

DEVOLUTION

LCC(77)163

SECRET

Copy No. 1..

A Paper by Mr. Pym

1. BACKGROUND

Although there has been widespread relief that the devolution debate has receded in recent months, unfortunately the Government is actually going to produce its new Bills so time is not on our side.

Last February we proposed an all-Party Committee on devolution. It would consider every Party's proposals but each Party would attend without any prior commitment to its particular ideas. The Government has rejected this but in my view it still remains the right approach. When repeatedly challenged as to the proposals the Conservatives would put forward to the Committee we have been deliberately vague, merely making references to Douglas-Home.

The situation has become urgent once again now there has been a clear indication that the Government's Bills will come before the House very early on in the new session and that the Second Readings will be followed very closely indeed by the guillotine motions.

2. SECOND READING AND GUILLOTINE OF NEW BILLS

The most likely occasion on which we may be able to defeat the new Bills will be once again on the Guillotine. There is one crucial difference between the situation in the coming session and that in the last one: there will not be lengthy debates between the Second Reading and the Guillotine motion which might persuade those in favour of the principle of the Scotland Bill to oppose the Guillotine. This means that our precise posture on Second Reading is likely, on this occasion, to be crucial to the outcome of the Guillotine vote.

The problem is that in Scotland the vote on second reading is seen entirely as a vote on the principle of devolution whereas in the Commons it is seen as a vote on the principle of a particular method of devolution.

Our best hope of maximising our vote on the Guillotine of the Scotland Bill would be if we had a free vote on second reading. That would also serve the Party in Scotland best. They do not want a repetition of last year. The price to be paid for that is that it would make the position of the Front Bench during the subsequent debates very difficult. The other option, which might well be preferable, is a three line whip against the Scotland Bill preceded by a three line whip for a reasoned amendment. Such an amendment would only be of value if it embraced a commitment to an all-party Committee and to consideration by that Committee of the specific stated proposals which the Conservative party would submit to it (see below).

the proposals we would put to the Committee; otherwise they will seem like a gimmick for party management purposes.

With regard to Wales none of these problems arise: we will vote against the Bill and the guillotine on a three line whip.

3. OUR PROPOSALS TO THE COMMITTEE

In addition to increasing our chances of success in the lobbies on Second Reading and Guillotine of the Scotland Bill there are other important advantages of now outlining our proposals which we would put to a Committee.

We cannot remain credible on second reading or in the debates over the next year if we merely stick starkly to the idea of an all-Party Committee. Indeed, that would endanger the credibility of such a Committee itself.

We can be more positive either by committing ourselves to a definite set of proposals or by detailing the proposals we would place before the Committee. A new commitment to particular proposals is not a practical possibility and in any case we have advanced our all-Party approach as the correct way of initiating a major UK constitutional change.

For as long as that is credible and for as long as there is a chance the Government's Scheme may go through anyway so that our ideas are academic, there is no point in moving to a commitment to detailed proposals.

However, our credibility could itself be enhanced and extended by spelling out the proposals that we would put to the Committee and the way in which it would work.

This could be achieved by:

- a) A commitment to put the conclusions of the Committee to the House of Commons, although inevitably the government of the day must reserve the right to form its own view on those conclusions and make its own recommendations to the House.
- b) A commitment to provide Civil Service assessment of all proposals advanced.
- c) Detailing the proposals which the Conservatives would put forward in the Committee.

Such a procedure would enable us to argue for an alternative method of devolution without being committed to anything more than putting it to the Committee - that is, as long as the all-Party Committee remains the appropriate next step. This seems to me a position of great political advantage at present.

The credibility of proposing an all-Party Committee would, for example, be diminished in the event of: debates on the Bill going on all year; an election after the Bill had been passed by the Commons but not the Lords.

4. THE PROPOSALS

We have argued consistently that one can have either a limited assembly without executive and legislative powers or one that goes further than the Government's scheme to quasi-federalism.

Neither the Party nor the country is ready for the latter.
b) what would be the role of a more limited Assembly?

A. Legislative role

Many believed the central defect of the Douglas-Home Assembly was the potential conflict in its legislative role (i.e. that Second Reading, Committee and Report stages of Scottish Bills should be taken in Edinburgh). For that reason they objected to it being directly elected, lest that itself should exacerbate any conflict.

