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‘The best-laid schemes o’ mice an’ men’? Proposals, planning, defeat, and legacy, of devolution in the 1970s.

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Abstract

*The question of whether devolved assemblies should be established for Scotland and Wales dominated considerable parliamentary time in the 1970s and became a key pillar of the Labour Government’s legislative agenda after the two 1974 General Elections. The main building blocks of the Government’s devolution proposals for Scotland and Wales were in place from 1975 with the publication of the White Paper, *Our Changing Democracy*. The White Paper outlined proposals for a primary law-making Assembly for Scotland and a Scottish Executive, operating under a ‘conferred powers model of devolution’. For Wales, the Assembly was to be a body corporate (with no split between Executive and Assembly) exercising only executive functions and able only to pass secondary legislation. With some important modifications (including crucially the requirement for a referendum, which was then further amended to require a Yes tally equating to 40% of the electorates in both nations), these proposals were eventually incorporated into law as the *Scotland and Wales Acts 1978*.*

*While the political debates surrounding devolution in this period are well known, less attention has been paid to the practical plans undertaken by the Civil Service for devolution to become a reality. As this article demonstrates considerable time was spent drawing up, from an early stage, detailed preparations for devolution, particularly in Scotland. In Wales, planning was more tentative, yet nonetheless was taken seriously by Welsh Office. These plans never materialised in the way envisaged, with neither Welsh nor Scottish devolution able to pass the referendum thresholds put in place. However, as this article also demonstrates, both the *Scotland and Wales Acts* had a constitutional legacy when devolution became reality under New Labour in the late 1990s.*

Key words: Devolution, constitutional change, Scottish Politics, civil service planning, Welsh Politics

1. Context

The question of whether devolved assemblies should be established for Scotland and Wales emerged onto the political agenda following the electoral rise of the Scottish National Party (SNP) and Plaid Cymru in the mid-1960s. Their successes at the 1966 Carmarthen and 1967 Hamilton by-elections, accompanied by near misses for Plaid Cymru in Rhondda West and Caerphilly in 1967 and 1968 respectively, led to the establishment, by the Wilson Government, of a Royal Commission on the Constitution, under the Chairmanship of Lord Crowther, in 1969. Wrestling with poorly defined terms of reference and internal divisions, the Commission finally reported in 1973 – the Commission by this point was chaired by Lord Kilbrandon following Crowther's death in 1972.¹

The Commission yielded two reports: an official report, backed by a majority of the Commission's membership, and a dissenting minority report – although as has been discussed elsewhere, the Commission's divisions were more complex than a straightforward majority-minority split. Overall, there was strong backing for some form of devolved Assemblies for Scotland and Wales, although support for the latter was more lukewarm. The Commission's divisions focused on the powers that these bodies should enjoy and the extent to which devolution for Scotland and Wales should form part of a broader process of territorial governance reform (i.e. should devolution represent asymmetric or uniform system of Government across the UK).² Following the report's publication there followed a lull, with devolution being overtaken by the economic and industrial crises that engulfed the Heath

¹ A. Evans, *Devolution and Parliamentary Representation: The Case of the Scotland and Wales Bill, 1976-7*, *Parliamentary History* xxxvii (2018), 275-276

² A summary of the Commission's discussions and disagreements can be found in Chapter 26 of the 'official' report: Royal Commission on the Constitution 1969-1973, Vol. 1, *Report*, Cmnd. 5460 (1973), paras. 1215-1224

administration.³ However, this time devolution avoided the slide into obscurity that had it previously suffered earlier in the twentieth century.⁴

In February 1974, Ted Heath went to the polls on a 'Who Governs Britain' General Election, amid rising inflation and industrial unrest. In the end, it was Harold Wilson's Labour Party that entered Government after the election, Labour having been returned as the largest party in a hung Parliament. Importantly, for devolutionists, also saw the SNP returned to the House with seven MPs, polling 21.9% of the vote in Scotland – a result that helped to prompt the Labour Party, after a series of internal disputes between the party in London and in Scotland, to commit to devolution.⁵

As a result, in September 1974, the Wilson Government published a White Paper which proposed directly elected assemblies for Scotland and Wales (the Scottish Assembly would have primary law-making powers in contrast to the model of executive devolution envisaged for Wales). The results of the October 1974 election, which saw the SNP return 11 MPs after polling over 30% of the vote in Scotland, ensured that Wilson's Government, this time returned with a slim majority of three seats, would have to act on this newfound commitment to devolution. As a result, a further set of proposals, in the form of the white paper, *Our Changing Democracy: Devolution for Scotland and Wales*, were published in November 1975 and a year later, in November 1976, the Scotland and Wales Bill was introduced before Parliament.⁶

³ V. Bogdanor, *Devolution in the United Kingdom* (Oxford, 1999), 173-175

⁴ In 1919-1920 a Speaker's Conference examined the question of devolution in Great Britain only to conclude in stalemate and be consigned to the status of a footnote in the UK's constitutional and political history (see: A. Evans, A Lingering Diminuendo? The Conference on Devolution, 1919-20, *Parliamentary History* xxxv (2016), 315-335)

⁵ J. Mitchell, *Devolution in the UK* (Manchester, 2009), 120; L. Audickas and R. Cracknell, UK Election Statistics: 1918-2018: 100 years of Elections, House of Commons Library Briefing Paper: No. CBP7529 (13 December 2018)

⁶ The context to the Scotland and Wales Bill is summarised in A. Evans, *Devolution and Parliamentary Representation*, 276-278

This article seeks to provide an account of the preparations that the Civil Service undertook in both Scotland and Wales for devolution in the 1970s. While the article provides a technical summary of the proposals that the Wilson and Callaghan Governments put forward for devolution in both nations, and the evolution of these schemes, these proposals have already been well covered elsewhere.⁷ This article is, therefore, primarily interested in practicalities, such as the accommodation and staffing arrangements that were in place for a Scottish Assembly, than the controversies of whether such an Assembly should exist, what it would cost and the claims made, during the 1979 referendum, by its opponents and adherents. As such, this paper will detail the contingency planning, particularly in Scotland, that was undertaken within the Civil Service for devolution in Scotland, including the extensive assistance provided by the House of Commons, and Wales. Finally, this paper will also reflect on the legacies of both the Scotland and Wales Acts and their continued influence when devolution became a reality in the 1990s.

2. Scottish devolution

2.1. The proposals

The 1975 White Paper, *Our Changing Democracy: Devolution to Scotland and Wales*, proposed the creation of a unicameral Scottish Assembly, with initially 142 members. For the first Assembly, this would consist of two members returned for each of the 71 Scottish Westminster constituencies, though the Government envisaged that for later elections the Boundary Commission would divide the 71 parliamentary constituencies “on a basis which will improve the fairness of the system by taking more into account of the number of voters in each constituency”. Each of the Westminster constituencies would be allotted one, two or three

⁷ See, for example: J. Mitchell, *The Scottish Question* (Oxford, 2014); I. McLean and A. McMillan, *The State of the Union* (Oxford 2005) and V. Bogdanor, *Devolution in the United Kingdom*.

