

REPORT

To: POLICY AND RESOURCES COMMITTEE		Subject: COMMISSION ON SCOTTISH DEVOLUTION – CONSULTATION PAPER
From: CHIEF EXECUTIVE		
Date: 26 August 2008	Ref: JRE/JL	

1. Introduction

- 1.1 The purpose of this report is to advise the Policy and Resources Committee of the Commission on Scottish Devolution, which has been established to conduct an independent review of the experience of devolution in Scotland and, to request Committee to homologate the Council's submission of evidence to the Commission (Appendix One)

2. Background

- 2.1 The Commission on Scottish Devolution was established in December 2007 following a motion passed by the Scottish Parliament supporting an independently chaired review of devolution in Scotland. The exact remit of the Commission is:

“To review the provisions of the Scotland Act 1998 in light of experience and to 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.”

- 2.2 The UK Government signalled its support for the Commission in January 2008. This was subsequently reinforced by the Secretary of State for Scotland in a written Ministerial Statement on 25 March 2008 when he said that the UK Government would work with the Scottish Parliament to provide support for the Commission.
- 2.3 The appointment of Sir Kenneth Calman to chair the Commission was announced on 25 March and the remaining membership was confirmed on 28 April (a full list of members is attached as Appendix Two.)

3. Organisational Structure, Workload and Current Consultation

- 3.1 The Commission intends to publish its first report by the end of 2008, and a final report at some point in 2009. In the interim, and in order to take forward key elements of its workload and remit, the Commission has established five task groups focusing on:
- Principles;
 - Functions;
 - Engagement;
 - Financial Accountability; and,
 - Inter-Governmental Relations.

- 3.2 The Commission is supported by an independent expert group, established to advise the Commission on financial accountability.
- 3.3 In June the Commission issued an invitation to the Council to make a formal submission of evidence in response to a series of nine questions (and also on any other matters that fall within the Commission's remit.) A copy of the Council's composite response to these questions is provided in Appendix One.
- 3.4 The deadline for the submission of evidence was 3 September 2008. The Draft was submitted to the commission on the understanding that it had yet to be considered by this Committee. Members may wish to note that the detail of our response was shared with the Council Leader prior to its submission. Its approval, subject to any amendments, will be intimated to the commission following Committee consideration. This Committee is requested to homologate the council's response.

4. Recommendation

- 4.1 The Policy and Resources Committee is requested to:
- (i) note the establishment of the Commission on Scottish Devolution, under the chairmanship of Sir Kenneth Calman, and remitted to conduct an independent review of the experience of devolution in Scotland;
 - (ii) homologate the Council's response to the Commission's request for evidence, attached as Appendix One, and note that the Commission's closing date of 3 September 2008 precluded prior consideration; and,
 - (iii) otherwise note the contents of this report.



Chief Executive

NORTH LANARKSHIRE COUNCIL

EVIDENCE TO THE COMMISSION ON SCOTTISH DEVOLUTION

INTRODUCTION AND CONTEXT

North Lanarkshire Council is pleased to support the Commission on Scottish Devolution in its review of the provisions of the Scotland Act 1998. This submission of evidence represents a composite response and is informed by the findings and experience of all Council services.

North Lanarkshire is Scotland's fourth largest local authority with a land area of 470 square kilometres and a population of 324,680. At present our population has a high proportion of children and young adults. Projections suggest that the proportion of children and young adults will fall, while the proportion of the population of pensionable age is expected to increase.

North Lanarkshire is ideally situated in central Scotland and benefits from close proximity to the main arterial motorway and rail routes. Our area is predominantly urban with two thirds of our population living in our main towns: Airdrie; Bellshill; Coatbridge; Motherwell; Wishaw; Cumbernauld and Kilsyth. The remaining population live mainly in former mining villages and smaller rural communities.

The traditional heavy industries which previously dominated our area have declined but largely been replaced by a modern business infrastructure and new growing industries, with a particular emphasis in the service sector, banking and finance.

North Lanarkshire Council comprises 20 multi-member wards with 70 councillors. The Scottish Labour Party, as the majority political group, holds the administration. The political make-up of our council comprises:

Political Group	Number of seats
Scottish Labour Party	40
Scottish National Party (SNP)	23
Scottish Conservative and Unionist	1
Scottish Liberal Democrat	1
Independent	4
Cumbernauld Independent Councillors' Alliance	1

Our council is forward thinking and ambitious with a clear vision for both our area and our people. We have recently re-structured our operational and decision making arrangements in line with our five year change management programme, *Service and People First*. Our streamlined structure is centred around five, customer-facing Services, each lead by an Executive Director, who is also a member of our Corporate Management Team:

Learning and Leisure Services;
 Finance and Customer Services;
 Corporate Services;
 Housing and Social Work Services; and,
 Environmental Services.

