scottish housing market; and
- a range of measures to support housing in the face of the global recession.

Box 1: Case Study: Addressing the recession

The Scottish Government has taken decisive action, as far as possible within its current responsibilities, to respond to the global economic downturn. Housing has been at the heart of that response. Action has included:

- bringing forward £120 million of affordable housing investment from 2010-11 to support house-building in partnership with local authorities who provided £40 million. This has helped preserve production capacity in the building industry.
- expanding Open Market Shared Equity with a £60 million budget in 2009-10 to help more families to buy at the lower end of the housing market.
- an urgent review of the ways in which reserved or devolved legislation should be strengthened to protect people under threat of repossession and the launch of a new Home Owners Support Fund. Together with the Mortgage to Rent Scheme and a new Mortgage to Shared Equity Scheme, this is helping provide £35 million to protect home-owners facing repossession.

The Scottish Government is continuing to support six Urban Regeneration Companies (URCs) across Scotland to deliver their ambitious plans for the transformation and regeneration of their areas. The URCs have adapted their plans to respond to the economic downturn and to create the right environment for development when markets recover. And, taking account of the contribution made by Scotland's town centres to the economic and social fabric of the nation, the Scottish Government created the £60m Town Centre Regeneration Fund to support the improvement of Scotland's town centres and local high streets. In turn this will support local economies through the economic downturn.

- 2.5. There are, however, significant limitations on the ability of the Scottish Government and Parliament to take action to deliver the housing which Scotland needs. To take just one example, their ability to respond to the recession has been severely limited by the inflexibility of the funding arrangements under the Barnett formula. More generally, crucial policy levers such as inheritance tax, stamp duty and the social security system are reserved to Westminster.

- 2.6. The distinctive features of the Scottish housing landscape mean that an approach which may be appropriate in other parts of the UK will not necessarily deliver for Scotland.
- 2.7. As well as having different legal arrangements in areas such as property law, housing in Scotland has traditionally been more affordable than the UK average and the housing market has, in general, been less volatile. Scotland has less private housing and a higher proportion of households have tended to meet their housing needs through the social rented sector. Though the proportion of households socially renting in Scotland has been falling in recent years to a level closer to that in England, this difference remains.
- 2.8. In terms of house type, Scotland has more than twice as many flatted properties as England, with 36% of all homes being flats compared to only 17% in England. The way in which Scottish homes are built differs from that elsewhere in the UK. For example, Scotland has a significantly higher proportion of solid wall or timber construction homes than England and these are not suitable for cavity wall insulation. And Scotland's climate, which also affects approaches to energy efficiency and fuel poverty, is, on average, colder than the rest of the UK.
- 2.9. These differences mean that current arrangements, whereby the UK Government retains key responsibilities – the tax and benefits systems, the regulation of lending, consumer protection and businesses offering housing services, and borrowing – can, and in practice often do, thwart the revitalisation of housing in Scotland. Differences in housing law can mean that the fit of UK regulation with Scottish circumstances can be compromised. Differences in tenure pattern is a crucial factor on the design emphases of housing policy while the differences in the type of Scottish homes and the way in which they are built means that approaches to improving housing conditions and energy efficiency need to be tailored to suit Scottish circumstances. The greater degree of rurality and generally colder climate in Scotland mean that a one size approach across the UK will not always be to Scotland's advantage. These issues are discussed in detail in the following chapters.

Health

- 2.10. Since the formation of the National Health Service in 1948 a fundamental principle has been the provision of healthcare services delivered free for those who need them. This Scottish Government is wholeheartedly committed to publicly funded healthcare services for the people of Scotland.
- 2.11. There are 14 territorial (geographically based) NHS Boards in Scotland. The Boards differ in size, population served and the services capable of being provided locally. The Scottish Government provides each Board with an annual funding allocation to support the delivery of services. In addition, there are 7 Special Health Boards, supported by the Common Services Agency, that provide support services for the whole of the NHS in Scotland. For example, NHS Education Scotland provides postgraduate education services for healthcare professions and related advice and support.
- 2.12. The NHS in Scotland is distinct from that south of the border. Instead of a competitive "internal market", Scotland has a long-standing and robust integrated healthcare system that sees Government and NHS Boards working collectively and in collaboration towards common goals. What this means for the people of Scotland is that if an individual needs specialist advice and/or treatment then their General

2 Current Arrangements

Practitioner will refer them to a hospital or treatment centre either within their own Board area or elsewhere if their local Board does not provide the relevant service(s).

2.13. The devolved health budget is currently £11,030 million, which makes up over a third of the overall Scottish Government Budget of £32,900 million in 2009-10. The equivalent figures for 2008-09 were £10,644 million and £31,317 million respectively. The level of the total Scottish Government Budget is informed by the Barnett formula, which determines changes to the assigned budgets of the devolved administrations. However, the increases applied to individual portfolios are determined by the Scottish Government.

2.14. The achievements of the NHS under devolution demonstrate how Scotland has been able to take a different approach from the rest of the UK to ensure the best possible health services for the people of Scotland. Key achievements include:

- continuous and sustainable improvements in access to NHS services. Waiting times have been reduced from a pre-devolution high of 12 months for in-patient and day-case treatment to the current 12 weeks target for out-patient consultation and for in-patient and day-case treatments. Such tremendous progress has been made by bringing in new and more efficient ways of working as well as more investment in capacity. The skills of nurses and allied health professionals have been utilised to enable them to take on more roles and give patients more choice. Better workforce planning has ensured that the right staff with the right skills are available in the right place to treat patients. New diagnostic and other equipment has been introduced along with more strategic and effective use of IT such as the development of the single patient record; and
- In recent years, Scotland has received international recognition for its world-leading approaches to healthcare quality improvement, through groundbreaking initiatives such as the Scottish Patient Safety Programme which is being implemented in every NHS Board and is designed to improve the safety of care by:
 - reducing healthcare associated infection;
 - reducing adverse surgical incidents;
 - reducing adverse drug events;
 - improving critical care outcomes; and
 - improving the organisational and leadership culture on safety

Box 2: Case Study – Free personal care

Free Personal and Nursing Care has been one of the most high-profile and defining policies under devolution. It currently improves the lives of over 50,000 vulnerable older people in Scotland.