Assembly seats, “according to a formula based on the average size of Parliamentary electorates in Scotland”. The formula proposed was:

1. Parliamentary constituency whose electorate is less than 75% of the average electorate = 1 seat
2. Parliamentary constituency whose electorate is not less than 75% and not more than 125% of the average electorate = 2 Assembly constituencies
3. Parliamentary constituency whose electorate is more than 125% of the average electorate = 3 Assembly constituencies.

According to the White Paper, based on existing electorates, this would result in an Assembly of 138 seats. The formula would also be re-applied, and further re-division made, whenever there was a Parliamentary boundary reform⁸

In terms of basic housekeeping arrangements, the White Paper went on to propose that the Assembly would be elected for a four-year term, albeit with the possibility of minor adjustments either way if required.⁹ Initial decisions that would be taken by the Secretary of State included setting the time and place of the first meeting of the Assembly, determining the pay and allowances of Assembly Members, and making interim Standing Orders for the Assembly. In each of these cases, responsibility would then flow permanently to the Assembly.¹⁰ The White Paper also proposed that while the Secretary of State would not be an *ex officio* member of the Assembly, “the Assembly and the Secretary of State could arrange by agreement for him to attend and address meetings from time to time”.

⁸ HM Government (November 1975). *Our Changing Democracy: Devolution to Scotland and Wales*, London: HMSO, Cmnd. 6348, paras. 32-33

⁹ *Ibid.*, para. 35

¹⁰ *Ibid.*, paras. 36-42

There would be a separation of powers between the Assembly and the Scottish Executive (unlike the model proposed for Wales, as shall be discussed later), latter being headed by a Chief Executive. The Chief Executive would be appointed by the Secretary of State, this appointment and the appointment of their Executive colleagues would be approved or rejected en bloc by the Assembly, although subsequent reshuffles would not require confirmation votes in the Assembly.¹¹ The White Paper also proposed the creation of ‘Assistants to the Executive’, actors who would be political in character, but would not be members of the Executive, or subject to the approval of the Assembly. Instead, they would be appointed by the Secretary of State on the recommendation of the Chief Executive.

While it was expected that Executive Members and Assistants would “normally” be Assembly Members, the White Paper allowed for the possibility of appointing individuals from outside the Assembly. According to the White Paper, it “may be desirable to include a distinguished person, or one with special expertise (for example in the law), who is not an Assembly Members”, and it was suggested that “political pressures should ensure that the scope of appointing non-members to the Executive is not overused”.¹²

The White Paper stressed that the UK Parliament would remain sovereign and, thus, retain the ability to legislate for Scotland. Nonetheless, and unlike the proposals for Wales, the Government intended to provide primary law-making powers to the Scottish Assembly. The powers would be devolved to Scotland under what is now referred to as a ‘conferred powers model’. Namely, specific subject areas would be devolved (conferred) to the Assembly and anything not specifically devolved would be reserved to Westminster.

11 In the event that the Chief Executive resigned, it was envisaged that the whole Executive and Assistants would also resign from office, with the Secretary of State appointing a ‘caretaker’ Executive to carry on business until a new Executive had been voted in by the Assembly.

12 HM Government, *Our Changing Democracy*, paras.43-50

According to the White Paper, the Government had opted for a “positive standpoint of devolving wherever possible and keeping subjects back (or making exceptions within subjects otherwise devolved) only where there is cogent reason for doing so”, e.g. where devolution might risk “basic unity” or “where devolving or dividing a subject would be very awkward to work”.¹³ Among the subjects to be conferred, according to the White Paper, were local government (exceptions including the election, and membership, of local authorities), health, education, sciences and arts (with the exception of Universities and Research Councils), housing, development and industry (exceptions including the nationalised industries), natural resources (exceptions including the main aspects of agriculture and sea fisheries), and law and the legal system (exceptions including treason, counter-terrorism laws, police and prosecution system).¹⁴

In terms of the Scottish Parliament’s legislative processes, the White Paper sketched out a proposed procedure that would be “very similar” to that used at Westminster. Executive Members or individual Assembly Members would be able to initiate legislation (as at Westminster, any backbench bills that incurred expenditure would require Executive assent). The broad process would be as follows:

1. A general debate on the Bill, with an opportunity for Members to vote on its general principles (what in Westminster is referred to as a ‘second reading’ stage for legislation)
2. Consideration of, and an opportunity for Assembly Members to vote on and amend the details of the Bill (in Westminster this function is provided by the Committee and Report stages of a Bill)
3. A final stage where the Bill can be passed or rejected, but not amended (in the House of Commons this is known as third reading).¹⁵

¹³ *Ibid.*, paras.62, 116

¹⁴ *Ibid.*, paras. 119-168

¹⁵ *Ibid.*, para. 54

Both prior to introduction and after a Bill has been passed at final stage, the Presiding Officer of the Assembly would decide on whether the Bill fell within devolved competence.¹⁶ The Presiding Officer's judgement would not be sufficient to strike down the Bill, but "will serve as a warning to the Assembly and the Executive".¹⁷

Following the final stage, and prior to the legislation being able to receive Assent, the Bill would then be submitted to the Secretary of State who would conduct their own assessment of whether it was within the legislative competence of the Assembly. In assessing this, provisions that are "reasonably incidental" to a purpose that falls within a devolved field may be treated as *intra vires*, "even though they may not strictly relate wholly to devolved subjects".¹⁸ The Secretary of State would also consider the acceptability of a Bill on general policy grounds. If a Bill is not *intra vires* or acceptable on policy grounds, then the Secretary of State would return the Bill to the Assembly. The Assembly will then choose how to respond – according to the White Paper, if the Assembly chose to return a Bill that was rejected on policy grounds then the Secretary of State would then lay it before Parliament with a motion praying for the Bill to be rejected. The Government nonetheless stressed that these reserve powers did not "reflect the spirit" in which it expected devolution to work.¹⁹

16 In 2018, this situation arose when the Presiding Officer of the Scottish Parliament judged the Scottish Government's UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill to be outside the scope of the Scottish Parliament. Members of the Scottish Parliament, nonetheless, passed the Bill, which was then challenged before the Supreme Court by the UK Government. For more information on this case, see: M. Elliott, *The Supreme Court's judgement in the Scottish Continuity Bill case*, Public Law for Everyone, <https://publiclawforeveryone.com/2018/12/14/the-supreme-courts-judgment-in-the-scottish-continuity-bill-case/> (accessed online: 15/12/2018)

17 HM Government, *Our Changing Democracy*, para.56

18 This test will be familiar to observers of Welsh devolution where debates about provisions being 'incidental to' a devolved subject matter were a regular feature of life under the Government of Wales Act 2006. This Act, and in particular the 'conferred powers' model of law making provided by Part 5 Schedule 7, was in effect a rebadged version of the Scotland Act 1978.