Our Chief Executive's Service is responsible for strategic policy, community planning and regeneration services given the corporate and cross-cutting requirements of these matters.

FORMAL RESPONSE AND SUBMISSION OF EVIDENCE

In considering and preparing our response to each of the consultation areas listed below, North Lanarkshire Council is mindful that these are very much political considerations and individual respondents' or witnesses' submissions will be influenced by their support or otherwise of devolution – both in terms of the current structure and levels and the potential for further devolution of additional powers.

1. In general, how successful have the new structures created by devolution been – both in terms of delivering effective government in devolved areas, and in providing effective parliamentary scrutiny and oversight.

North Lanarkshire Council believes that the new structures have generally been effective. The structures provide a high level of accountability, transparency and democracy. The structures and Scottish Parliament ministers on an individual basis, provide adequate opportunity for ongoing dialogue, consultation and communication.

The relationship between the Scottish Parliament and CoSLA is highlighted as a positive example of effective and continuously strengthening collaborative working. The concordat signed on 14 November 2007 by the Scottish Parliament and CoSLA, on behalf of local government, set out a new partnership between central and local government. It offers increased flexibility and responsibility to individual councils to determine their own spending priorities at a local level.

The introduction of the Single Outcome Agreement (SOA) as an integral element of the concordat is welcomed. We see the potential benefits to this as being:

- a means of securing long term funding over the next three years without the top slicing of efficiency savings from the overall funding package as in the previous Spending Review regime;
- allowing greater flexibility to councils to fund their own service priorities and revenue pressures; and,
- a reduction in levels of ring-fenced funding and the associated reporting requirements.

Opportunities for direct representation between local government and the Scottish Parliament are welcomed and to be encouraged. Here in North Lanarkshire we have hosted several ministerial visits – most recent examples being a visit to our major regeneration site at Ravenscraig by the Minister for Enterprise, Energy and Tourism in May 2008 and a visit to a number of our high schools by the Cabinet Secretary for Education and Lifelong Learning in February 2008. We welcome the opportunities that these visits provide us with to showcase our service delivery improvements (for example our innovative approach to vocational education) and also to raise directly issues of concern or potential opportunities (for example, the case for Ravenscraig to be afforded priority status).

2. Can you give examples of where devolution has produced results that better serve the people of Scotland than would have been likely or possible under pre-devolution arrangements?

From a social policy perspective, we have witnessed substantial extra investment in health and social services post devolution. For example, legislation has been introduced for carers that has strengthened their rights and given due and proper recognition to their responsibilities. Similarly, People with community care needs have benefited from a shift in emphasis to alter the 'balance of care' away from institutional settings to care and support at home. This has been accompanied by significant extra resources.

The introduction of free personal care may be highlighted as a benefit of devolution. However, consideration of this must be taken in the context of the local area and its economy. Free personal care benefits those people who would otherwise have had to pay for their care through

their own savings or assets. Here in North Lanarkshire, and other areas experiencing high levels of low income and disadvantage, the vast majority of older people did not pay for their care.

3. Are there any particular features of the 1998 Act that you think should be changed or reconsidered, on the basis of experience since 1999?

In 1998 North Lanarkshire Council participated in the McIntosh Commission's consultation examining how effective relations could be built between local government and the Scottish Parliament and Executive and also how councils could make themselves responsive and democratically accountable to their local communities.

The council submitted key recommendations to each of the Commission's questions. In particular, the council:

- emphasised the importance of a partnership between the Scottish Parliament and local government;
- recommended that pre-legislative engagement should take place between the Parliament and local authorities in the preparation and examination of legislation before it becomes law;
- suggested that increasing the term of office for councillors to four years would seem about right;
- emphasised that the Scottish Parliament must recognise local government's community leadership role as well as the need for local responsiveness and accountability;
- recognised that whilst a 'concordat' agreement could be used to express the above points, legislation would require to be brought forward to introduce formal powers and duties; and,
- recommended that consideration should be given to three year financial planning.

Following on the McIntosh Committee's report the Council has shown, throughout the period from that report going to the new Scottish Parliament in 1999, to be willing to fully engage in the constitutional debate with particular reference to the relationship of Councils to the new Scottish Parliament and the development of a new form of relationship. For that reason the Council participated fully in the arrangements surrounding the Kerley Committee's report and subsequently undertook substantial engagement with the Leadership Advisory Panel's work under the Chairmanship of Alistair McNish. This involved a significant internal review of the Council's own political management and decision making arrangements, relating to the structures under which we currently operate.