Around 42,000 people now receive personal care services at home at no charge allowing them to remain in their own homes and live independently for longer.

9,600 self-funders in care homes receive a weekly payment of £153 towards their personal care and around 6,100 of them are also receiving £69 per week towards their nursing care costs.

Recent statistics show that as more people benefit from free personal care in their own homes, there are fewer free personal care clients in care homes. This is firmly in line with the Scottish Government's policy of shifting the balance of care from residential care, and supporting more people to remain in their own homes for as long as possible.

The introduction of Free Personal Care in Scotland did however raise issues surrounding the existing Attendance Allowance benefits administered by the UK Government, which are explored further in Chapter 4.

- 2.15. Under devolution Scotland has also seen major progress, and achieved international recognition, for its innovative and aspirational approach to public health. Scotland led the way in the UK with legislation to ban smoking in public places. Other achievements range from a programme to tackle Hepatitis C to far-reaching proposals to address alcohol misuse.
- 2.16. The NHS in Scotland also contributes directly to growth in the Scottish economy not only by improving the health and wellbeing of the working age population but also through the significant investment in world-class research and development in medical/life sciences technology and innovation, and by pursuing continuous improvement in the quality of the healthcare services it provides.

Box 3: Case Study – Smoking Ban

On 26 March 2006, Scotland became the first part of the UK to ban smoking in enclosed public places. The legislation has been hailed not only as the most important piece of public health legislation since the introduction of the NHS but as a defining moment in devolution. It is widely acknowledged that, in the absence of the leadership shown by the Scottish Parliament, smoking bans would not have subsequently been introduced elsewhere in the UK.

However a number of areas relating to tobacco in which the Scottish Government does not have the ability to legislate remain and which therefore restrict the Scottish Government's efforts at reducing the harmful effects of smoking. These include pack size and plain packaging.

The Smoking Prevention Working Group, a panel of experts set up to advise Ministers on reducing smoking rates in Scotland, highlighted concerns around packets of 10 cigarettes. Recent research suggests that the majority of under-age smokers purchase packets of 10 cigarettes. A number of countries, including France, Australia, New Zealand, Canada and 14 states in the US have banned the sale of packets of 10 cigarettes as part of wider youth prevention strategies. Following more detailed research in this area, Ministers in Scotland were minded to take powers in the Tobacco and Primary Medical Services (Scotland) Bill to ban packs of 10.

However, this was not possible as the Scottish Government and Scottish Parliament do not currently have the legislative ability to do this. At a UK level, the opportunity to take the power to ban packets of 10 cigarettes in the Health Bill was not explored.

Law and Order

- 2.17. Scots law and the Scottish legal system have a long history, dating back to the medieval era. For example, the Faculty of Advocates can trace its roots back to before the College of Justice was established by an Act of the Scottish Parliament in 1532. The integrity and independence of the law and legal system were acknowledged in the 1707 Act of Union.

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- 2.18. Law and order issues in Scotland today are largely devolved. Scotland has its own criminal justice legislation; its own police forces (with operational independence and clear accountability); an independent prosecution service, headed by the Lord Advocate; its own court and prisons services; and distinctive arrangements for the delivery of offender management through local authority criminal justice social work services. Consequently, in many areas of law and order Scotland can and does develop distinct policies.
- 2.19. Devolution has given successive Scottish Governments the authority to make large-scale and radical reforms to the criminal justice system, recognising the serious challenges faced in our communities. Over the past 10 years, aspects of the criminal justice system have been significantly overhauled – institutions, policies for protecting communities and addressing reoffending, the prisons system, and the criminal justice investment programme. Devolution, with its enhanced Parliamentary scrutiny and accountability, has sharpened the focus on measures to deal with the root causes of offending and to address Scotland’s destructive relationship with drugs and alcohol.
- 2.20. Over the past decade the Scottish Parliament has passed a series of ground-breaking measures to enable better outcomes in criminal justice. Alongside these changes in the law we have seen major changes in the operational systems of the main law enforcement agencies, a new focus on smarter measures to deal with anti-social behaviour and low-level crime, enhanced support for victims and witnesses, and a raft of interventions to combat violence including knife crime.
- 2.21. Key achievements in this period include:
- **Renewal of criminal justice institutions:** The overhaul of both the High Court and the summary courts, and reforms to the work of the police, prosecution and courts, to tackle the delays experienced by many who come into contact with the criminal justice system, to improve speed and efficiency, and to provide robust alternatives to prosecution for crimes that do not need to come to court;
 - **Innovative programmes:** The current Scottish Government has set out the first national drugs strategy in a decade and has introduced new and more effective arrangements for local action on drugs. Sweeping new initiatives on alcohol have been announced to bring about a long-term change in Scotland’s relationship with drink and to reduce drink-related crime. New programmes have been introduced to educate young people about knives and violence and to tackle teenage gang violence;
 - **Addressing offending and reoffending:** record investment in the police has given Scotland its highest ever police numbers and the lowest levels of recorded crime in nearly thirty years. Additional resources are going into community penalties to make them more immediate, speedy and robust. A new strategy for offender management aimed at reducing reoffending is being progressively rolled out through local authorities, the prisons service, and third sector partners.
 - **Supporting communities:** new laws are in place to enable the police and others to deal effectively with anti-social behaviour. The Scottish Parliament is now considering proposals to break the cycle of reoffending and to enable offenders to pay back to the communities they have offended against. The Commission on English Prisons has described these proposals as Scotland taking "a courageous lead in the UK". CashBack for Communities is another distinctively Scottish approach, reinvesting the proceeds of crime to intervene early in the cycle of crime

At least £13 million is committed through to 2011, and the initiative has already engaged over 100,000 young people. In addition services for victims and witnesses have been overhauled and strengthened and additional protection has been built into our legal framework for children and victims of hate crime.

- 2.22. Scottish Governments have taken ambitious and far-reaching measures to help build safer and stronger communities. Progress since devolution shows how much can be achieved when all the relevant levers for improvement – law, regulation, services, systems, investment – come together to work for better outcomes and when there is strong cooperation between national and local government.
- 2.23. However, there remain several important areas which remain reserved to the UK Government. These include firearms and drink driving limits, which are discussed in Chapter 3.