19 HM Government, *Our Changing Democracy*, paras. 58-60

The proposals outlined in the 1975 White Paper would form the basis of first the Scotland and Wales Bill and then, following the failure of the Scotland and Wales Bill, the Scotland Act 1978. The Scotland Act provided for a law-making Assembly, elected under the first past the post electoral system, whose legislative competence was explicitly conferred upon it by statute under a conferred powers model. Writing in 1979, Neil McCormick, described the “complexity and difficulty of comprehension” of where the devolution boundary lay, as a result of this conferred powers model, as a “defect of the Act” and suggested that “only lawyers and Civil Servant” (and even then “by no means of all them”) would be “able to work out or give reliable advice” on the balance of power between Edinburgh and Westminster.²⁰

As to be expected, there were differences of a technical and details nature between the original White Paper and the Scotland Act. The Chief Executive role had been christened as First Secretary with Executive Members rebadged as Secretaries of the Scottish Executive. The position of assistants to Secretaries was maintained, however, unlike the original proposals, both Secretaries and assistants would have to be appointed from among the Assembly’s membership. In terms of appointment, unlike the procedure envisaged in the White Paper, the Scotland Act provided that only the First Secretary’s appointment would be subject to a vote of the Assembly, with Executive appointments made by the Secretary of State based on the advice of the First Secretary.²¹ In terms of the Assembly’s administration, the Act also made provision for the appointment of a Clerk of the Assembly and a body of officers and other senior officials to work for the Assembly.²²

²⁰ N. MacCormick, Constitutional Points, in, D. Mackay (ed.), *Scotland: The Framework for Change*, (Edinburgh, 1979), 53

²¹ Scotland Act 1978, s.20

²² *Ibid.*, s.32

There were, however, more substantive changes to the devolution regime envisaged in the White Paper. One, in particular, that related to the way in which Parliament managed its affairs, post-devolution, and another that focused on how devolution should be enacted. The first change was the product of an amendment to the Scotland Act which sought to remedy the ‘West Lothian Question’.

This question, which focused on the continued ability of Scottish MPs, post-devolution, to vote on matters affecting the rest of the United Kingdom, but which were also devolved to Edinburgh, reared its head soon after the Government published its White Paper in 1975 and continued to dog its proposals for Scottish devolution whether in the form of the ill-fated Scotland and Wales Bill or the Scotland Act.²³ The result being that the latter was successfully amended, in the House of Lords, to include provision whereby if a Bill, relating to a subject matter that was devolved to Scotland, would not have had a majority at Second Reading had it not been for Scottish MPs then the House of Commons would have to re-confirm its decision in a vote, within fourteen days (otherwise the original Second Reading vote would be set aside).²⁴

The second major change between the White Paper and the Scotland Act, was the requirement that devolution be endorsed by the Scottish electorate at a referendum. A referendum had been conceded, by the Labour Government, as a (doomed) attempt to save the Scotland and Wales Bill. However, when devolution was resurrected in the form of separate Bills for Scotland and Wales, the Scotland Bill’s referendum provisions were themselves the subject of “the most significant backbench amendment to any legislation since 1945”. The Labour MP for Islington South and Finsbury, George Cunningham, tabled an amendment, on Burns Night 1978, that

²³ See: Evans, *Devolution and Parliamentary Representation*

²⁴ Scotland Act 1978, s.66. Although note that this section would not have come into effect, unless and until it had been approved by a resolution of the House of Commons. For more information, see Mitchell, *The Scottish Question*, 178-179

required at least 40% of the Scottish electorate to support devolution at the referendum. If the margin of a Yes vote did not meet that threshold, then the Government would then have to table an Order repealing the Scotland Act.²⁵ A further referendum-related amendment, tabled by the former Liberal Leader, Jo Grimond, which would have provided Orkney and Shetland with an opt-out from devolution if a majority of electors in those islands voted against the Assembly at the referendum, was carried in the Commons by a majority of 204 votes to 118. This provision was then removed from the Bill, during its passage through the Lords, replaced by a Government amendment that would have seen the creation, in the event of a successful referendum, of a special commission into the governance of Orkney and Shetland.²⁶

²⁵ Scotland Act 1978 s.85; Mitchell, *The Scottish Question*, 178-179; McLean and McMillan, *The State of the Unions*, 165-167

²⁶ O. Gay, *Scotland and Devolution*, Research Paper 97/92, (House of Commons Library: 29 July 1997), 19-20

2.2. *Planning for devolution*

While the above section sketched out, in general terms, the evolution of the Labour Government's devolution proposals for Scotland, the next section focuses on the detailed planning that was underway throughout this period for a Scottish Assembly and Executive.

a) The Assembly

Accommodation

Serious preparations for a Scottish Assembly were underway in 1975 with the publication of the Government's white paper, *Our Changing Democracy: Devolution for Scotland and Wales*, and in anticipation of the Scotland and Wales Bill. From an early stage these preparations saw close cooperation between Whitehall and Westminster, with civil servants drawing upon the advice and expertise of officials in the House of Commons. Indeed, a clear example of this reliance can be seen in a detailed paper, sent to the Scottish Office by D.A.M. Pring, a senior Clerk in the House of Commons, written in October 1975.²⁷

This paper, prepared by House of Commons staff, offered administrative advice regarding the staffing and accommodation of a Scottish Assembly. On staffing, the authors were clear that the "staff of the Assembly should be separate" from the staff for the devolved executive and the Scottish Office, warning that "the Assembly is unlikely to tolerate anything else". The paper broke down the staffing required for the Assembly under the following headings:

1. Clerks Services: including chamber services, committee office, table office

²⁷ Parliamentary Archives. HC/CL/CA/1/3/2. Letter from Pring to Ross, dated 27 October 1975

2. Library Staff
3. Administration: fees and estate offices
4. Sergeant At Arms Department: including housekeeping staff, door keepers and ceremonial
5. Other Offices: including Speaker's Office, Hansard, Vote Office, Refreshment Staff.

Overall, the paper estimated that these offices would require over 240 members of staff, although they acknowledged that this number could rise, including, for example, because the need for legal advice would probably be greater than at Westminster "as we would expect the problem of vires to arise much more in an Assembly whose terms of reference are to be limited by statute".

In terms of where the Assembly should be based, the old Royal High School had already been lined up as the main base. However, the paper's authors were "quite convinced" that it would not be sufficient by itself. As a result, the paper strongly recommended that the whole of the eastern half of the old St Andrew's House (the Scottish Office's headquarters in Edinburgh) be made available to the Assembly.

The paper envisaged a Scottish Assembly estate that would look like the following:

- the main Royal High School (RHS) premises would "house the Assembly and its immediate services", including public admission lounge facilities for members, officers for the Speaker and senior staff, party offices, a library, media offices and Hansard;
- the adjacent buildings to the main RHS building would be used to house rooms and offices for the permanent committees of the Assembly, two or more larger committee rooms and back up accommodation for staff employed in the main building; and

- old St Andrew’s House would provide offices for vote office, library staff, members, staff of the Assembly, ministerial offices and, the authors helpfully noted, “could usefully provide the necessary restaurant facilities” for the Assembly.

It was also noted that it “may be appropriate to provide a house for the Presiding Officer”, however the authors came to the conclusion that this might be a decision best left to the Assembly when established.

