

# Powers of the Scottish Parliament

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### Decision of Congress 2007

At Congress 2007, the STUC agreed Amended Motion 100 which recognised the achievements of the Scottish Parliament under the existing devolution settlement but stated that "... the ability for the Scottish Executive and Scottish Parliament to pursue policies has been restricted by the scope and nature of the legislation that formed the devolved Parliament." Motion 100 called upon the General Council to "... to consult with affiliates on the areas which could enable an enhancement of the present devolution settlement, and bring forward a report to next year's Congress."

### National Conversation

May 2007 saw the election of a minority SNP administration at Holyrood. In August 2007, the Scottish Government launched the National Conversation. A White Paper was issued laying out the arguments both for the devolution of further powers and for independence.

The White Paper identifies an end point within the current parliamentary term (2010) at which Parliament will debate a Bill to enable the Scottish Government to hold a referendum which asks voters to agree or disagree with the proposition that "... the Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state."

The White Paper also suggests a potential second proposition that the Scottish Government should negotiate a settlement in order to secure the devolution of a named range of powers, which, in effect, would allow voters to choose further devolution rather than full independence.

More recent statements from the First Minister suggest that the Bill put forward might propose just one, three option, single transferable vote referendum where the questions to be put would offer options of the status quo; an enhanced devolution settlement; and independence.

### Constitutional Commission

The Scottish Labour, Tory and Liberal parties have made clear their opposition to the holding of a referendum and are not taking part in the National Conversation. The parties put forward a motion, which was passed by the Scottish Parliament in November 2007, to create a Constitutional Commission with the intention of reviewing the

powers of the parliament and making recommendations for any necessary change. The remit of the Constitutional Commission does not include consideration of the option of independence. The Commission is a joint initiative with the Westminster Government having also received UK Parliament's approval. At the time of writing the Commission's Chair, Professor Sir Kenneth Calman, has been appointed but further membership has been yet to be announced.

### General Council and the constitutional debate

At its meeting in September 2007, the General Council agreed "to have a positive ongoing role both in the (National) Conversation and in other meaningful deliberations surrounding the debate". At a later meeting it was agreed that this positive role should include engagement with the Constitutional Commission.

It has also been the strategy of the General Council to promote a wider debate with civic institutions in Scotland, to ensure that the issue of constitutional change is placed in a wider UK context through dialogue with the TUC and national Trade Union Centres and to promote a debate about the powers of the Scottish Parliament as they relate to local government democracy and social partnership.

Notwithstanding this wider engagement, the priority of the General Council has been to consult with affiliates in line with Amended Motion 100 and to develop an interim report for Congress 2007. If agreed, this interim report will provide the basis for the General Council's representations to, and negotiations, with the National Conversation, the Constitutional Commission and Scotland's civic institutions. The process of consultation with affiliates will continue through 2008 and 2009, establishing by degrees, a fuller policy position on potential constitutional change.

In developing the interim report, the General Council has been guided by the understanding that its view should be informed by a wider engagement with civic Scotland and any decision to alter the constitutional settlement whether preceded by a referendum or by agreement between the UK and Scottish Parliaments will follow wide discussion and negotiation. The purpose of this interim report is therefore to provide a guide to the General Council's approach to discussion and negotiations whilst leaving open the option of developing policy and positions in the context of the ongoing national debate. The

report also enables the General Council to engage with all relevant bodies irrespective of the degree of constitutional change preferred.

### Consultation process

In view of the widening and developing debate over the powers of the Scottish Parliament it was clear that a definitive report for Congress 2008 covering all reserved powers was neither possible nor desirable. The General Council therefore agreed to prioritise areas for consultation and consideration. The decision to prioritise given areas does not imply that the devolution of any given power is necessarily favoured or opposed by the General Council rather that the area has been highlighted by one or more affiliates or has received a high degree of political and public attention.