The enactment of the Local Government in Scotland Act in 2003 clearly devolved and strengthened the role of local government. Subsequent reviews and our commitment to continuous improvement, culminating in the introduction of *Service and People First* in April 2007, have further provided a leaner and more strategic management approach.

However, we feel that the opportunity now exists to re-examine the constitutional position of local government and bring forward formal recognition of the local government tier in Scotland's constitutional hierarchy.

North Lanarkshire Council would welcome, in the Commission's final report, an explicit recognition of the requirement to establish and develop the role of local government as genuine partners in the democratic governance of Scotland and a commitment to the principle of subsidiarity with devolution to the most appropriate local level of decision making (i.e. local authorities for all relevant matters, with the Scottish parliament retaining close control only of those functions which must be considered centrally.)

An accessible, open and responsive Scottish Parliament with measures in place to encourage a participative approach to the consideration of legislation and the scrutiny of policy will significantly

revitalise the democratic process if the principles of subsidiarity are consistently applied and developed over time.

North Lanarkshire Council recognises that the Scottish Parliament and local authorities are not the sole actors in public policy and, to deliver positive outcomes in complex policy areas, an inclusive partnership approach to decision-making is required with close attention to those areas which cross traditional organisational, departmental and agency boundaries.

4. Do you believe the people of Scotland would be better served if any matters currently reserved to Westminster were now devolved to the Scottish Parliament?

i. Welfare benefits

The UK's welfare benefit system is a reserved matter for Westminster. This has caused some tensions with efforts in Scotland to tackle worklessness. In 2006, the Scottish Parliament launched 'Workforce Plus' – an employability strategy designed to aid co-ordination of employment services and create a personalised, individualised service. 'Workforce Plus' has been welcomed by agencies across Scotland, however, policy and practices operate within the reserved welfare benefit system. Accordingly, problems can be experienced when UK national policies are implemented in Scotland but fail to take account of local circumstances, structures and in this case, the Scottish approach to employability.

Whilst it is recognised that devolution of welfare benefits to the Scottish Parliament would result in inequity and different jurisdictions north and south of the border, some consideration must be given to better integration between national policies/legislation and Scottish initiatives or policy.

Similar difficulties to the welfare benefits issues described above have also been experienced when national employability programmes and funding streams cannot be integrated with local partnerships. A more appropriate response under the current arrangements would be for national agencies to be allowed a greater degree of flexibility in applying policy within a local context. This delegated flexibility could be governed by well established local partnerships such as the 'Routes to Inclusion' partnership in Lanarkshire. Such flexibilities have been given to City Strategy areas and North Lanarkshire Council would call for this flexibility to be available consistently across Scotland.

Finally in relation to welfare benefits, consultation undertaken by our council when developing "Living Well in North Lanarkshire – A Quality of Life Strategy for Older People" highlighted consistent dissatisfaction at Carers Allowance ceasing to be paid to people when they reach 65 years. Many carers are now well over that age and they regard this as discriminatory. As this remains a reserved matter, capacity to influence it is very limited.

ii. Employment related issues

The council is aware of suggestions that employment related issues might usefully devolve to the Scottish Parliament. Having considered this, particularly in the context of Consumer Protection and Health and Safety, our view would be that these should continue to be reserved matters, covering employment, industrial relations, health and safety and equal opportunities. In part this is because of economic necessity and the interlinks between the economy north and south of the border but also, from a structural viewpoint, because of the very clear links with European legislation which would make the potential of different employment jurisdictions somewhat problematic.

5. Do you believe the people of Scotland would be better served if any matters currently devolved to the Scottish Parliament were now reserved to Westminster?

No evidence or experiences in North Lanarkshire to suggest that any matters currently devolved to the Scottish Parliament should be reserved to Westminster.

- 6. Irrespective of which particular matters are reserved and which others are therefore devolved, do you support the reserved/devolved distinction as the best way to define the respective responsibilities of the UK Parliament and the Scottish Parliament? Would there be merit in an intermediate category, involving some form of shared or concurrent competence, with suitable checks and balances to avoid conflict?**

North Lanarkshire Council suggests that there would be some merit in examining the potential for creating an intermediate category of shared jurisdiction. This should have the potential to avoid rather than create conflict and may be particularly useful in addressing issues such as those described in Question 4 above in relation to national legislation impeding the implementation of Scottish Parliament initiatives / policy. However, we recognise that there would probably require to be a change to the current arrangements for determining jurisdictional disputes. The current, related, arrangements for Westminster to legislate on a potentially devolved matter and for this to be dealt with by way of a Sewell motion, can be sometimes misunderstood.