On a point of both architectural and procedural detail, the paper warned that the lack of space available for the chamber and the need to not damage the architectural character of the main RHS building “appear to preclude the use of division lobbies” and would thus mean mechanical voting would have to be used. According to the paper, this “in turn leads to individual seating and desks”.²⁸

On 14 April 1976, the Lord President of the Council (and lead Minister on devolution) Michael Foot formally announced the Government’s plan to use the Royal High School as the home of the Assembly and that the Property Services Agency had been authorised to enter into the commitments necessary for the building to be adapted and made ready for the Assembly for spring 1978.²⁹

Staffing

The involvement of House of Commons officials, however, extended far beyond preparing a paper for the Scottish Office. In 1974, four clerks wrote to the then Clerk of the House, Sir David Lidderdale, highlighting the Clerks Department’s “experience in procedural matters” and knowledge of the operation of other legislatures. This experience, in their opinion, meant that

²⁸ Parliamentary Archives (PA). HC/CL/CA/1/3/2. Letter from Pring to Ross, dated 27 October 1975

²⁹ HC Deb (Hansard) 14 April 1976 c.1382

they were “well qualified to take a part in discussions about the setting up of new legislative assemblies in the United Kingdom” and they indicated that, should the Clerk of the House be content, they would be “very happy to undertake the detailed work” required. The authors of this letter included two clerks, William McKay and George Cubie, who would go on to play a key role in the preparations for a Scottish Assembly.³⁰

Nearly four years after this initial expression of interest, and after the aborted attempt at devolution via the failed Scotland and Wales Bill, Nicholas Morrison, the Permanent Secretary at the Scottish Office wrote to the Clerk of the House, Richard Barlas, to take up this offer of clerky assistance. Noting that, in July 1976, Barlas had indicated to him that McKay and Cubie had “expressed an interest in working with the Scottish Assembly”, Morrison suggested that as the Scotland Bill has had its Third Reading, “we must intensify our pre-planning for devolution.”³¹ In particular, Morrison wanted to explore the possibility of obtaining “the services of one or both of these officers for this coming summer”.

According to Morrison, the Scottish Office would need assistance for general preparation work in the period running up to a referendum, with an assumption that any Scottish Assembly would “arrive at 1 April 1979”. As the initial staff of the Assembly would be secondees from the Scottish office, Morrison further suggested that it “would be a considerably greater help” if McKay and Cubie could actually be attached to the initial staff of the Scottish Assembly (he proposed a rather convoluted formula whereby the two clerks would be seconded first from the Commons to the Scottish Office and from there to the Scottish Assembly). However, as Morrison noted, this would raise the further question of whether McKay and Cubie would be “prepared to continue with the Scottish Assembly on a permanent basis”.³²

³⁰ PA. Letter from D. Scott, H.M. Barclay, W.R. McKay and G. Cubie, dated 25 November 1974

³¹ PA. HC/CL/CA/1/3/3. Letter from N. Morrison to R. Barlas, dated 6 March 1978

³² Ibid.

While Barlas was prepared to allow McKay and Cubie to assist the preparations for a Scottish Assembly, he was notably reluctant to accede to the more extensive, additional, proposals outlined in Morrison's letter. In a letter to senior colleagues on 9 March, Barlas chewed over Morrison's request, noting that he was "prepared to release McKay and Cubie [...] for the period of the summer recess and also for the period of any General Election - if one should take place in the autumn". However, Barlas felt that the proposals to formally attach either to the Scottish Assembly on an extended basis raised "more difficult considerations", stating that it was "extremely doubtful whether I should feel inclined to use two of our more experienced staff for so long on such a vague basis". Certainly, Barlas felt quite strongly about the importance of maintaining the strict separation between Commons officials and Civil Servants, arguing that he did not think "I could allow any clerk to be formally seconded to a Government department". Nonetheless, Barlas reflected that it could be possible to release the pair for odd days during that period [pre-April 1979] to go to Scotland and advise".³³ This mixture of reluctance and a sense of obligation to assist – what one might describe as a begrudging dutifulness – would continue to define Barlas' approach during his negotiations with the Scottish Office.

On 13 March, Barlas replied to Morrison and informed him that it "should be practicable" to second McKay and Cubie during recesses but warned that he could not definitely say whether they could be released for a longer period due to a lack of sight of future parliamentary business. As for the idea of a more permanent secondment, Barlas warned that this would be difficult, citing general staffing problems in the House, however he stressed that Commons officials "would like to do what we can to help".³⁴

³³ PA. HC/CL/CA/1/3/3. Letter from Barlas to senior House of Commons colleagues, dated 9 March 1978

³⁴ PA. HC/CL/CA/1/3/3. Letter from Barlas to Morrison, dated 13 March 1978

However less than a fortnight later, the situation had sufficiently changed that Barlas now not only accepted the prospect of a much longer secondment for McKay and Cubie, but also that of a more permanent arrangement.³⁵ The key to this pivot was an internal assessment, undertaken by House of Commons officials that suggested the House service could absorb the loss of the two Clerks through recruitment exercises and the possible return of secondees based in the European Parliament in Brussels.³⁶ As well as this assessment, it had also become clear to Barlas that attempts to dissuade McKay and Cubie against departing, whether temporarily or more permanently, from Westminster to Scotland were proving futile. In a letter to the Speaker of the House of Commons, and no sympathiser to the cause of devolution, the Rt Hon George Thomas MP, Barlas stated that he was “reluctant to lose them [McKay and Cubie]”, but again reiterated the duty the House had to assist any new Assembly. Nonetheless, Barlas expressed his view [shared by the Speaker] that they were “misguided” to entertain this proposed course of action. Despite these efforts, however, it had become clear that there was no point in continuing to argue with McKay and Cubie as their response had been like others who “have received the call” [to return home in anticipation of devolution].³⁷

As a result of this combination of obligation, failure (of persuasion), and reassurance (that the House service would be able to plug the gaps), Barlas wrote to Morrison on 22 March advising him that he had come to the conclusion “that we ought, in everyone’s interests, to come to a decision now”. As such, and despite the “considerable” staffing difficulties that would arise from the loss of two, clearly respected and talented, clerks, “our duty lies in giving the maximum assistance to any Scottish Assembly”. Continuing the, by now well developed, theme of begrudging dutifulness, Barlas told Morrison that “if it is your view and that of Ministers that it would assist if McKay and Cubie were released to assist with the Assembly, then so be it”.

³⁵ PA. HC/CL/CA/1/3/3. Letter from Barlas to Morrison, dated 22 March 1978

³⁶ PA. HC/CL/CA/1/3/3. Letter from Barlas to senior House of Commons colleagues, dated 15 March 1978

³⁷ PA. HC/CL/CA/1/3/3. Letter from Barlas to Mr Speaker, dated 22 March 1978

Morrison therefore proposed that McKay and Cubie be released for the forthcoming recess and thereafter for a period of two years from 1 November 1978, or “until such an earlier time as they may be offered or refused permanent employment with the Assembly”. As part of this arrangement, McKay and Cubie would have a right to a “return ticket” to the House but would forfeit this right should they accept permanent employment with a Scottish Assembly³⁸

Other issues

Among what might be filed as miscellaneous planning for a Scottish Parliament, were concerns about administrative and legalistic consequences of devolution. These included concerns about whether the Scotland Bill, as originally drafted, would have enabled bankrupt members to retain their seats (unlike the system in Westminster), the drafting of the Bill’s provisions that touched on the matter of Crown Privilege, as well as concerns about the extent to which the Bill protected Members from the threat of defamation (particularly if the Assembly’s proceedings were to be broadcasted).³⁹

Another pre-occupation that arose during parliamentary scrutiny of the Scotland and Wales Bill and subsequently the preparation of the Scotland Act was the question of whether the Scottish Assembly should have the power to dissolve prematurely and hold early elections, for example after a vote of no confidence in the Executive. This question initially arose during the Committee stage of the Scotland and Wales Bill when, following disquiet about the absence of such a mechanism in the Bill, John Smith (the Minister of State) indicated that he would look again at this issue.⁴⁰

