

Labour
Not Sent

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Ref. A092/1011

PRIME MINISTER

DEVOLUTION: CENTRAL ADMINISTRATION

Decisions required

1. You have a Manifesto commitment to move immediately to establish an elected Scottish Parliament. You will need to decide immediately:-

1.1. the allocation of Ministerial responsibility for drawing up proposals for the establishment of a Scottish Parliament, bearing in mind that this will have implications for subsequent action on your commitment to a Welsh assembly and regional government in England, and will be of relevance to the question of Scottish representation at Westminster.

1.2. the structure of Ministerial committees necessary for collective consideration.

1.3. whether and to what extent administrative responsibility should be centralised or allocated to the Scottish Office.

2. A priority task for completion by the time of The Queen's Speech debate will be to identify the issues to be resolved and agree a target timetable, which will influence the preparation of legislation and any preliminary steps such as the publication of a White Paper. You may wish to aim for the latter by the Summer Recess.

Related Matters

3. The arrangements you make will need to take account of your Manifesto commitments to establish in the life time of a full Parliament an elected Welsh assembly in Cardiff, to establish a regional tier of government in England which will later form the basis for elected regional governments and to re-establish an elected authority for London. Other constitutional issues; a Bill of Rights, a Freedom of Information Act, reform of the House of Lords and the introduction as a general rule of a fixed Parliamentary term may also be relevant. Your Manifesto also mentions a commitment to work for constitutional change in Northern Ireland.

Issues arising on Scottish Devolution

4. A wide range of issues will have to be resolved before legislation can be introduced. The core issues to be addressed include:

4.1. the form of the Scottish assembly, its size, and the electoral arrangements (proportional representation and representation of women).

4.2. the relationship between the Scottish Parliament and its executive, the accountability of civil servants to the executive, and the relationships of the civil servants of the devolved administration to the UK civil service.

4.3. the powers of the Scottish Parliament and their entrenchment; the nature and extent of reserved matters; and the constitutional arrangements necessary to handle disputes.

4.4. relationships with Westminster and the Crown; the role and responsibilities of the Secretary of State for Scotland; the level of Scottish representation at

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Westminster and the role and responsibilities of Scottish MPs there.

4.5. the role of the devolved administration in relation to EC matters.

4.6. financial arrangements, including block grant and equalisation/needs assessment and the possible role of an advisory group; income from taxation and power to vary national tax rates within Scotland; and the management of the economy.

4.7. the responsibility of the devolved administration for local authorities, including structure and taxation.

5. These issues affect the interests of every Government Department to a greater or lesser extent, and there is clearly scope for lengthy and detailed argument. It is important that this should not become a brake on progress, putting at risk the timescale you envisage for legislation on devolution, and that safeguarding Departmental interests does not produce proposals which are so hedged about as to fail to meet your political commitments. The range of manifesto requirements implies a willingness to live with some diversity of treatment between Scotland, Wales and England, but at the same time you will wish to ensure that the detailed proposals brought forward are acceptable in Parliament and preserve the stability of the Union.

Machinery for Handling Devolution, 1974-1979

6. In this period the Cabinet Office was the lead Department reflecting the expectation, following the Kilbrandon report, that changes would be made for England as well as Scotland and Wales. It was also regarded as a neutral, UK-wide Department. The Lord President had lead Ministerial responsibility and a Minister of State, Privy Council Office, supported him and took responsibility for handling the legislation in Parliament. The

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Cabinet Office Constitution Unit (COCU) was headed by a Grade 1A, with three Grade 3s and supporting staff. There were two Ministerial Committees, one on strategy chaired by the Prime Minister and the other on detailed matters chaired by the Lord President. There was an official support structure consisting of a Permanent Secretaries' Committee chaired by the Cabinet Secretary, a smaller Committee of Permanent Secretaries chaired by the Head of the Constitution Unit, and a number of working groups dealing with the policy areas of constitutional arrangements, functions, industry and employment, finance, proposals for England and legal matters. COCU took control of the development of policy and used its own legal team to instruct Parliamentary Counsel.