Transport

- 2.24. The Scottish Government's aim is to create a successful Scotland with a well connected, safe and reliable transport system, which helps deliver higher levels of sustainable economic growth. The Government has invested to provide good quality public transport that is integrated, accessible and affordable, and which supports all communities including those in more remote areas of Scotland. It also supports and encourages the use of more sustainable and active travel modes to contribute to a greener, healthier Scotland.
- 2.25. While many transport functions in Scotland are already devolved, a number, such as aviation, remain reserved to the UK Government. However, in recognition that high fares to and from Scotland's peripheral communities could act as a barrier to social inclusion, the Air Discount Scheme was introduced in May 2006, under the European Commission's *'Aid of a Social Character'* mechanism.

Box 4: Case Study – Air Discount Scheme

The Air Discount Scheme (ADS) was introduced as a means of facilitating a better level of social inclusion in Orkney, Shetland, the Western Isles, Islay, Jura, Caithness and North West Sutherland. Residents benefit from a 40% reduction on the core fare for air travel within these areas and to and from Aberdeen, Edinburgh, Glasgow International and Inverness Airports.

The Scheme has proved popular with residents since it was introduced, with around 83% of the population in membership and over 500,000 discounted tickets purchased. As well as reducing the cost of air travel, the Scheme improves connectivity and reduces journey times in the Highland and Islands.

In February 2008, the European Commission agreed that the Scheme could continue for a further 3 years through to 31 March 2011. A full socio-economic impact assessment of the Scheme will be conducted during 2010 to ascertain whether it should continue, with or without enhancements.

- 2.26. The success of the Air Discount Scheme provides an excellent example of a scheme which only applies in Scotland, introduced and working successfully to provide a unique solution to suit particular Scottish circumstances and geography.

Children

- 2.27. For many years Scotland has had its own curriculum framework and qualifications system, with different lengths of compulsory primary and secondary education and different school exam systems. With devolution in 1999, the Scottish Parliament gained legislative authority for the entire education system. Much has been achieved since devolution to make sure the system is fit for purpose in the 21st century.
- 2.28. The Scottish Government and Parliament have responsibility for pre-school education, childcare provision, children's services, the children's hearings system, social work and youth work. However, financial support with the costs of childcare, provided through childcare vouchers and the childcare element of the working tax credit, are reserved matters.
- 2.29. The Scottish Government and its partners in local government are committed to maximising the opportunities for all children to get the best start in life and to improving the outcomes for children, young people and families at risk. Together these will provide a strong platform for the future success of Scotland. The Government and local authorities have also implemented an ambitious programme of improvement designed to ensure that every child in Scotland gets the help they need, when they need it. Getting it right for every child (GIRFEC) is a transformational change programme which threads through child centred policies and will result in shared understanding and common language across all services working with children. It targets planning and action to address a child's needs and risks. It streamlines procedures and reduces overlap to reduce resources. Key elements of this are:
- putting in place a long-term framework aimed at transforming early years services so that they move from crisis-management to prevention, early identification and early intervention, with service providers working together to meet the needs of individual children and their families;
 - reforming and modernising the Children's Hearing system, Scotland's distinctive system of care and justice for its children and young people and
 - improving the way in which Scotland's looked after children, including those in residential care, are cared for and supported.

Box 5: Case Study - Childcare

The Scottish Parliament is committed to ensuring every child in Scotland has a strong start in life. Not only is this key to children's future outcomes, it also brings improvement in human capital, supports greater equity of outcomes, and as a result, promotes sustainable economic growth.

During the current Parliamentary session:

- The Early Years Framework (EYF), published in December 2008, strengthened the Scottish Parliament's commitment to the importance of affordable, flexible and accessible childcare. It also states the long-term aim of ensuring access to integrated pre-school and childcare services in every community matched to an assessment of local needs and demand. Single outcome agreements and the community planning process will be the key local mechanisms for putting the EYF into practice and will allow local partners to ensure the needs of their local area are reflected in childcare.

- The Scottish Government, in partnership with local government, has already extended the provision of pre-school entitlement from 412.5 to 475 hours per annum for 3 and 4 year olds, and is working to deliver the commitment to increase pre-school provision to 570 hours from August 2010.

Under the current constitutional settlement, financial support to parents for childcare is provided through the tax credit system and childcare vouchers, which are reserved to the UK Government, while childcare provision is devolved to the Scottish Government.

Many people⁴ find the current UK Government arrangements for financial support through the tax and benefits system to be unduly bureaucratic and complex. The split in responsibilities for childcare funding between the UK and Scottish Government can be confusing, resulting in parents being unsure of which government is responsible for different parts of childcare funding. There are also concerns that the childcare element of the Working Tax Credit is not working as effectively as it could as parents find it difficult to negotiate. As a result, many parents are put off applying and those who do apply can experience miscalculations which can result in unnecessary pressure being put on families.

In view of these issues the Scottish Parliament has:

- pressed the UK Government to introduce a simpler and more progressive scheme for supporting parents with the costs of childcare; and
- promoted childcare vouchers among employers in Scotland. Between January and June 2009 the Scottish Government ran a project to promote greater use of childcare vouchers among Scottish employers in the public, private and voluntary sectors.⁵ This has successfully raised the profile of childcare vouchers through individual contacts and working with the Scottish Trade Union Congress (STUC).

2.30. Despite the progress made in childcare since devolution, the current constitutional settlement limits the Scottish Parliament's ability to maximise the contribution of services to improve the lives of our children and young people. The Scottish Government believes that benefits and tax credits systems must act to protect our children from poverty and support families as they bring up their children. However, the current UK-wide systems are not sufficiently responsive to Scotland's specific needs. Even when flexibilities are built into UK systems they are often too slow to respond to changing need. If the Scottish Government had responsibility for both supply and demand side funding it could address the real challenge of how we construct a progressive and non-stigmatising way of supporting the costs of childcare, which is simple and accessible for parents.

Conclusion

2.31. This section has shown what Scotland has achieved in relation to law and order, health, housing, social aspects of transport and children. The next section examines the Commission on Scottish Devolution recommendations relating to the above issues.

⁴ Comments raised at a National Conversation event, with childcare stakeholders, Edinburgh 9 June 2009.