³⁸ PA. HC/CL/CA/1/3/3. Letter from Barlas to Morrison, dated 22 March 1978

³⁹ The National Archives (TNA). CAB 198/452. Letter from Rowe to GE Cammie, dated 10 October 1977; Letter from G.E. Cammie to D. Phillips, dated 31 August 1977

⁴⁰ HC Deb (Hansard) 2 February 1977 c.633

Following this intervention, the Cabinet Office's Constitution Unit examined how an "in extremis" power of dissolution might work, and a note was prepared for Minister's by the Unit. This note, authored by Michael Quinlan, noted that the Government's devolution sub-committee had previously considered the matter and had ultimately rejected the idea due to concerns that a "power of dissolution in the hands of the Executive or the Assembly would be a potent political weapon" that could have the potential to be deployed in such a manner as to "embarrass" the UK Government.⁴¹

Looking again at the matter, Quinlan noted that "only a limited dissolution power" appears to be in question before outlining a number of potential safeguards that could apply. These included the requirement of a two thirds majority, a time limitation e.g. it could only be used in the last year of the Assembly (although he noted that there was "not much logical basis to this"), as well as the possible requirement that any request for an early dissolution be enacted only once both Houses of Parliament had consented via an Order-in-Council.

Quinlan suggested that the "best basic form of a dissolution power might be to provide that it should be conditional upon Assembly resolution approved by not fewer than two-thirds of Assembly members present and voting" and that an election following such a dissolution should be in addition to, rather than a substitution for, the usual four yearly election cycle. As for the role of Westminster, Quinlan inclined, marginally, in favour of a Parliamentary lock (in the form of an Order in Council subject to the affirmative procedure).

Importantly, however, Quinlan was not convinced that this question was of crucial importance nor one where the decision would "materially affect the stability of the devolution scheme".

⁴¹ TNA.CAB/198/452. Minute prepared by Michael Quinlan, dated 17 February 1977

Overall, he judged that having such a mechanism would be worth having (although he noted that this was “not quite the same thing as being worth amending the Bill and provoking fresh debate”). Reiterating that the balance was a “fine one”, he warned that if such a concession were conceded to Scotland, it should not be to Wales – a move that he described as “shifting the balance the other way”, as it would magnify the potential use of dissolution as a means of outmanoeuvring the UK Government.⁴²

By July 1977, opinion within the Government appears to have shifted in favour of a dissolution mechanism as a “power of last resort”. In a letter to the Lord Advocate, Ronald King Murray MP, John Smith MP explained that the devolution strategy committee had agreed the adoption of a two-thirds majority requirement, as a means of ensuring that dissolution would not be “too easily achieved” and as a way of protecting against ambush.⁴³ These considerations manifested themselves in section 3(b) of the Scotland Act. This provision enabled the Assembly to be dissolved by order of the secretary of State if the Assembly resolves, on a third thirds majority, that it should be dissolved.⁴⁴

There were, of course, a number of rather more trivial issues that planners had to consider in the drafting of the Scotland Bill. Such issues included concerns that about the Scottish Assembly’s liquor license, as well as potential for the Assembly to discriminate against the English. On the former, a Cabinet Office official was compelled to write to the Office of Parliamentary Counsel on 1 November 1977 to warn that instructions from the Secretary of State for Scotland on the “necessity for ensuring that the Assembly can serve drinks” had reached the Cabinet Office at a late juncture in the Bill’s drafting process. As a result, even though officials in the Cabinet Office did not have to read the draft instructions, the Office of the Parliamentary Counsel were urged

⁴² TNA.CAB/198/452. Minute prepared by Michael Quinlan, dated 17 February 1977

⁴³ TNA. CAB/198/452. Letter from John Smith MP to Ronald King Murray MP, dated 18 July 1977

⁴⁴ Scotland Act 1978, s.3(b)

to “consider what you can usefully do in the time available”.⁴⁵ As for the latter issue, the ability of the Scottish Assembly to discriminate against the English, the question had arisen following concerns expressed by Sir John Garlick, the Second Permanent Secretary at the Cabinet Office. Officials were then briefed to seek legal advice, including whether the Race Relations Act 1976 and the Act of Union offered suitable protections for English-born residents in Scotland post-devolution.⁴⁶

2.3. Scottish Executive

Plans for how the Scottish Executive would be established and run were well underway by the time that the Scotland and Wales Bill’s ill-fated parliamentary journey ended in early 1977. With the revival of the Government’s devolution proposals, in the form of the Scotland Bill, officials returned to planning for the day to day mechanics of devolved government. In May 1978, these thoughts, in the form of a paper outlining a broad potential structure for the Scottish Executive Administration, were sent from the Scottish Office’s Permanent Secretary, William Kerr Fraser to the Treasury’s Permanent Secretary, Sir Douglas Wass.⁴⁷

In this letter, Fraser outlined a Scottish Executive that would consist of a “relatively small administration” of some 11,000 civil servants. In terms of the number of Government departments, Fraser proposed to advise any incoming First Secretary that there should be “no more than four or five functional departments, with one or two at the centre”, justifying this on the grounds of “economy and efficiency” and to avoid a “proliferation of small freestanding departments”. This structure of, roughly, five departments could then feed into an Executive of 12 members, of which a substantial number would not be departmental ministers (Fraser

⁴⁵ TNA. CAB/198/452. Letter from G.E. Cammie to E.G. Caldwell, dated 1 November 1977

⁴⁶ TNA. CAB/198/452. Letter from D. Cunningham to Mr Archer, dated 12 May 1977

⁴⁷ TNA. BD/108/240. Letter from William Kerr Fraser to Sir Douglas Wass, dated 30 May 1978

suggested that this could include roles such as Leader of the House, Chief Whip, as well as Ministers with responsibility for cross-departmental matters – he proffered the example of a Minister for ‘general Highland problems’.⁴⁸

In terms of departmental responsibilities, Fraser noted that such allocation would be the prerogative of the First Secretary. However, based on his assumptions about there being no need for more than five functional departments, he suggested that the best approach would be to adopt the existing five Scottish Office internal departments, along with the Scottish Courts Administration, “and apply the principle of ‘minimum change, minimum costs’”, although he noted that some changes would be necessary due to the retention of certain responsibilities by the Secretary of State for Scotland.

Based on the existing arrangements within the Scottish Office and the powers to be devolved to Scotland, Fraser’s paper proposed the following five departmental model:

- a) Health;
- b) Education and social work;
- c) Infrastructure development (transport, housing, water and sewerage, planning and fire services);
- d) Home and legal affairs (including the Scottish Courts Administration); and
- e) Land use and natural resources, tourism, Highlands and Islands Development Board and Scottish Development Agency.

⁴⁸ Fraser acknowledged that there could be political pressures “to create Departmental portfolios in excess of any reasonable number of Departments” and suggested that experiments in “dual membership responsibility” for departments could be considered (i.e. where two ministers shared cabinet responsibility for a particular department), alternatively he suggested one member could be designated the lead minister and would then delegate to the second minister. However, he admitted that the first model was unprecedented in Whitehall and the latter model would struggle for acceptance from those left as “second tier” members of the Cabinet.

