

SCOTLAND AND WALES BILL

A Paper by Mr. Pym

We have to decide now our strategy towards the Bill. We need decisions in principle as to our objectives at Committee stage. The first decision is whether we wish to stick by the details of our original proposals which have few friends and from which even Lord Home has moved away or whether there is an argument for accepting that any Assembly that is now likely to be acceptable to the Scots will have its own executive. If that is so perhaps we should move to the "safety net" position of a clear division of powers, special arrangements for English legislation and a Bill of Rights, as in a federal system. If we suggested this now we would be in a stronger position to amend this Act when we came to power should we wish to do so.

A. Amendments to bring the scheme into line with our own proposals

Given that the Conservative Party opposed the Second Reading of the Bill because we claimed it could not be amended to produce a scheme in line with our own proposals, we are not bound to table amendments to that effect. However, I think that we should see if we can demonstrate that we stand by our proposals by framing them in legislative form and work has been set in hand to try to draft amendments that could give effect to our proposals. Although it may prove difficult or impossible to draft all the necessary consequential amendments we could indicate the main areas of change. Initially such amendments would involve three principle areas:

- What.*
- (i) Removal of the separate executive .
 - (ii) Different procedure for legislation, involving Westminster
 - (iii) Definition of Assembly's role vis à vis Secretary of State.

The argument for or against such amendments turns on whether we want to stick by the particular proposals we have made (which we have claimed were not the subject of the debate at present).

In the case of Wales the amendments are easier. We merely seek to delete the Welsh provisions.

B. Amendments to make the Government's scheme more acceptable(i) Elections

Clause 2 establishes the size of, and electoral system for, the Assemblies. To an extent the size must be dependent upon the functions and structure which will be determined later in the Bill. Some advocate reducing the Assemblies to one member per Parliamentary constituency (71 Scotland, 36 Wales) but this could cause

problems for Scotland where the executive would have to be formed from a Party with only 25 seats - or even less. Further, should the number of Parliamentary seats be reduced to 56/31 the Assembly would be even smaller. One way around this would be to adopt the Additional Member System of voting whereby one member would be elected on the first past the post system for each Parliamentary constituency and then extra members would be added to bring the total into line with the national percentage of votes cast, thereby bringing the numbers to, say, 100 and 50. It may be felt desirable not to allow the additional members to be in the executive. This would not be the same system as Northern Ireland (STV with quota in multi member constituencies.) If we wished to adopt that system the European constituencies could be used to produce an assembly of about 60 members for Scotland and 30 for Wales. Disregarding personal views, the correct tactic may be for the front bench to adhere to the first past the post system for the time being and for the running for other systems to be from behind.

(ii) Legislation

EEC and international obligations

Clause 20⁴⁷(b) provides for Bills not compatible with Community or international obligations of the UK to be vetoed by the Secretary of State without reference to Parliament. This could lead to conflict. One answer would be to place this within the vires procedure as it is a question of interpretation and excluded from the devolved matters by clause 25 (2).

A similar procedure exists for Executive Acts by either assembly.

(iii) Executive

a) Principle of Welsh Executive

The Welsh Assembly itself is to exercise Executive powers, in part through an executive committee. We may wish to remove such powers and make the Assembly an advisory body to the Secretary of State (along the lines of Douglas Home for Scotland) as it is the exercise of these powers that could create conflict in Wales.

b) Subordinate Instruments

Certain powers may only be exercised after consultation or with the consent of a Minister of the Crown. Do we want to either remove these powers from the Executives altogether or remove the role of the UK government?

(iv) Relations with UK Government

It is in this area that the most clear cut areas of conflict are found, especially with regard to:

- a) Need to submit reports to the Secretary of State;
- b) Power to reject Scottish Assembly Bills or Welsh or Scottish Executive actions that would or might affect, directly or indirectly, a matter with respect to which only Parliament or the UK government has power and which are not in the public interest;
- c) Power to prevent or require executive actions;
- d) Power to revoke subordinate instruments;
- e) Guidelines relating to Scottish and Welsh Development agencies, Highlands and Islands Development Board, rents, rate and rent rebates, terms and conditions of service of certain employees and remuneration of teachers.

- f) Reserved local authority functions;
- g) Overlapping roles, e.g. with regard to water in Wales.

The Party must decide how it wishes to make a clearer division of powers:- by removing the specific powers of action by the UK government leaving Parliament to legislate notwithstanding the Scotland and Wales Bill; by reducing or increasing the powers of the Assembly e.g. over the SDA and WDA; by defining the division of powers in such a way that the matters for which provision is made would be ultra vires and subject to that procedure.

Are there any better institutional methods to resolve such conflict as may arise? For example, would it be better to have a Parliamentary review of every Assembly Act so that this does not become a crisis procedure? If the specific powers of action are retained, should they be subject to a new Parliamentary procedure requiring Parliamentary approval by a specified majority?

(v) Finance

This is a fundamental dilemma. We have argued that the Bill is in an unendurable half-way position, so in which direction do we push it? Should the Assembly have tax raising powers to add to or substitute for the block budget? Even local authorities have tax raising power. Without such power the Assembly will be tied to the Treasury. It will not even have real power over legislation if it involves expenditure - as this will depend on the revenue allocated by the UK Government. To deny taxation capability to Scotland is to deny devolution.

With regard to the block budget, should there be a specific formula to determine its amount? Annual bargaining could cause considerable conflict. Such a formula could be renegotiated every 5/10 years but it might improve stability meanwhile.

C. Additional Clauses

(i) Orkney and Shetland Islands .

The Orkney and Shetland Islands are anxious to be excluded from this measure, largely because they already have substantial autonomy. We could try to entrench this autonomy, but there are obvious practical difficulties. Exclusion would involve Parliament legislating, in all the devolved spheres, separately for Orkney and Shetland, which follow Scots law. It would also entail them coming under English departments once the Scottish office departments were disbanded.

(ii) Number and Role of Scots and Welsh MPs

Should we seek to reduce the number of Scots and Welsh MPs to parity with England? There are powerful arguments both ways, and formidable difficulties in making any change.

Should we state their role with regard to English matters?

Should we recognise their reduced role with regard to Scottish matters and should we institute a procedure to allow them a voice in these matters?

(iii) Trade and Industry Powers

There is a strong case for broadening the Assemblies' influence in these spheres, in which the Scots and Welsh are most interested. Failure to be able to act here could lead to later pressure to go further, i.e. to independence. The fact that such independence would leave each country in a worse economic plight even than now might or might not weigh with the Scots then. What is our attitude to be?

(iv) Bill of Rights

It may be argued that Parliament could establish a Bill of Rights for Scottish/Welsh citizens vis a vis the action of the Scottish and Welsh Assemblies.

(v) Referendum (see separate paper)

We have to decide the questions we would like to see asked, the timing and the constituency. Later we will need to decide our attitude in this campaign but at present we should keep our options completely open.

(vi) Local Authorities

Should we propose a merger into one tier, despite all that has gone before, to avoid imposing yet another tier of government?