⁵ Childcare Vouchers, Promoting Increased use in Scotland, 4 August 2009, <http://www.scotland.gov.uk/Publications/2009/08/promotingvouchers>

3 The Commission on Scottish Devolution's Recommendations

Chapter Summary

- The Commission on Scottish Devolution made 63 recommendations in total. Those which are relevant to this paper include those on Stamp Duty Land Tax, children of asylum seekers, airguns and speed limits.
- While the Scottish Government has welcomed these proposals, they do not go far enough in enabling the Scottish Government to pursue policy best suited to Scotland.
- Examples highlighted include the limited proposals for further devolution in relation to firearms and drink-driving limits.

Introduction

3.1. The Commission on Scottish Devolution was established in April 2008 further to a debate in the Scottish Parliament and with the support of the UK Government.

3.2. Its remit was:

'to review the provisions of the Scotland Act 1998 in the light of experience and recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom'.

3.3. The Commission published its final report on 15 June this year, making 63 recommendations. The Scottish Government published its detailed response to these recommendations on 9 November 2009.⁶

The Commission's recommendations

3.4. Of these recommendations, a number relate specifically to housing, law and order, children, health and social aspects of transport. A number would relate more generally by affecting Scotland's borrowing and taxation responsibilities and the way in which the block grant from the UK Parliament is calculated.

3.5. Recommendations relating to housing include the following:

- that Stamp Duty Land Tax should be devolved to the Scottish Parliament, with a corresponding reduction in the block grant. (Recommendation 3.2)
- that there should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing Benefit and Council Tax Benefit

⁶ The Scottish Government Response to the Recommendations of the Commission on Scottish Devolution, <http://www.scotland.gov.uk/Publications/2009/11/09152544/0>

systems (as they apply in Scotland) when these are connected to devolved policy changes, and for the UK Government – if it agrees – to make those changes by suitable regulation. (Recommendation 5.19).

Box 6: Case Study - Stamp Duty

Responsibility for Stamp Duty Land Tax would be an additional useful policy lever for the Scottish Government housing and economic policy. There are numerous ways that Stamp Duty Land Tax could be used to achieve wider objectives such as setting rates at a level to incentivise energy efficiency. This is in addition to the potential for duty holidays to relieve stressed markets.

However, this recommendation cannot be seen in isolation from the overall tax and benefits system in which they sit and the overall financial framework for funding the Scottish Budget. Whilst the Scottish Government is keen to secure further responsibilities for Scotland, the recommendations do not go far enough, and would still result in the majority of Scottish tax revenue being determined by the UK Government.

In addition, devolving responsibility for only a limited subset of taxes, as the Commission recommends, means that should the base of those taxes fluctuate (as has been fairly clearly demonstrated in terms of Stamp Duty in recent times), then it is not possible for the Scottish Government to compensate for cyclical falls in tax receipts. This could introduce greater uncertainty and volatility into Scotland's finances and hence public services.

Box 7: Case Study - Housing Benefit

The wide array of social security benefits and tax credits available in the UK are interdependent. Changes to any one element of Housing Benefit are likely to have a knock on effects to other areas of the benefit system and consequently impact on both the coherence and the cost of the overall benefits system. It is likely therefore that any meaningful improvement would be impractical to deliver.

Rather, full responsibility over the benefits system, accompanied by full fiscal autonomy, would be the minimum required to deliver a benefits system tailored to Scotland's needs. Therefore the degree of autonomy afforded to Scotland by the Commission's recommendation on Housing Benefit may be more apparent than real.

3.6. Recommendations relating to law, order and transport safety include the following:

- The regulation of airguns should be devolved to the Scottish Parliament (Recommendation 5.14)
- Regulation-making powers relating to drink-driving limits should be transferred to Scottish Ministers (Recommendation 5.15)
- The power to determine the level of the national speed limit in Scotland should be devolved. (Recommendation 5.16).

Box 8: Case Study - Firearms

The Commission recommended that the regulation of airguns should be devolved to the Scottish Parliament but that the regulation of firearms generally should remain at the UK level. Its report argued that parallel regulatory systems within the UK would be excessively complex and confusing. It also argued that wider devolution of firearm regulation would inconvenience those who wish to shoot on both sides of the border, and would interfere with attempts to produce a 'coordinated approach' to the misuse of firearms.

Arguments around the burden of regulation do indeed have to be weighed in any debate about the costs and benefits of 'subsidiarity' in controlling potentially harmful activity. However, the Scottish police currently experience frustration in enforcing existing firearms legislation because of the disparate and incoherent nature of the regulations.

The Commission stressed the danger in having 'different, uncoordinated policies' across Great Britain in relation to firearms, but conceded that 'if there is appetite to deal with air weapons differently in Scotland than south of the border then the advantages of enabling the Scottish Parliament to do so outweigh the disadvantages'. The position of the current administration is that devolution is fundamentally about recognising the need and scope to do the right thing for Scottish circumstances whilst at the same time building sensible partnerships with our nearest neighbours. As the Commission said: 'it is not inconceivable that some sort of mutual recognition arrangement could be reached that would allow firearms certificates in one jurisdiction to be accepted in another'. In practice, devolution has already provided strong evidence that different regulatory regimes can work satisfactorily together whilst maintaining distinctions that are important in different countries.

The Commission presented the Scottish position on airguns as a matter of regulatory 'appetite'. Airgun crime threatens some of our most deprived communities; the use of air weapons, particularly by young people, is a part of a culture that no government in Scotland can allow to develop. The position of the current administration is that there are good arguments not only for equipping the Scottish Parliament to regulate airguns, but for taking similar competence across the whole field of firearms. This would allow for a coherent policy to be developed which takes account of the specific views and needs of Scotland's communities.

Box 9: Case Study - Drink Driving Limits

Drink driving hinders efforts here in Scotland to make our roads and communities safer. Figures for 2006, the latest available, indicate that there were a total of 980 casualties in Scotland as a result of accidents involving illegal alcohol levels. Of those casualties, an estimated 30 people were killed and 160 seriously injured. This suggests that around 1 in 9 road deaths in Scotland occur in alcohol related incidents.