While Fraser noted that there were a “number of other variants that could be equally viable”, he insisted that “all seem likely to justify five Administrative Deputy Secretary posts”.

In addition to the five functional departments, there would also, according to Fraser, be a number of functions that would “require coordination and control from the centre of the Administration”. These included constitutional matters, such as monitoring the devolution settlement and oversight of relations with Whitehall, as well as finance matters (most notably negotiations about the block grant⁴⁹), and legal and secretarial issues. In terms of how the ‘centre’ should be organised, Fraser suggested that it may seem sensible to split the ‘centre’ department into two sub-sections (reflecting the financial and non-financial responsibilities).

At a ministerial level, Fraser expected that the First Secretary would “almost certainly wish to take charge of non-financial functions” and it “would seem virtually certain that there must be a Secretary with specific responsibility for Finance” – although he noted that the First Secretary might wish to be their own Finance Secretary to avoid “the creation of a rival centre of power in the Administration”. In terms of the bureaucratic leadership, Fraser envisaged that the Scottish administration would be headed by an official at Permanent Secretary rank and who would “undoubtedly wish to have direct responsibility for many of the non-finance functions and would also wish to be the Secretary to the Executive”. Fraser expected that the Permanent Secretary would require a Deputy Secretary to provide support for non-finance functions and another to deal with finance functions. This requirement of one Permanent Secretary and two

⁴⁹ The Scottish Assembly and Executive were to be funded by a block grant from Westminster. The formula used to devise the size of the block grant would become known as the Barnett Formula, after its creator Joel Barnett (the then Chief Secretary to the Treasury). Designed, according to McLean and McMillan, to redress what the Treasury saw as overspending in Scotland, the formula was intended in the long run to bring public spending in all four nations of the UK to “converge on equal spending per head” (McLean and McMillan, *The State of the Union*, 169-170). In the short run, “it was designed to replace bargaining one programme at a time by a single annual bargain” (McLean and McMillan, *The State of the Union*, 169-170), as the formula works out the yearly change in the block grant (M. Keep, *The Barnett Formula*, Briefing Paper 7386 (House of Commons Library, 2018), 4-9).

Deputy Secretaries for centre functions, Fraser argued, would be needed regardless of the First Secretary's decisions about ministerial responsibility for finance matters.⁵⁰

Fraser's focus on efficiency and minimising was endorsed, a number of months later by Sir Ian Bancroft, the then Head of the Home Civil Service, who told Fraser that he accepted that "it would not be realistic to contemplate major reorganisation in establishments in advance of the Executive settling down in office and being able to take a view on these matters", he also endorsed Fraser's position "in favour of retaining a centralised organisation" for the Scottish Executive administration, at least initially.⁵¹

3. Welsh Devolution

3.1 The Proposals

The model of devolution proposed for Wales, under both the Scotland and Wales Bill and then the Wales Act, was considerably weaker than that envisaged for Scotland. The Labour Government's 1975 White Paper, *Our Changing Democracy*, proposed an Assembly with initially 72 members (two per Parliamentary constituencies in Wales). Unlike the proposals for Scotland, the Assembly would not possess primary law-making powers, but would enjoy secondary legislative powers within devolved areas. In another key departure from Scotland, the White Paper proposed that powers devolved to Wales would be "vested in the Assembly as a corporate body". As a result, there would not be a formal distinction between Executive and Assembly. Instead, the Wales Act made provision for the delegation of the Assembly's executive powers to subject committees who, in turn, would be able to delegate those powers to their respective

⁵⁰ TNA. BD/108/240. Letter from William Kerr Fraser to Sir Douglas Wass, dated 30 May 1978

⁵¹ TNA. BD/108/240. Letter Sir Ian Bancroft to William Kerr Fraser, dated 24 October 1978

leader. Committee leaders would comprise the Assembly's Executive Committee, the de facto (if not de jure) Welsh devolved executive. The Chair of the Executive Committee would be formally titled the 'Chief Executive' and would be appointed by the Assembly as a whole.⁵²

As in Scotland, much of the eventual Wales Act closely resembled the proposals put forward in the White Paper. The Act provided that for an Assembly, as a body corporate, with only executive and secondary legislative powers. As anticipated in the White Paper, subject committees would have played a key role in the day to day life of the Assembly. Section 17 of the Act required the Assembly to establish subject committees. One of those committees had to be the Executive Committee and its membership would derive from those appointed as the 'leaders' of subject committees (a post distinct from Committee Chairman). Section 17 further enabled the delegation of powers from the Assembly as a whole to its committees and from the committees to their respective leaders. Importantly the rule requiring party balance that applied to all other subject committees did not apply to the Executive Committee, thus further facilitating its likely development as a de facto cabinet.⁵³

In another important difference with Scotland, flowing from the lack of a formal separation between Executive and Assembly, was that officials hired by the Assembly would be civil servants. This contrasted to both Houses of Parliament where staff, as discussed earlier, are servants of their respective chamber and not civil servants and to the regime provided for Scotland whereby the Clerk and other officers of the Assembly would not have been civil servants.⁵⁴

⁵² HM Government (November 1975). *Our Changing Democracy: Devolution to Scotland and Wales*, London: HMSO, Cmnd. 6348, paras. 177-196; TNA. BD 108/240: Welsh Assembly: senior staff structure: Letter from J E King to Clifford Bamford, dated 10 October 1978

⁵³ D. Foulkes, An analysis of the Wales Act 1978, in, D. Foulkes et al. (eds.), *The Welsh Veto* (Cardiff 1983), 62-108

⁵⁴ *Ibid.*, 68

However, as in Scotland, by the time the Wales Act began its journey through Parliament, the Government had conceded that a referendum would be required for devolution to come into force. Again, as in Scotland, the referendum provision in the Wales Act was successfully amended, on 19 April 1978, by the Conservative opposition and rebels on the Government's backbenches to include a requirement that any majority for Yes should equate to 40% of the total electorate for devolution to be enacted.

3.2 Planning for devolution

Accommodation

On 14 April 1976, when the venue for the Scottish Assembly was announced, the Lord President of the Council suggested that the Government would seek to base the Assembly in the Temple of Peace in Cathays Park, Cardiff.⁵⁵ However, after negotiations collapsed with the building's owners, the United Nations Association, the Secretary of State for Wales, John Morris, revealed, on 26 October 1976, that the Assembly would instead be based at the old Coal Exchange building in Cardiff.⁵⁶ Work on converting the building for use by the Assembly was rather stunted, a consequence of the failure of the Scotland and Wales Bill and then the need for the Assembly to successfully be endorsed by voters at a referendum after the Wales Act 1978.

