

The Constitution Unit

**Three into One Won't Go:
The Future of the
Territorial Secretaries of State**

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Executive Summary

- Devolution has left some loose ends at the centre. One is the continuation of three Secretaries of State for Scotland, Wales and Northern Ireland. Do we still need three separate Secretaries of State?
- Federal systems manage with either a single Minister at the centre responsible for federal-state relations (as in Canada), or none (Australia).
- The Scottish Secretary is the most obviously redundant. The Welsh Secretary is still required to promote primary legislation at Westminster; while the Northern Ireland Secretary will remain so long as the security situation and British-Irish relations warrant it.
- This suggests an initial merger of the Offices of Scottish and Welsh Secretary: if not now, then once the Welsh Assembly has been granted legislative powers. Northern Ireland is likely to remain a special case, requiring a separate Minister.
- That is the logic of devolution. The politics of Cabinet formation may dictate otherwise. Patronage plays an important part; as does the politics of identity. William Hague has proposed retention of the separate offices of Welsh Secretary and Scottish Secretary, but combining them with other posts. This will downgrade the offices, because the other posts will dominate (as has been found with the Minister for Women).
- A merged 'Secretary of State for the Union' could take a more strategic and forward looking view, and lead government thinking on the unresolved issues of devolution: including finance, representation at Westminster and the English Question. A combined Secretary of State could also help to ensure mutual learning between the devolved administrations and the UK government from the policy experiments released by devolution.
- Giving the combined Secretary of State responsibility for regional government in England does not depend on functional considerations. It would be a political statement, giving higher priority to the issue, and a stronger push from the centre. A strong lead could equally come from DETR, if No 10 backed the policy and Ministers collectively gave it support.
- There is still a case for a 'constitutional supremo' with overall responsibility for constitutional reform, taking a synoptic and strategic view, while leaving the policy lead on individual reforms with the Whitehall departments.
- If the three territorial Secretaries of State were merged into one, the Cabinet would reduce from 22 to 20 members. This would release seats for more 'without portfolio' members, or for separate functions such as transport.

Introduction

1. If we were starting afresh post-devolution, would we include as members of the British government three separate Secretaries of State for Scotland, Wales and Northern Ireland? One way of answering this question is to look overseas. In Canada the federal government has a single Minister of Intergovernmental Affairs, supported by a department within the Privy Council Office (the equivalent of the Cabinet Office) responsible for the management of federal-provincial relations. In Australia they have a similar, but smaller secretariat in the Department of Prime Minister and Cabinet, and no Minister. The secretariat reports direct to the Prime Minister in his capacity as chairman of the Council of Australian Governments.

2. One reason why Canada has a Minister, and a much larger Department of Intergovernmental Affairs, is the problem of Quebec. Asymmetry in the constitutional settlement is reflected in the political and administrative arrangements at the centre. So it is in the UK. But should the UK's central arrangements continue to be quite so asymmetrical once the devolved institutions have bedded down? Should we carry on with three Secretaries of State, just as before, as if devolution had not happened?

3. Forming the new government after the next election provides an opportunity to address some of the loose ends left by devolution. In recent months the following have been suggested as possible changes in the machinery of government following the next election:¹ merging the Secretaries of State for Scotland, Wales and Northern Ireland

- shifting responsibility for regional government in England
- adding responsibility for local government in England
- adding responsibility for other constitutional reforms (Lords reform, electoral reform).

More recently William Hague has announced that he would reduce the size of the Cabinet by three. He would achieve two of these reductions by merging the Scottish Secretary and Welsh Secretary with other Cabinet posts (in the way that Baroness Jay doubles as Leader of the Lords and Minister for Women). This would be another way of merging the territorial Secretaries of State, not with each other, but with responsibility for another Whitehall department.

4. This paper addresses each of these proposals in turn, starting with merger of the territorial Secretaries of State. It concludes that there is a strong functional case for combining the offices of at least two of the Secretaries of State; but the politics of Cabinet formation may dictate otherwise. There is also a functional case for having a Minister at the centre with overall responsibility for constitutional affairs.

¹ Tristram Hunt, *Remodelling Government*, IPPR, summarised in *The Times*, 16 December 2000.

Future of the Territorial Secretaries of State

5. Before devolution Scotland, Wales and Northern Ireland were privileged in three respects. They were over-represented at Westminster;² they enjoyed significantly higher levels of public expenditure than England;³ and they had their own Secretaries of State to represent their interests in Cabinet. These privileges had been allowed to develop in part to appease the demands for devolution. Now that devolution has been granted they are all up for review. Scottish representation at Westminster is to be reduced in line with the English quota at the next Parliamentary Boundary Commission review.⁴ The Barnett formula (which determines changes in the Scottish, Welsh and Northern Irish spending blocks) is becoming the 'Barnett squeeze'.⁵ And the future of the three Secretaries of State has been called into question.