The General Council gave high priority to the consideration of the areas of fiscal powers; broadcasting; equalities; and health and safety. Consultation was undertaken with affiliates through various mechanisms. In areas where affiliates have particular industrial interests additional consultation was undertaken.

The areas given medium priority for consideration and to be consulted on following Congress 2008 are the civil service; aspects of immigration policy; non devolved areas of energy policy; misuse of drugs; employment law; public sector pensions; and the regulation of some professions.

### Recommendations

#### FISCAL POWERS

The Scottish Parliament currently holds a number of fiscal powers including the power over the system of local taxation, business rates and the ability to vary income tax by three pence in the pound. Other fiscal responsibilities lie within Scotland at local government level including the rate at which local tax is set and borrowing powers. Borrowing powers were ceded to local government by the Local Government Scotland Act 2003 although the Scottish Parliament itself does not have borrowing powers.

Aside from independence, the current debate centres on the degree to which Scotland should adopt the responsibility for the revenue it spends

and the degree to which areas of expenditure currently reserved to Westminster should be devolved.

In this respect there are three broad models

- continuation of the block grant mechanism (though possibly reformed). This could allow a change in borrowing and spending powers but little or no change in revenue raising powers.
- the introduction of a mixed system whereby a greater proportion of monies spent in Scotland are raised in Scotland but where a proportion continues to be allocated through block grant according to a needs based or per capita formula;
- full responsibility in Scotland for revenue raising mechanisms currently reserved to Westminster with a “buy back” of appropriate services.

#### *Block Grant and the Barnett Formula*

The majority of affiliates responding to the General Council consultation recognised the ongoing debate over the block grant mechanism for funding public expenditure and believed that in the longer term a new settlement would be necessary particularly in the light of proposals for devolution of additional spending and borrowing powers.

This reflects the wider view in Scotland that enhanced forms of fiscal accountability are desirable. However, it was also the general view that an immediate move away from the Barnett Formula would be disadvantageous.

The General Council does not recommend support for the immediate abolition of the Barnett Formula and sees much to recommend a needs-based component to any future block grant agreement. However in the longer term consideration of a mixed formula is necessary including the possibility of additional tax raising powers.

#### *Income Tax*

The current income tax varying power (3p in the pound) has not proved an attractive option for successive Scottish administrations, possibly reflecting concerns on the potential for tax flight and the redistributive limitations of the current power. The General Council identified a number of potential problems with the wider devolution of

income tax policy to Scotland but recognised that in the context of the ongoing debate on the block grant it should not rule out changes in powers over income tax.

STUC should continue to consider its position through discussion within the established consultation mechanisms and through additional dialogue with civic Scotland and its communities.

### *Borrowing Powers*

The General Council believes that it is not consistent that the powers to borrow should be available to local government in Scotland but not the Scottish Government. Prudential borrowing would enable the Scottish Government to borrow at levels sustained by revenue income and using rules negotiated with the UK Treasury. Prudential borrowing powers would enable the Scottish Government to promote traditional borrowing mechanisms as an alternative to PPP/PFI.

The General Council supports alterations to the Scotland Act to allow prudential borrowing for the Scottish Parliament.

### *Corporation Tax*

The devolution of this power is favoured by both business interests and the Scottish Government to enable the setting of lower rates in Scotland ostensibly to attract increased inward investment and business set up. The General Council believes that anticipated increased EU scrutiny and regulation of Corporation Tax will lead to closer harmonisation across the EU member states and that, in any case, the predictable moves to lower Scottish rate for Corporation Tax would undermine social cohesion and sustainable economic development.

The General Council opposes extending the powers of the Scottish Parliament to include Corporation Tax.

### *VAT and the range of excise and other duties*

VAT levels are currently regulated by the EU. There are significant “border” and other complications, not to mention EU rules governing the setting of other duties.

The General Council believes that there is no prospect or advantage in the devolution of these powers to Scotland.