It would be inescapable that any Assembly would express its views on Scottish legislation whether or not specific procedures were laid down for it to do so and Parliament would have to take its decisions in the light of those views. However in the scheme I am recommending the will of Parliament would clearly and indisputably prevail. One way of achieving this officially would be to allow the Committee Stage, but no other, of Scottish legislation to be taken in the Assembly with Parliament able to decide whether or not the Assembly's amendments were acceptable on Report. Other means are by allowing the Assembly to suggest amendments on which the House of Commons would vote or by allowing Assembly consideration at the pre-legislation (e.g. White Paper) stage.

In this way Parliament would not lose any control, but gain assistance in performing its role. The Assembly's position would be clearly subordinate.

B. Other powers

The other powers of this Inquisitorial Assembly would be largely as elaborated previously (giving the advantages of consistency) i.e. powers to:-

- a) question the Scottish Office Ministers
- b) debate matters of general concern-
- c) advise on the allocation of a block budget

- d) debate reports of public bodies, nationalised industries, etc. in Scotland.
- e) form Select Committees with power to call in civil servants so as to examine policies and to propose new ones for the Government's and Parliament's consideration
- f) enable any Government Minister to attend the Assembly and the Assembly to request their attendance on a limited number of occasions to debate UK policies as they affect Scotland.

Such an Assembly would be an extension of democratic scrutiny and an extension of Parliament. It is the lack of Parliamentary scrutiny in Scotland rather than the absence of executive powers that is the legitimate source of complaint.

C. Composition of Assembly

There are four main options:-

- 1) Indirectly elected from regional and local councillors.
- 2) Directly elected.
- 3) Scottish MPs meeting in Scotland.
- 4) A hybrid of 1 or 2 and 3.

Probably the least disliked scheme in the Party is 3 but it suffers from a decisive drawback: it would prevent the House of Commons from meeting on one, or more, days a week as all its business is UK business with all MPs having the right to participate. To alter that would be a major constitutional change for the House of Commons and most unlikely to be acceptable as it would involve the creation of 2 types of MPs and would be subversive of the Union. For the same reason option 4 is out.

The arguments in favour of indirect elections have not been positive, but rather arguments against direct elections. A directly elected assembly with legislative powers is regarded as a rival to Parliament and bound to come into conflict with it.

Any Assembly will only be taken seriously if it is broadly representative. If it is not, there is no point in having it. Equally any Assembly must be sufficiently representative to be defensible as a positive contribution to democratic scrutiny. If a means could be found for establishing an indirectly elected Assembly and it were regarded as broadly representative, then it would be preferable. But I do not believe an indirectly elected Assembly is any longer credible in Scotland.

More than that, there is no point in creating such an Assembly if it does not actually scrutinise the work of the Executive far more effectively than now. Anything that did not do so could lead to cynicism and disillusion and fuel the

Nationalist fire. Consequently, it will need to sit for at least two, and possibly more, days a week. No councillor worth his salt would have time for that.

However, it is not the manner of election that is crucial but the powers. If we remove the subsequent legislative power, then the opportunity for conflict will be greatly reduced as the Assembly will be advisory and Parliament will remain supreme and lose none of its responsibilities. The opportunity for disagreement will remain but not on the basis of two bodies each claiming power to act in a particular situation that could be so damaging to the unity of the UK.

With the removal of legislative powers most of the problems surrounding direct elections disappear and indeed such a minimal Assembly would only have political credibility if directly elected.

It should be remembered that our often repeated commitment to a directly elected Assembly has never been withdrawn. What I said at Perth was that it was inoperative in the context of all Party talks, just as the commitments of all the other Parties were inoperative. At present no one Party can carry through any commitment on its own.

5. RECOMMENDATION

We cannot decide our tactics on the Scotland Bill until we know exactly how the Government is going to handle it. In the meantime we should announce the following policy.

- 1) We would establish an all-Party Committee to report in 9 months.
- 2) The Civil Service would be made available to examine all proposals put to the Committee.
- 3) Conservative proposals put before that Committee would be for a directly elected Assembly with the powers listed above.
- 4) We would put the conclusions of the Committee to the House of Commons.

TO ALL MEMBERS OF THE SHADOW CABINET

DEVOLUTION
(A Paper by Mr. Pym)

LCC(77)163

Errata

The last line on page 1 has been omitted. It should read:

"If we are to do that it is vital that we spell out now"

On page 5, line 5, delete "subsequent", insert "substantial".

Conservative Research Department,
24 Old Queen Street, London, S.W.1.

GW/MHA
26.10.77