There have been widespread and repeated calls for a reduction in the drink drive limit in Scotland from 80mg per 100ml of blood, to 50mg. Research by University College London in 2005 suggested that six lives could be saved in Scotland every year if this reduction were to take place. In addition, a reduction in the drink drive limit would send a strong message that Scotland must and will change its relationship with alcohol and work to develop socially responsible attitudes to it. However, the matter is reserved and the ability to bring forward a reduction currently lies with the UK and not the Scottish Government. Devolution of this responsibility would allow the Scottish Government to act quickly to meet Scottish demands for a lower limit.

The Commission recommended that the Scottish Parliament should be able to set a single drink driving limit by regulation. The devolution of this responsibility to Scottish Ministers would allow Scotland to make progress and would be consistent with Scottish responsibility for the overall criminal justice system. Nonetheless, even with the benefit of the additional discretion proposed by the Commission, there will still be gaps in the responsibilities of Scottish Ministers. For example, they would not have the ability to set differential limits for certain groups of drivers such as young or commercial drivers should they decide to do so. Under the Commission's recommendation that responsibility would remain with the UK Government and Scottish Ministers would still lack the full range of levers necessary to make key policy decisions about drink driving limits in Scotland. Further devolution of competence would be necessary to address this gap.

Box 10: Case Study – Speed Limits

National speed limits are currently set by the UK Government. Scottish road authorities already have responsibility for setting local speed limits which means they have the ability to set lower speed limits on local roads in their areas, while, the Scottish Government can set lower speed limits on specific parts of the trunk road network.

The Commission has recommended that responsibility for setting national speed limits should be devolved to the Scottish Government. This would enable the Scottish Government to decide on our own national speed limits, taking into account relevant Scottish issues such as the rural economy and climate change targets, rather than be so constrained by decision making at UK level, which may not fully take account of particular Scottish circumstances.

3.7. Recommendations relating to health include the following:

- Regulation of all health professions, not just those specified by the Scotland Act, should be reserved (Recommendation 5.12).

- The Scottish Parliament should not have the power to legislate on food content and labelling in so far as that legislation would cause a breach of the single market in the UK by placing a burden on the manufacturing, distribution and supply of foodstuffs to consumers, and Schedule 5 to the Scotland Act should be amended accordingly (Recommendation 5.11)

Box 11: Case Study - Regulation of Health Professionals

The Scotland Act 1998 reserves to Westminster the regulation of the health professions regulated at the time of devolution. Consequently, legislative and executive competence for regulation of any new health profession subsequent to the Scotland Act has been automatically devolved.

This has allowed Scotland real influence over which new professions need to be regulated and how. It has also led to the pursuit of robust and novel approaches through more equal partnership discussions with officials across the UK. There is increased dialogue with the Council for Healthcare Regulatory Excellence (CHRE), which oversees the regulators and has one member appointed by Scottish Ministers. All of the professional regulators' Head Offices are in England, but since devolution the General Medical Council (GMC), the General Dental Council and the Health Professions Council have developed a presence in Scotland too.

This is good news for Scotland, demonstrating a keen interest by professional regulatory bodies in Scottish devolved health policy and its impact on regulation. Importantly, the Scottish Government was able to ensure that the UK Government White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century*, recognised that implementation of some of the practical aspects of its significant regulatory reforms would need to be slightly different for Scotland and the other devolved administrations, due to increasingly divergent (and devolved) NHS structures and systems. The Scottish Government was also able to ensure significant Scottish input to subsequent Department of Health (DH) Working Groups impacting on devolved areas. For example, Scotland took forward a pilot on the regulation of healthcare support workers on behalf of all four UK countries.

If the Commission's recommendations were implemented, there would be no statutory imperative for DH to consult with and gain the agreement of the Scottish Government on legislation either to amend the regulatory regimes for those professions whose regulation is currently devolved, or to introduce the regulation of new professions. Any Orders under Section 60 of the Health Act 1999 with devolved elements currently have to be approved by resolution of the Scottish Parliament as well as Westminster. Due to different health structures and systems, Scotland takes a different approach from England in terms of operational practicalities and if the regulation of all professions was reserved there would be no guarantee that these nuances would be accounted for.

Real influence in all areas of healthcare professional regulation can only be guaranteed through complete devolution of regulation, or independence, which would ensure Scotland has an even greater influence over regulatory policy than at present. This need not rule out UK-wide regulatory systems, but would ensure real consensus. Where that could not be achieved, the Scottish Government could make its own legislation.

Box 12: Case Study - Food Content and Labelling

It is understood that the inclusion of the proposal to re-reserve food labelling in the Commission report was a result of direct lobbying by the alcohol industry. The Scottish Government is firmly of the view that there should be mandatory labelling of alcohol products. There is an argument - which was explicitly recognised in the Scottish Alcohol Framework⁷ - for a single UK-wide regime given the potential for confusion amongst consumers and for increased costs to the industry from operating different systems and we are seeking to work with the other administrations to achieve this. However, in the event that the UK Government decides to continue on the basis of a voluntary regime, the existing devolution settlement would allow the Scottish Government to pursue a mandatory scheme on alcohol labelling in order to protect the health and wellbeing of the people of Scotland.

3.8. Recommendations relating to children include the following:

- In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland (Recommendation 5.7)

Box 13: Case Study - Children of Asylum Seekers

Scottish Ministers and officials already have regular discussions with Home Office Ministers and UK Border Agency (UKBA) about the Children (Scotland) Act 1995 and the need to promote the well-being of children seeking asylum in Scotland. Since January 2009 all UKBA staff and contractors have been operating under a statutory Code of Practice to keep children safe from harm and have a new statutory duty to safeguard and promote the welfare of children.

Conclusion

3.10. While the Commission recommendations for additional devolution are to be welcomed, they represent minor improvements to the status quo. It is the Scottish Government's belief that other options in this paper better allow us to choose policies and delivery mechanisms which best reflect Scotland's interests.

⁷ "Changing Scotland's Relationship with Alcohol: A Framework for Action", <http://www.scotland.gov.uk/Publications/2009/03/04144703/0>.

4 Options for Reform

Chapter Summary

- This chapter examines options that go beyond the current devolution model – mainly ‘devolution max’ and independence.
- Devolution max would see the Scottish Parliament having responsibility to make primary legislation in most areas, excluding defence, foreign affairs and aspects of macroeconomic policy, while independence would see Scotland with the same responsibilities as other, similar countries. Only independence would see the Scottish Parliament and Government with the full range of policy-making tools ensuring alignment of all policy in Scotland.
- Cross-border cooperation arrangements already in place could be both enhanced and multiplied under devolution max or independence.