- 7. Do you support the current financial arrangements for devolution, where the Scottish Parliament receives a block grant (based on the Barnett formula) to spend on devolved services as it chooses, but (apart from the power to vary the basic rate of income tax by up to 3p in the pound, and devolved control over local taxation) has no responsibility for raising revenue from Scottish taxpayers to pay for those devolved services?**

A benefit of block funding is that the Scottish Parliament is free to determine how the grant should be spent, based on locally determined priorities. Continuation of block funding is necessary to reflect the relative needs of one part of the UK compared with another. The Barnett formula is linked to population shares across the UK and is not needs based so that there is no transparent link between need and grant received. A needs based formula could reduce inter-governmental conflict arising from the current application of the Barnett formula where the UK government appears to be able to determine what spending should be included or excluded, e.g. funding for the 2012 Olympics in London is excluded from the total that is used to calculate Scotland's share of funding. The justification for a change from the Barnett formula to a needs based formula would be that it can be shown to be a fairer means of allocating funding across the UK. If this cannot be demonstrated, then the system would be no more acceptable than the Barnett formula. Experience within local government of developing a needs based mechanism for allocating grant suggests that the creation of a transparent needs based formula that covers all of the services provided in the public sector throughout the UK would be problematic.

A disadvantage of block funding is that the total amount of funding is constrained by the UK government. Under the present arrangement, Scotland receives its funding based on decisions taken on spending in England so that its ability to carry out its plans may be limited. Responsibility for raising its own finance would help Scotland to balance its plans with the resources that it feels able to generate.

Having its own tax raising powers is also said to increase the fiscal accountability of a government although research conducted for the Local Government Finance Review Committee found no evidence that tax raising powers were essential for enhanced local accountability.

- 8. Do you believe that the Scottish Parliament should be responsible for raising a greater proportion of its income by having increased taxation powers? If so, which taxes should be devolved (e.g. VAT, Income Tax, Corporation Tax, Excise Duties etc) and should there be corresponding changes to the existing funding arrangements from the UK Government?**

As above, increased fiscal autonomy would assist Scotland in pursuing its policy objectives by increasing the control that Scotland has over raising its own resources. Scotland currently has

limited tax raising powers (power to increase income tax by up to 3p in the £) but this has not been used to date. Greater revenue raising powers could be given by removing the 3p limit. There are likely to be issues with devolving VAT because of EU rules and Corporation Tax because of inter-country competition. Assigning of tax revenue, which would mean that tax raised in Scotland would be allocated to Scotland, may help to link resources generated to spending levels. However, this would not enhance tax raising powers as the rate of tax would still be set at a UK level. There could also be potential political conflict over which taxes are assigned, e.g. taxes from North Sea oil.

9. How effective do you believe inter-governmental relations have been since 1998, including in the context of the respective roles of UK and Scottish Ministers in their dealings with the European Union?

In the main, we believe that inter-governmental relations have been largely effective. However, we would again wish to emphasise the potential to formalise and in turn strengthen, the role and capacity of local government in the Scottish constitutional hierarchy.

COMMISSION ON SCOTTISH DEVOLUTION

MEMBERSHIP

Note: Although some Commission members are described in terms of offices they hold with named organisations, they serve on the Commission in a personal capacity and not on behalf of those organisations.

Sir Kenneth Calman, Chancellor of the University of Glasgow;

Colin Boyd, Former Lord Advocate, Member of the House of Lords (Labour);

Rani Dhir, MBE, Executive Director, Drumchapel Housing Co-operative;

Professor Sir David Edward, Retired judge of the European Court;

Murray Elder, Member of the House of Lords (Labour);

Audrey Findlay, Former Leader of Aberdeenshire Council, Convener of the Scottish Liberal Democrat Party;

Jamie Lindsay, Former Scottish Office Minister, Member of the House of Lords (Conservative), Chairman of the Scottish Agricultural College;

John Loughton, Chairman of the Scottish Youth Parliament;

Murdoch MacLennan, Chief Executive, Telegraph Media Group;

Shonaig Macpherson, Chair of the National Trust for Scotland and of the Scottish Council for Development and Industry;

Iain McMillan, Director, CBI Scotland;

James Selkirk, Former Scottish Office Minister, Member of the House of Lords (Conservative);

Mona Siddiqui, Professor of Islamic Studies, University of Glasgow;

Matt Smith, Scottish Secretary, UNISON; and,

Jim Wallace, Former Deputy First Minister, member of the House of Lords (Liberal Democrat).