### *Council Tax Benefit*

Whilst the Council Tax is devolved, Council Tax Benefit is reserved. The General Council has identified that there are complications with the devolution of additional powers associated with the operation of the UK benefit system. However the General Council believes in principle, that the responsibilities for setting the local taxation system and the disbursement of the monies associated with its benefit should be aligned and reside with the Scottish Parliament. This should not however be interpreted as support for current Scottish Government proposals for a local income tax. The STUC has tended towards support for a property based element to local taxation, albeit on a more redistributive basis.

The General Council supports in principle the devolution of Council Tax Benefit contingent on the ongoing wider debate over Fiscal Powers.

### *Housing Benefit*

As with the local taxation, housing policy is a devolved power but the associated benefit is not. The design of housing policies to suit Scotland’s needs, particularly in relation to government funded house building could be addressed more progressively if Housing Benefit were treated as part of overall housing strategy. As with Council Tax Benefit, the General Council recognises a number of difficulties associated with the transfer of this power but believes in principle, that the responsibilities for housing policy and the disbursement of the monies associated with housing benefit should be aligned and reside with the Scottish Parliament.

The General Council supports in principle the devolution of Housing Tax Benefit contingent on the ongoing wider debate over Fiscal Powers.

## EQUALITIES

Currently equalities legislation is reserved to Westminster with the exception of “promotion of equalities”, which Holyrood may undertake. This includes a wide range of equalities legislation and a further range of equality references within wider acts. A significant range of equalities legislation is related to employment law.

Affiliates have given clear in principle support for the devolution of equalities, yet support for the devolution of employment law is far less certain.

The General Council recognised the widespread view that equalities legislation should be devolved and that in the future, more progressive legislation might result. The General Council also recognised the appetite for stronger and more autonomous enforcement powers for the Commission for Equalities and Human Rights in Scotland.

The General Council supports in principle the devolution of equalities, but recognising the fundamental linkage with UK employment legislation, believes that further consideration of the issue is required in the context of the consultation on devolution of employment law to take place later in 2008.

#### BROADCASTING

The General Council undertook extensive engagement with both the Federation of Entertainment Unions and in its responses to the Broadcasting Commission set up by the Scottish Government. A number of affiliates also contributed to the wider consultation.

Responses to the consultation varied with a consensus for the devolution of some further powers such as the Scottish Parliament assuming powers to direct the industry regulator Ofcom and the BBC Trust. Equally, the responses have been such that full devolution of Broadcasting should not be ruled out although some concerns were raised about the future of the BBC in a fully devolved context.

The General Council supports the devolution of limited further powers over Broadcasting and will continue to consult affiliates and relevant bodies with a particular emphasis on assessing the findings of the Broadcasting Commission which will report in late summer 2008.

#### HEALTH AND SAFETY

Through the secretariat the General Council maintained a general dialogue with affiliates over the powers in relation to Health and Safety in Scotland. A consultation was issued although the short period of time available for responses probably limited the number of responses

received. The General Council has not detected a strong view that primary legislation for Health and Safety should be devolved and has noted that in Northern Ireland, where the area is devolved, there have been no moves to strengthen or in any other way alter the existing legislation inherited from Westminster. It should be noted that this is not a unanimous view.

The General Council is however aware of stronger support for the devolution of safety regulation and enforcement. In Northern Ireland, the HSE NI has existed since 1978 and employs 45 inspectors in enforcement, roughly about one inspector for every 17000 workers, the comparable figure for Scotland is approximately one for every 39700.

The implication of the devolution of safety regulation and enforcement is therefore an area which the General Council would wish to explore in more depth.

The General Council does not support the devolution of primary Health and Safety legislation but will continue its consideration of devolving safety regulation and enforcement as part of its wider consultation with affiliates on the potential devolution of aspects of the civil service and Non Departmental Public Bodies which will be progressed following initial discussion with civil service and other affiliates with an industrial interest.