4.1. This chapter considers the implications of additional responsibilities for the Scottish Government and Scottish Parliament, focusing in particular on ‘devolution max’ and independence.

What the future could look like - options

Devolution max

4.2. ‘Devolution max’ refers to Scotland having the maximum amount of tax and policy devolution short of independence. Scotland would remain within the UK. The Scottish Parliament would have the ability to make primary legislation for almost all issues. Defence and foreign affairs would remain reserved. Responsibility for most elements of fiscal policy, including setting and collecting tax revenue raised in Scotland would also be devolved, although some aspects of economic policy, such as monetary policy are likely to remain reserved.

4.3. By collecting all tax revenues in Scotland, a payment from Edinburgh to London would be required to cover common UK public goods and services (i.e. ‘shared services’). Whilst devolution max would give the Scottish Parliament greater responsibility for policy, a number of factors would continue to constrain fiscal policy under this framework. For example, intra-national rules and guidelines, and in particular EU laws governing taxation policy between and within Member States, may limit the level of real autonomy provided. Rules and commitments imposed by the UK Government under devolution max may also limit the ability of the Scottish Government to introduce policies which differed significantly from elsewhere in the UK.

Independence

4.4. Independence would see Scotland with the same responsibilities as other, similar countries. This would include full fiscal and economic autonomy and return responsibility for raising and collecting all revenues (including North Sea revenues) to the Scottish Parliament, as well as the full range of government expenditures (including welfare and defence). This would of course be subject to international rules and regulations, such as EU directives on competition, tax harmonisation and the EU

4 Options for Reform

Single Market. However, unlike the other options outlined above, Scotland's relationship with the international community would take place within the context of Scotland acting as an independent sovereign state. In short, Scotland would have full responsibility for all of its affairs.

- 4.5. In practice, many of the opportunities for housing, law and order, children, health and transport, delivered by devolution max would be similar to those delivered by independence. However, under devolution max, the UK as opposed to Scotland would remain the sovereign state and this would have implications. For example, the UK Government could continue to impose constraints on the policy levers available to the Scottish Government. In particular, many key elements of economic policy would remain reserved as would the negotiation of international settlements. The Scottish Government believes that only independence would provide the maximum degree of policy discretion to enable Scotland to meet its full potential.

What could the future look like – taxation as a policy lever

- 4.6. Under current arrangements the full benefits of using fiscal levers to support priority policy areas have not, to date, been realised for Scotland. Taxation can be a potent lever to incentivise individual and organisational behaviours as they relate to specific policy objectives. Of course, altering a single element of the taxation system would have to be considered within the overall fiscal framework.
- 4.7. Increasing Scotland's responsibilities in terms of taxation would enable Scotland to use fiscal levers to intervene in the areas where Scotland needs it most.
- 4.8. As things stand, Scotland is faced with limited options to deliver the quantity and range of housing which Scotland so desperately needs. The Scottish Government can seek to have the system reformed at the UK level but the evidence shows that this is not always practical or effective. The characteristics of the Scottish housing landscape are simply too different to the rest of the UK for there consistently to be a single solution which delivers for the whole of the UK.
- 4.9. Alternatively, the Scottish Government can use its limited responsibilities to seek to incentivise behaviour. While devolved achievements in housing have been significant, they also reveal cracks in the coherence of policy development when responsibilities are shared between Scotland and Westminster.

What could the future look like - Maximising the impact of social security benefits

- 4.10. A significant element of funding directly relating to and impacting on Scottish housing policy is provided through social security benefits. These are decided and managed by the Department of Work and Pensions (DWP) within the UK Government. There are therefore two distinct streams of policy being implemented in Scotland, one set at a UK level and one set at a Scottish level. This raises fundamental questions about the democratic accountability for the delivery of a number of policy areas in Scotland.

Box 14: Case Study – Funding housing policy

The social rented sector receives funding from Government through a development grant and through rents. The Scottish Government subsidises the sector by providing a development grant to build new low-cost homes for rent through the Scottish settlement from the UK Government. Part of the calculation on the level of grant is the level of rental income that social housing providers will receive.

A large proportion of rents, however, are funded through Housing Benefit, which comes from DWP. Housing Benefit currently meets two thirds of the total rents in the sector, or £1 billion and it therefore cannot be disentangled from decisions on investment grants in the social rented sector in Scotland. Whilst housing policy is devolved to Scotland, the Scottish Government has little influence on the overall balance between these two sources of funding. As a consequence, as well as impacting on tenants, any significant changes to Housing Benefit could compromise policies on social housing investment developed in Scotland to meet specific Scottish circumstances.

Box 15: Case Study – Attendance Allowance

Prior to the implementation of Free Personal Care in Scotland on 1 July 2002, people who funded their own care in a care home could apply for and receive Attendance Allowance. However, the UK Government determined that personal care payments were a contribution towards the resident's accommodation costs and that the Attendance Allowance payments should be withdrawn.

The previous Scottish Executive re-set the levels of personal care payments for care home residents to compensate for the loss of Attendance Allowance to ensure that residents did not lose out. However, the extra cost of this was not transferred to the Scottish budget. In effect, the introduction of Free Personal Care in Scotland actually saved – and continues to save - the UK taxpayer approximately £30 million a year.

Lord Sutherland's recent report on the funding of free personal and nursing care found that as well as being unjust he considered the decision to be anomalous. People in Scotland living in their own homes receiving public support for their personal care needs can still receive Attendance Allowance and older people in care homes in England receiving free nursing care support can also still receive Attendance Allowance.

The UK Government has announced that it will publish a Green Paper on the future funding of long-term care for older people, including consideration of the Attendance Allowance. As with any reform of UK disability benefits, the Scottish Government are keeping closely in touch with developments to ensure that any transfer of resources will be fair and sufficient to meet Scottish objectives and ambitions for reshaping social care delivery in the future.