On 7 April 1977, for example, it was announced that while preliminary work, needed to repair the fabric of the building, had been carried out, the main work of conversion required would not proceed at the current time as a result of the Government's decision to pause work on the Scotland and Wales Bill and review its devolution strategy.⁵⁷ Nearly two years later, on 16 January

⁵⁵ HC Deb (Hansard) 14 April 1976, c.1382

⁵⁶ HC Deb (Hansard) 26 October 1976, c.174W

⁵⁷ HC Deb (Hansard) 7 April 1977, c.604W

1979, by which time the Wales Act had passed Parliament but required a referendum to be enacted, the Welsh Secretary confirmed, in an answer to a written question from the Liberal MP Geraint Howells, that work on the building was not now expected to resume until after the referendum.⁵⁸

Staffing

Based on the Government's proposals in the 1975 White Paper, the planning presumption, from the outset, was in favour of a shared bureaucracy staffing both executive and assembly functions. In anticipation of the Wales Bill receiving Royal Assent, planning within Whitehall focused on a 'Welsh Assembly Administration' (the WAA). According to a draft paper on the 'top structure' of the administration of Welsh devolution, prepared in January 1978, the WAA would "be a larger organisation than the current Wales Office", with total staff of 2,500 of whom "nearly all of them" focused on executive, rather than parliamentary, duties.⁵⁹

By October 1978, planning for the WAA had resulted in the following working assumptions being made, in Cardiff at least, about the potential operation of Welsh devolution: first, the devolved functions conferred to the Assembly could "reasonably" be covered by six subject committees (development; land use; roads and transport; health and personal social services; education, arts, language, sports etc.; and housing, local government and miscellaneous functions); second, resource allocation between these committees and their respective delivery bodies would be the task of the Executive Committee "and there would be no separate Finance or Establishments Committees"; third, the distribution of functions would be reflected in the official structure of the WAA, "but with services such as finance, establishments, information

⁵⁸ HC Deb (Hansard) 16 January 1979, c.706W

⁵⁹ TNA. BD 108/240: Welsh Assembly: senior staff structure: Letter from J E King to O H Morris, dated 27 January 1978

and legal services provided in a central block or blocks”. Other factors that would need to be “taken into account” included:

- matching the probable coordination provided at a political level by the Executive Committee at an official level;
- the negotiation and allocation of the block grant would probably be the central and politically most important activity of the Assembly;
- connected to the above, the importance of relationships with the rest of Whitehall in the block grant negotiations as well as on continuing policy development;
- the degree of accountability, and levels of scrutiny, of civil servants was likely to be higher than in Whitehall; and
- the level of decisions taken at a political level was also likely to be higher.

These assumptions were laid out in a paper on the top structure for a WAA, developed by JE King, the Principal Establishments Officer in the Welsh Office, and sent to, among others, Clifford Bamford in the Civil Service Department.

Based on the afore mentioned assumptions and factors that would need to be “taken into account”, the paper put forward its proposals for a WAA top structure. The top structure would be headed by an official of Permanent Secretary rank. It would be an open question as to whether the Head of the WAA should also serve as Secretary to the Executive Committee, along the lines of the Cabinet Secretary in Whitehall, or whether it would be better for the Head of the WAA to instead appoint a Deputy Secretary to act as Secretary to the Executive Committee. If such a model were to be accepted, the paper proposed a top structure along the following lines: a Permanent Secretary at the head of the WAA, three Deputy Secretaries overseeing broad areas of responsibility (1. Environment and Industry, 2. ‘Central Services’ and Secretary of the Executive Committee, and 3. Health and Education), with Under Secretaries with responsibility for a range of more specific policy areas within each of these three clusters (it was envisaged that there

would be at least one Under Secretary group for each Executive Member and subject committee).

According to J.E. King, the benefits of the proposed structure were that there would be a Deputy Secretary with responsibility to report to the Permanent Secretary on all blocks of devolved work, including the day to day operational work of the centre – thus freeing up the Permanent Secretary to devote the time necessary to block grant questions, resource allocation and ‘Accounting Officer’ functions. It was also contended that such a structure would also avoid the blurring of “the ‘normal’ lines of management responsibility”, thus making it easier for officials to react to the “many novel problems” on which they may need to take the initiative following the advent of devolution.⁶⁰

The response to this proposed top structure, from Clifford Bamford, was notably lukewarm. Responding on 8 December 1978, Bamford indicated that the Civil Service Department would not authorise the creation and filling of particular posts “until there is an evident need to fill them” and that such a moment may not even arise until after the Assembly was established. On the specifics of King’s paper, Bamford warned that that there was too much uncertainty about “how the elected representatives will operate the system in practice” - in particular, the possible relationships between the committees and between the committees and the Executive Committee and within the Executive Committee. According to Bamford, there was a potential spectrum of power relationships spanning from a dispersal of power within the Assembly to the concentration of power by the Executive Committee. As such, “the administrative structure would clearly have to be different according to which model relationships at elected representative level were to follow”.

⁶⁰ TNA. BD 108/240. Letter from J E King to Clifford Bamford, dated 10 October 1978

Bamford therefore suggested that King and the Welsh Office look again, “after the referendum”, at “two or three of the most likely alternative scenarios for relationships between Committees, Executive members, the Executive Committee and the Chief Executive and consider in relation to each what the appropriate supporting administrative structure might be”. He added that the Wales Office might wish to pick the brain of “suitable people in local authorities” such as the Strathclyde Regional Council, which “might throw light on some of the implications for administrative structure of differing power relationships between subject committees, the Chairmen of these committees, central Policy and Resources committees and the Leader of the Council”.⁶¹

Bamford’s letter received a rather caustic response from J.E. King who complained that Bamford “rather overlooked and underrated the extent to which senior officials here, from the Permanent Secretary downwards, have been thinking over the past few years about the whole range of ways in which the Welsh Assembly might choose to operate”. According to King it is precisely as a result of this thinking and consideration that the Welsh Office had come to favour a structure headed by a Permanent Secretary and support by a number of deputy secretaries. Indeed, he noted that his Permanent Secretary had been quite clear that a Permanent Secretary would need to head the new WAA and that “he will need the support of a deputy secretary for the central services area”.

Keen to arrive at a solution, King offered Bamford a compromise whereby the CSD authorised a top structure for the WAA “involving a Permanent Secretary and two Deputy Secretaries, on the basis that it is inconceivable that these posts would not be required”. However, he also warned that should such a compromise not be reached, the Permanent Secretary at the Welsh Office, Sir

⁶¹ TNA. BD/108/240. Letter from Clifford Bamford to JE King, dated 8 December 1978

Hywel Evans, would “pursue the matter further at his own level”. According to King, the Permanent Secretary was not content with the idea of waiting to go forward with no decisions to be taken regarding the Assembly’s top structure until after the referendum. On this point, King also asked Bamford whether this was “the line you are taking in relation to Scotland?”. King’s letter went unheeded and, indeed,⁶² at the top of the letter, one can find a scribbled message noting that “Mr Bamfield does not propose to reply to this letter until after the referendum”. A reflection perhaps of the rather limited, certainly in comparison to Scotland, chances of Welsh devolution being able to survive the forthcoming referendum.