7. From the point of view of the Scottish Office, who would have had to operate the legislation, the process was imperfect. Discussions were protracted and difficult though this reflected to some extent differences in Cabinet. Much of the final scheme was unsatisfactory and could have been unstable in practice, though this was partly attributable to amendments made in Parliament.

OPTIONS

8. Against this background the following paragraphs look at organisational options under three headings: Ministerial responsibility; the structure of Ministerial and Official Committees; and the supporting central administrative arrangements.

Ministerial responsibilities

9. There appear to be four main options for the allocation of lead Ministerial responsibility:

9.1. The Secretary of State for Scotland. On this approach the Secretary of State for Scotland would be clearly in the lead at all stages on Scottish devolution,

from the development of policy through to the preparation and Parliamentary handling of legislation. This approach could have presentational attractions, to the extent that it would look right politically, particularly north of the border, for the Secretary of State for Scotland to be seen to be clearly in charge of the process. But there would be risks. English backbench MPs will need to be persuaded that arrangements are equitable. Much would depend on the Secretary of State's energy, judgement and political skill. The strength of his relationship with key colleagues, and their continuing commitment to devolution in the face of their own competing departmental pressures will also be important.

9.2. The Home Secretary. Although it might be argued that a major constitutional task of this kind falls appropriately to the Home Office this approach would suffer from two drawbacks. As in the 1970s, the Home Office would not be seen as a neutral Department, and it is unreasonable to suppose that the Home Secretary would be able to give the matter sufficient political priority throughout the sustained and intensive period of policy development and handling legislation.

9.3. A non-departmental Minister. This approach would essentially replicate the 1970s model with full central responsibility for policy development led by the Lord President and the handling of legislation carried by a Minister of State in the Privy Council Office. It would bring the advantages of neutrality and a central coordination point for issues which engage the whole of Government. This might be seen as a safeguarding or moderating influence by those, for example in English regions, who might resent the special position being given to Scotland. On the other hand, Scottish political opinion might feel that it implied a grudging central dispensation.

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9.4. A senior Minister supervising the process, formal responsibility resting with the Secretary of State. On this model a senior Minister, perhaps one of the non-departmental Ministers (eg the Lord President), would have overall responsibility for ensuring progress and delivering agreement (possibly through chairmanship of a Ministerial Committee, see below). The principal initiative on policy would come from the Secretary of State for Scotland, who would have the main operational responsibility on Scottish devolution and would lead on the legislation while the Lord President might handle matters affecting the Westminster Parliament and wider constitutional issues. This approach seeks to combine the domestic political expectations noted at 9.1 with the need for strong central coordination and neutrality.

Structure of Ministerial and Official Committees

10. As in the 1970s a two-tier structure would seem appropriate: a top level committee for strategy and a lower level committee to handle detail. It would in theory be possible to take specific issues to whichever of the standing committees appeared relevant but this would seem cumbersome and would make proper coordination of the end result more difficult. It would seem appropriate for the top level committee to be chaired by you. The supporting committee could be chaired by a non-departmental Minister or by the Secretary of State for Scotland: there would be advantages in neutral chairmanship (see paragraph 9.4).

11. There would need to be a structure of official working groups tackling specific issues, possibly with neutral (Cabinet Office) chairmanship. As in the 1970s, a top level steering group of Permanent Secretaries could be required to give direction to the exercise. Its role and responsibilities, and frequency of meetings, would depend on the extent of the coordinating function and the number of constitutional questions to be decided.

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Central administration

12. There are three main options here:

12.1. A Cabinet Office constitution unit. This would take full responsibility for policy and legislation both on Scottish and Welsh devolution and on English regional government, very much of the 1970s model. It would only be appropriate in parallel with central Ministerial responsibility.

12.2. Conventional Cabinet Office coordination. On this model the Cabinet Office would play a conventional secretariat role, servicing Ministerial Committees, running Official Committees (possibly chairing some of them) and tackling policy problems ad hoc. This approach would leave the burden of making the running very much to the Scottish Office and other Departments with distinct policy interests.

12.3. Enhanced secretariat role. On this approach, in some respects akin to the European Secretariat, a group within the Secretariat would play a strongly pro-active coordination role. This would span Economic, Home Affairs and European interests and might provide specific support for the Scottish Office team on areas of particular central interest such as finance, electoral reform and the wider constitutional framework, and the European dimension. On the paragraph 9.4 model this group would also provide support for the non-departmental Minister with a devolution remit.