- 4.11. Social security benefits have a hugely significant impact on policy delivery. The reserved nature of social security benefits has resulted in lack of coherence with Scottish policy. That responsibility for both the overall policy direction and the detailed design of regulation should be reserved to Westminster can seriously undermine the devolved nature of housing, health and other policy areas. Greater responsibility for benefit policy and expenditure would allow Scottish Ministers to develop and implement more effective and coherent policy.
- 4.12. Furthermore, elements of the current design of social security benefits do not align with distinctive Scottish needs. This impacts on wider Scottish Government social and economic objectives as well as on specific policy areas such as housing, health and children.

Box 16: Case Study – Fuel poverty

The Scottish Government is committed to ensuring that by 2016, so far as is reasonably practicable, people do not live in fuel poverty. The UK Government currently spends around £2 billion per annum on Winter Fuel Payments throughout the UK by means of flat rate payments of £250 for those aged 60-79 and £400 for those aged 80 and over.

This raises a number of issues. Firstly, as Scotland is, on average, colder than more southern parts of the UK, a system responsive to temperature and the associated variation in fuel bills would be required to equally mitigate the effects of fuel poverty throughout the UK. Under the current scheme design, recipients living in milder parts of the UK receive the same level of payment to those living in colder areas such as Scotland, even though their fuel bills are likely to be lower.

Secondly, the Scottish Government is prevented from taking direct action to mitigate problems with benefits design by supplementing payments. Any such payment could result in recipients losing out on other social security benefits or tax credits. Scotland must rely on other policy measures within its control to address fuel poverty such as the installation of more energy efficient central heating systems.

This is particularly problematic as fuel poverty is influenced by a combination of the energy efficiency of the home, household income and energy prices. The Scottish Government has responsibility over only the first of these three factors, and even within that, much of the investment in energy efficiency is governed by regulation of energy companies which is a reserved matter.

Box 17: Case Study – Health Inequalities

In June 2008, the Scottish Government published *Equally Well*, the Report of the Ministerial Task Force on Health Inequalities. The Task Force was established in order to investigate the health inequalities that persist in Scotland and to set out a programme of action ensuring that improvements to the health of the population are shared by all of Scotland's people.

Equally Well recognises that in order to tackle health inequalities effectively, we need to address their underlying causes – issues such as poverty, support for families and physical and social environments. That responsibility for the wider determinants of health is largely devolved has allowed the Scottish Government to develop a comprehensive and coherent strategy for tackling health inequalities in Scotland.

However, one of the most important determinants of health is poverty and, whilst there is much that the Scottish Government can do to tackle poverty, key policy levers such as social security benefits, tax credits and employment support – key in helping to alleviate poverty and low income – remain reserved to the UK Government. This means that the Scottish Government does not have the full range of policy interventions at its disposal to break the cycle of poverty which exists in Scotland and tackle income inequalities which in turn contribute to health inequalities.

Box 18: Case Study – Kinship care

Kinship Carers are family members, or family friends, who care for children because their birth parents are unable to do so.

At the moment, the impact of any additional financial support from Scottish local authorities to a kinship carer can be diluted by UK-wide rules. This is because current UK Government policy means support, such as that potentially provided by local authorities, must be taken into account when calculating support such as child tax credit.

On the basis of decisions which are taken outside Scotland, the impact of extra support from Scottish local authorities to those caring for some of our most vulnerable children is reduced. If the design and implementation of the benefits and tax credits system was devolved to Scotland, the system could be better aligned to meet the needs of the people of Scotland in this area.

What could the future look like – aviation regulation

- 4.13. The overriding benefit of assuming responsibility for regulation would be in developing systems appropriate to Scottish circumstances. Under the current regulatory framework, the cost of maintaining airports in the Highlands and Islands is substantially more per passenger than at airports elsewhere in the UK. This contributes to higher fares and the high subsidy that is necessary to maintain Scotland's smaller and more peripheral airports. A Scottish system could be adopted which would provide a more tailored and proportionate approach while ensuring the continued safety of operations.

Box 19: Case Study – Aviation Regulation

For **aviation** regulation, under devolution max or in an independent Scotland we could:

- assume responsibility for the regulatory framework, fulfilling some or all of the functions currently exercised by the CAA;
- take responsibility for the application of international standards set by the International Civil Aviation Organisation and European legislation; and
- deliver airport infrastructure which maximises safety and operational efficiency making best use of technological advances where appropriate.

These responsibilities would give greater opportunity for the reduction of operating costs at Scotland's smaller airports without compromising safety, opening up the potential to develop to provide a better service to communities and customers.

What could the future look like – increasing road safety

- 4.14. The recently published Road Safety Framework for Scotland set out the Scottish government's vision, priorities and commitments to 2020, under the current devolution arrangements. With devolution max or independence, we would be able to explore further many of the issues we have suggested to the UK government in response to their road and safety consultations over the past year.

Box 20: Case Study – Firearms Law

Scottish Ministers have called for all firearms law to be devolved, not just the regulation of airguns as the Commission on Scottish Devolution recommended. This would allow for an overhaul of the whole firearms regime to make it consistent, easier to understand and easier to enforce. In short, it would allow for a coherent approach for Scotland, avoiding unnecessary complexity or potential loopholes and allowing an integrated approach to regulation to be developed to best meet Scotland's interests and needs. The Scottish Parliament would be better able to protect communities from illegal or irresponsible use of firearms, as it has in relation to knives and other offensive weapons, making it absolutely clear what is acceptable in our society.

A coherent firearms policy for Scotland could also make it easier for legitimate firearms users to go about their activities than it is under the current confusing and incoherent system. Equally, policy could be developed acknowledging and supporting the important contribution to the country's economy made by shooting sports and related industries.

Legislation could be designed to minimise overlapping or inconsistent regulation north and south of the border, reducing confusion or unnecessary costs. Responsibility for knife licensing, for example, is devolved to the Scottish Parliament, but it does not have powers to regulate firearms. The Scottish Parliament has been able to establish a system governing knives that meets Scotland's needs, and the Scottish Government believes that it should be able to do so for other lethal weapons such as firearms.