4. Conclusion: Defeat and Survival

Of the amendments to the Scotland and Wales Acts during their parliamentary journeys, the most significant (in both instances) was the inclusion of a 40% threshold in the post-legislative/pre-enactment referendums. When voting day came on 1 March 1979, the 40% threshold proved crucial in preventing devolution from coming into force in Scotland. While a majority of Scottish voters endorsed the implementation of the Scotland Act, the total number of Yes voters fell short of the required threshold (51.6% of Scottish voters voted Yes, a figure which represented 32.9% of the Scottish electorate).⁶³ In Wales, the notion of the Yes campaign winning a simple majority, let alone reaching the threshold, was never particularly likely. Indeed, when the results came in it was clear that devolution had been rejected on a monumental scale: 20.26% (Yes) to 79.74% (No).⁶⁴

⁶² TNA. BD/108/240. Letter from J.E. King to Clifford Bamford, dated 20 February 1979

⁶³ For a discussion of the results, and referendum campaign, in Scotland, see: J. Bochel and D. Denver, *The Outcome*, in J. Bochel et al. (eds.), *The Referendum Experience: Scotland 1979*, (Aberdeen, 1981), 140-146

⁶⁴ ⁶⁴ For a discussion of the results, and referendum campaign, in Wales, see: J. Barry Jones and R.A. Wilford, *The Referendum Campaign: 8 February 1978-1 March 1979*, in D. Foulkes et al. (eds.), *The Welsh Veto*, (Cardiff, 1983), 118-152

Under the terms of both the Scotland and Wales Acts, the Government had to lay before Parliament repeal orders. In the Welsh case, the scale of defeat meant that repeal was an inevitability. Indeed, Dafydd Wigley, the Plaid Cymru MP for Arfon, wrote Michael Cocks the Government Chief Whip on 21 March, to indicate his party's acceptance that the Government would move an order to repeal the Wales Act and that Parliament "cannot reasonably do other than pass this order".⁶⁵ In Scotland, the fact that a majority of Scottish voters had at least voted Yes prompted the Government to explore the possibility of salvaging, in some form, the Scotland Act, but a combination of a lack of cross-party consensus (the Conservatives refused to engage in talks until after the Scotland Act had been repealed) and opposition from Labour backbenchers forced the Government to abandon these hopes).⁶⁶

Paralysed by the combination of internal dissent and its status as a minority administration in a starkly divided House, the Labour Government did not move the repeal order. Following an SNP attempt at a motion of no confidence and, on 28 March 1979, a successful motion of no confidence was moved by the Official Opposition and carried by the slender majority of 311-310.⁶⁷ At the subsequent General Election, the Conservative Party was elected with a majority of 43 seats. On 20 June 1979, around a month after the Conservative administration took office, the House of Commons voted to repeal the Scotland Act.⁶⁸ The Wales Act was repealed the following week, on 26 June 1979.

Despite the defeat of devolution in 1979, both the Scotland and Wales Acts have continued to have an impact on the story of devolution when it re-emerged in the late 1980s and early 1990s

⁶⁵ TNA. PREM/16/2092: Letter from Dafydd Wigley MP to Michael Cocks MP, dated 21 March 1979

⁶⁶ Mitchell, *Devolution in the UK*, 126-127; see also the steering brief on potential lines for the Government to take and options that could be included in any cross-party talks that is attached to: TNA. PREM 16/2092. Letter from D.B. Smith to K.R. Stowe, dated 23 March 1979

⁶⁷ For a detailed discussion of the period between the referendum votes and the motion of no confidence, See: K.O. Morgan, *Callaghan: A Life* (Oxford 1997), 678-85; B. Donoghue, *Downing Street Diary*.Vol.2: With James Callaghan in No.10 (2009), 453-74

⁶⁸ HC Deb (Hansard) 20 June 1979 cc.1458-1462

on the political agenda and in the shaping of the devolution dispensations that came into existence after New Labour took office in 1997. In Wales, where devolution in the 1990s was again to be a more limited proposition than for Scotland, the Wales Act 1978 provided much of the framework of the Government of Wales Act 1998. As Rawlings has explained, there was an attitude of “why reinvent the wheel?” in 1997, with officials in both the Welsh Office and Welsh Labour drawing upon the Wales Act 1978 in the process of forming the Blair Government’s proposals.⁶⁹ According to Rawlings, the following similarities could be identified between the 1978 legislation and the 1997 White Paper on Welsh devolution:

- corporate legal form
- single chamber
- members elected for a four-year term, with no prior dissolution
- staffed by civil servants transferred from the Wales Office
- funded via the block grant and Barnett formula system
- continuance of the Office of Secretary of State for Wales.

It should also be added that, as with the 1978, Government of Wales Act 1998 provided for an executive model of devolution with the Assembly possessing only secondary legislative powers in areas conferred to it. According to Wyn Jones and Scully, the main difference between the 1978 Act and Labour’s devolution proposals in the 1990s “concerned the electoral system for the Assembly” with First-Past-The-Post (FPTP) abandoned in favour of a mixed system that included a proportional representation (PR) element.⁷⁰

In Scotland, by contrast, there were substantial differences between the Scotland Act 1978 and the Scotland Act 1998 and it is noteworthy that unlike in Wales, where officials in both the civil

⁶⁹ R. Rawlings, *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution*, (Cardiff 2003), 28

⁷⁰ R. Wyn Jones and R. Scully, *Wales Says Yes*, (Cardiff, 2012), 41

service and the Welsh Labour Party dominated the policy making process, the Scotland Act 1998 was a by-product of a multi-party constitutional convention that was purposely designed to develop proposals for devolution. Unlike in 1978, devolution in 1998 meant a Scottish Parliament, elected by a mixed system incorporating FPTP and PR, who operated on a reserved powers model whereby it could legislate on any matter that was not explicitly reserved to Westminster.⁷¹ The conferred powers model, as noted earlier, was criticised at the time for its complexity and, in 1997 the then Secretary of State for Scotland, Donald Dewar reflected that the 1978 Act had been a “somewhat grudging document” with a potential for “arguments over vires” (i.e. over competence). Instead, he suggested that the reserved powers model would “ensure maximum clarity and stability” and would “minimise the difficulties of interpretation and [...] allow for maximum flexibility in future”.⁷²

While the Scotland Act 1978 had little longevity within Scotland, it had a constitutional legacy of sorts in Wales where the devolution dispensation between 2011 and 2018 closely resembled that provided for in the 1978 Act. During this period, between the 2011 Welsh further powers referendum and the coming into force of the reserved powers model provided by the Wales Act 2017, the Assembly was a primary law-making body operating under a tightly defined conferred powers model of devolution (it’s powers were prescribed under Part IV Schedule 7 of the Government of Wales Act (GOWA) 2006).⁷³ The criticisms levelled, at the time and afterwards, at the Scotland Act 1978 for complexity and risking potential arguments over vires were frequently made during the operation of the Part IV Schedule 7 of GOWA 2006.⁷⁴

⁷¹ Mitchell, *Devolution in the UK*, 127-141

⁷² HC Deb (Hansard) 31 July 1997, c. 462

⁷³ Wyn Jones and Scully, *Wales Says Yes*, 173

⁷⁴ Indeed, during this period, three Assembly Bills were referred to the Supreme Court regarding their vires (two by the UK Government and one by the Welsh Government’s Counsel General), a marked contrast to Scotland where no case was referred to the Supreme Court by either the UK or the Scottish Governments to ascertain legislative competence. See also: House of Lords Select Committee on the Constitution, *The Union and Devolution*, 10th Report of Session 2015-16, HL Paper 149 (May 2016), para. 200; Wales Governance Centre and UCL Constitution Unit, *Delivering a reserved powers model of devolution for Wales*, (Cardiff 2015), 5-10

Devolution in the 1970s was the subject of much controversy, it absorbed a considerable amount of time on the floors of both Houses of Parliament and within Whitehall, where extensive planning took place (particularly for a Scottish Assembly and Executive). However, while the 1979 referendums meant that the plans made for devolution may not have borne fruit at the time, they had a remarkable constitutional shelf life.