13. An important consideration is whether these arrangements are to deal only with Scottish devolution or should provide a framework for handling the wider range of constitutional issues mentioned in paragraph 3. This in turn will depend on whether it is appropriate for lead responsibility on these matters to rest with individual Departments:

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13.1. Regional government in England. Although a number of Departments will have an interest, the lead on the process to which you are committed, involving the establishment of a regional tier of government and the re-organisation of local government would seem to fall naturally to the Department of the Environment, with a need for no more than the conventional mechanisms for collective consideration and policy clearance.

13.2. Welsh assembly. This is to reflect the existing administrative structure, and will not have legislative powers. It may therefore prove to be appropriate for the lead responsibility to lie with the Welsh Office.

13.3. Bill of Rights, Freedom of Information, Reform of the House of Lords. Some, if not all, of these matters fall appropriately to the Home Office and, with the possible exception of Freedom of Information, I would expect that the Home Secretary would wish to lead on them. Freedom of Information in any case raises rather different sorts of constitutional issue from those on devolution/regional government discussed earlier in this brief.

13.4. Northern Ireland. Although discussion of the nature and extent of powers to be devolved within Great Britain raises issues which may be argued to be relevant to the future government of Northern Ireland, the wider political circumstances are quite different. I therefore expect that you would wish to keep consideration of Northern Ireland separate from the handling of devolution and the other constitutional issues, though it would clearly be important for the Secretary of State for Northern Ireland to be a member of or to be represented on the Ministerial Committees considering devolution.

Choices to be made

14. To sum up, I suggest that in considering the administrative arrangements to be made for handling Scottish devolution the main choices to be made are as follows:

14.1. Are the issues on devolution, regional government and other constitutional matters you wish to tackle so closely linked that you need a major new central organisation to handle them, or do you feel that they are sufficiently separate, both in subject matter and on timescale, for separate lead responsibilities to be established.

14.2. If so, how to handle central coordination on Scottish devolution, which your Manifesto identifies for the earliest action. There is a spectrum of possibilities, ranging from allocating full responsibility for the development of policy and handling legislation to a central (non-Departmental) Minister of Cabinet rank to leaving full responsibility with the Secretary of State for Scotland. Either of these courses has drawbacks discussed above. You may wish to adopt the middle course suggested in paragraph 9.4 of leaving the day to day operational responsibility, including the handling of legislation, with the Secretary of State for Scotland, while allocating a clear coordinating role to a central Minister. This would help ensure that a clear central policy was developed on those issues of prime importance to the United Kingdom as a whole, and that proper account was taken of Westminster aspects of the proposals.

14.3. Whether you agree that there would be a two-tier Ministerial committee structure comprising a strategy committee chaired by yourself and a committee to handle day-to-day matters, chaired by a non-Departmental Minister.

14.4. What supporting administrative arrangements should be made. The main choices are between a Cabinet Office Constitution Unit (which would follow from a decision to go for central Ministerial responsibility) which might in due course take responsibility for policy on the Welsh assembly and English regional government though you need not decide that now; and an enhancement of the traditional Cabinet Office Secretariat role, to co-ordinate the work in a more pro-active way. The new Secretariat would play a leading role in coordinating advice on major matters of central UK interest, as well as supporting the non-Departmental Minister in his coordination role.

Recommendation

15. My recommendation is that, on this occasion, the Secretary of State for Scotland should have day-to-day operational responsibility for establishing the Assembly, including the legislation but under the oversight of a strong two-tier Ministerial Committee Structure, with a Strategic Committee chaired by you and a more detailed Committee chaired by the Lord President or Lord Privy Seal. The central machinery would be supported by an enlarged Cabinet Secretariat which would take a pro-active role, but this would fall short of the devolution unit of 1976-79 and would not require an additional Minister of State to lead it. You may want to discuss these issues with your senior colleagues or even take them to Cabinet on 16 April: in that case we could quickly provide you with a paper.

T.R.B.

ROBIN BUTLER

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