Regulation of businesses providing housing services

- 4.15. Many house-owners and tenants are affected by the activities of private sector businesses that provide services relating to houses. These include property managers, letting agents, selling agents, financial services including those selling equity release schemes, surveyors and building firms in the maintenance, repair and improvement sectors.
- 4.16. Consumer protection law governs the way such services are provided and can regulate for specific services as well as on a general basis. These aspects of regulation are reserved to the UK Government. However, Scotland's housing stock and market are different from those of England, as are property law, traditions for support services such as factoring and, of course, the nature and experience of home ownership. So, quite apart from differing policy objectives in Scotland, these inherent differences mean that different approaches may be needed to ensure that consumers' interests as owners and tenants in Scotland are adequately protected.

Box 21: Case Study – Regulation of Businesses Providing Housing Services

The reservation of consumer protection means that the Scottish Government often cannot ensure that regulation provides necessary protection for consumers that is suitable for Scottish circumstances. This may obstruct a package of measures which provides the right balance between formal regulation and a voluntary self-regulation approach.

Scotland is dependent on Westminster for legislation. An issue which may be a priority for Scotland may be low priority for Westminster and affected by Westminster political issues, such as the prospects for regulation of property managers and letting agents, driven by a different agenda in England.

- 4.17. While policy areas in this paper are largely devolved, Scotland is in many cases prevented from using the most appropriate mechanism to implement policies as responsibility for some aspects of regulation remains reserved.
- 4.18. As would be expected with devolution of these policy areas, policy priorities and approaches to implementing policy can differ in Scotland compared to other parts of the UK. The impact that responsibility for some aspects of regulation remaining reserved to the UK Government has is further compounded by differing practical and legal arrangements in many instances in Scotland. In some cases, these differences make it inherently difficult to design schemes and regulation which can be effective throughout the UK.

What could the future look like – borrowing

- 4.19. With independence, the Scottish Parliament would be responsible for all aspects of fiscal policy in Scotland, including the collection of all taxes and government expenditure. Devolution max would also provide a significant increase in the macroeconomic policy levers devolved to the Scottish Parliament. Under independence the Scottish Government would be able to borrow freely in international capital markets, subject to market constraints. Devolution max would also provide an opportunity for greater borrowing responsibilities to be devolved to the Scottish Parliament, although constraints might remain on the forms of borrowing available to the Scottish Government. A discussion of borrowing options is set out in the sister National Conversation paper on Fiscal Autonomy⁸.
- 4.20. Additional responsibilities could increase Scotland's capacity to borrow to fund major capital projects and would be fundamental to managing issues related to taxation and benefits discussed earlier in this paper. They could also influence the Scottish Government's approach to managing local authority housing debt.

Cross border arrangements

- 4.21. It is important to be clear that devolution max and independence would not necessarily spell the end to arrangements with other parts of the British Isles. This is the case for all policy areas discussed in this paper; in law and order, for example, continued sharing of information and intelligence would be vital. Pragmatic arrangements for the future of GB-wide organisations such as the Driving Standards Agency (DSA), Driver Vehicle Licensing Authority (DVLA) and the Vehicle Operator Standards Agency (VOSA) would be established. The following case study gives a detailed account of how cross-border cooperation could continue in terms of health.

⁸ <http://www.scotland.gov.uk/Publications/2009/02/23092643/0>

Box 23: Case Study – Cross Border Cooperation - Health

Cross border cooperation is well established under devolution and there is no reason why it should not continue under independence.

For example, Scottish Ministers currently have the ability to determine NHS staff pay, and terms and conditions, for Scotland. However, the Scottish Government recognise the benefits of determining these on a UK-wide basis, which has ensured a consistent approach for NHS staff employed throughout the UK. It has also ensured that there is not a significant cross-border flow and loss of staff and has helped to build inter-government working relationships.

Cross-border cooperation has also arisen where resources required to improve the health and wellbeing of people throughout the UK are scarce, and are therefore best utilised at a UK level. For example, the allocation of organs donated for transplantation is carried out on a UK-basis, in order to ensure that the best match between donor and recipient can be achieved. The need for organs does not respect national boundaries, and Scotland does not have a large enough population to be self-sufficient in the supply of organs. Therefore maintaining the current UK-wide allocation arrangements in an independent Scotland would ensure optimal access to organs for every citizen who requires a transplant. Organs are also shared at EU level, and these arrangements are reflected in 2 Directives currently under negotiation: the Directive on cross-border healthcare and the Directive on standards of quality and safety of human organs intended for transplantation.

Likewise, there are currently UK and European-wide arrangements for the commissioning of specialist health services for conditions or treatments that are so rare or specialised that no single UK country could sustain them alone. These arrangements are managed on behalf of Scotland by the National Services Division of the Common Services Agency (commonly known as NHS National Services Scotland), to ensure that the people of Scotland have access to such rare and specialised services when they need them. It is these reciprocal health arrangements which, for example, recently enabled a Scottish patient severely ill with the H1N1 virus to receive highly specialised treatment in Sweden, when the UK service was operating at full capacity.

There are also areas which are so complex that a UK-wide regulatory framework has proved beneficial, such as human fertilisation and embryology, and where EU legislation requires regulation on a UK-wide basis, such as the safety of the supply of blood. These areas require a level of cooperation, and it is likely therefore that an independent Scotland would wish to maintain this.

It is clear that there are many benefits flowing from devolution max or independence for the health and wellbeing of the people of Scotland. Neither will exclude continued fruitful working with neighbouring countries for our and their mutual benefit.

5 Conclusions

- 5.1. This paper has examined different constitutional options for Scotland relating to health, housing, children, law and order and social policy aspects of transport.
- 5.2. The achievements since devolution in these areas are both notable and varied, from the introduction of the smoking ban and an ambitious policy on homelessness.
- 5.3. However, without responsibility for the full range of policy levers, the Scottish Government will remain constrained in its ability to bring about further improvements in these areas, to further benefit the people of Scotland.
- 5.4. The current global economic downturn increases the challenges we face. It also illustrates that without responsibility for the full range of financial and economic levers in Scotland, the Scottish Government is restricted in what it can do to deal with these challenges.
- 5.5. The Scottish Government believes that only independence will enable Scotland to face these challenges head on, and to ensure continuous improvements in housing, support for our children, health and wellbeing, transport safety, and law and order.

How to participate in the National Conversation

- 5.6. We welcome ongoing discussions regarding these policies as part of our National Conversation. Comments on this report can be made through the National Conversation website at www.anationalconversation.com or email joinin@anationalconversation.com.
- 5.7. Responses can also be sent by post to:

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