

Commission meeting with Chris Flatt, Deputy Director, Constitution and Communications, Scotland Office

11 July 2013

Commissioners Present:

Paul Silk
Nick Bourne
Jane Davidson
Eurfyl ap Gwilym
Trefor Jones
Helen Molyneux

Points made in discussion:

- The Scotland Office's role was very similar to the Wales Office's, being keen to ensure the devolution settlement works effectively, that Scotland is aware of the work of the UK Government and the UK Government is aware of Scottish needs. There is also some sharing of back-office functions with the Wales Office, though there is limited collaboration between the two offices in presenting a common view to other Whitehall departments, since each normally worksing directly with policy departments. There was felt to be almost no appetite for a single Secretary of State for the territorial offices.
- On assessing competence, the Advocate General's Office wasere responsible for considering each Scottish bill. They had a good relationship with Scottish Government lawyers, and often prepared Orders to ensure the bill would be within competence. Difficulties had only arisen in areas which were not included in the Scotland Act 1998's list of reservations, such as the re-reservation of Antarctica, or a current issue of deep-sea mining, which may require clarification.
- There was a general attitude of cooperation, with the AGO involved in resolving uncertainty on competence over minimum pricing of alcohol (which had further uncertainty against EU obligations) and tobacco labelling (where the UK Government had supported the Scottish Government when challenged by Imperial Tobacco), and agreement between the governments to ensure the Scottish Parliament would have a legally sound basis for the independence referendum, given that the constitution was reserved.
- It was felt that this engagement, which was on the basis of co-operative attitudes rather than formal obligations, had meant there had been no referral to the Supreme Court of a Scottish Parliament Bill by the UK Government to date. It was not, rather than the nature of the settlement that necessarily had brought about this outcome. This cooperative attitude was also largely based on a creative dynamictension between the two governments that counterbalanced ²fundamental differences, which was not present in Wales - with the Liberal Democrat Secretary of State for Scotland was particularly keen to demonstrate devolution working. This was not necessarily the case in Wales.

- It was thought a first referral at this stage would be a dramatic departure from the norm and therefore seen as less likely. Asked if there could be an interim formal step of considering competence than a Supreme Court referral, it was noted that referral to the Supreme Court would be more efficient and cost-effective than going through the lower courts first.
- There were around 30 Scotland Office officials based in Edinburgh, and 25 in London, all of whom were seconded from the Scottish Government or Whitehall departments. There was a desire to maintain the circulation of staff.
- Electoral arrangements had been devolved in the 2012 Act, and the Scotland Office would maintain an interest through its sponsorship of the Boundary Commission, and had a small role on electoral registration issues.
- It was felt that Whitehall's knowledge and understanding of devolution issues had improved in recent years. Intergovernmental fora, particularly the JMC process, were particularly helpful to allow Ministers to engage with one another, including informally, and for officials to consider a specific subject closely together. Since the Calman Commission's report, there had been a good record of Scottish Ministers appearing before the UK Parliament and UK Ministers appearing before the Scottish Parliament.