6. Writing in 1998, the Constitution Unit forecast the eventual demise of the Secretaries of State in the following terms:

Although their present transitional roles are indispensable, it is difficult to see that the posts of the present Scottish, Welsh and Northern Ireland Secretaries can remain individually viable when devolution is up and running. The Scottish Secretary is likely to be the first to go. The Northern Ireland Secretary may remain so long as the security situation and North-South relations warrant it; and the Welsh Secretary may remain so long as the Welsh Assembly requires a godfather figure to promote primary legislation for Wales at Westminster. But these must be transitional arrangements; if either situation endures devolution will have failed.

That is the logic of devolution; but the politics may dictate otherwise. The Secretaries of State may remain in being for symbolic reasons, or political balance, or patronage for some time after there has ceased to be a real job to do; and the titles may remain long after that ... But over time the individual

² Scotland has 72 seats when an electoral quota corresponding to that for England would give Scotland 57. Wales has 40 seats when a similar electoral quota would give Wales 33. Northern Ireland is not over-represented with 18 MPs. During the Stormont Parliament (1922-72) there was a devolution discount and Northern Ireland had 12 MPs.

³ The Treasury Select Committee's enquiry into the Barnett formula in December 1997 reported that in 1995-96 expenditure in Scotland had been 19 per cent and expenditure in Wales 12 per cent above the UK average; while spending in England was around 4 per cent below. The Treasury submitted further evidence in February 1998 which showed the following differentials in per capita spending between the Scottish, Welsh and Northern Irish blocks and equivalent spending in England: Scotland 32 per cent higher; Wales 25 per cent higher; Northern Ireland 32 per cent higher. As the three territorial blocks differ in coverage, the relatives cannot be directly compared with each other.

⁴ Scotland Act 1998, s 86. The review is to be completed by around 2005, and will reduce Scottish representation to 60 seats or less. Wales will continue to be over-represented.

⁵ David Bell, 'The Barnett Formula and Needs Assessment', Dept of Economics, Stirling, November 2000.

Secretaries of State are likely to be replaced in Whitehall with a single Minister responsible for the generality of territorial affairs, i.e continuing rather than vestigial business. This Minister's principal role will be to manage intergovernmental relations, the annual block grant negotiations etc. The Minister is likely to be a senior member of the government. He or she could have a small central department, but could equally well be based within a reformed Cabinet Office.⁶

Current functions of the Secretaries of State

7. Part of the case for merger is that the Secretaries of State do not have enough to do. The continuing role of the Secretaries of State post devolution is described in the *Memorandum of Understanding* between the UK government and the devolved administrations as follows:

The Secretaries of State for Scotland, Wales and Northern Ireland also have responsibilities within the UK Government for promoting the devolution settlement, for ensuring effective working relations between the Government and the devolved administrations, and for helping to resolve any disputes which may arise.⁷

8. At bottom it is a liaison and troubleshooting role. The role is least demanding in the case of Scotland, and most demanding in Northern Ireland. In January 2000 the liaison role was described in more detail in two Devolution Guidance Notes issued by the Cabinet Office. A third Devolution Guidance Note about the Northern Ireland Secretary was published in February 2001.

⁶ R Hazell and Bob Morris 'Machinery of Government: Whitehall' in *Constitutional Futures: A History of the next Ten Years*, Oxford, 1999 at p 137..

⁷ Cm 4444, Oct 1999, p1.

Role of the Secretary of State for Scotland

DGN 3 describes the role of the Secretary of State for Scotland in the following terms:

3. The Secretary of State for Scotland will continue to represent Scottish interests in reserved matters within the UK Government, advising colleagues about any distinctive Scottish interests that arise for reasons other than the impact on devolved matters. He will support colleagues in presenting UK Government policies in Scotland. The Secretary of State for Scotland will remain a member of most of the Cabinet committees of which he was a member before 1 July [1999], and will expect to be consulted by colleagues on the Scottish aspects of their proposals.

4. The Secretary of State for Scotland will also wish to promote the devolution settlement provided by the Scotland Act 1998, by encouraging close working relations between the UK Departments and the Scottish Executive, and between the UK and Scottish Parliaments. This does not mean that he will act as a conduit for the necessary communication between the UK Government and the Scottish Executive. Normally Departments should deal with the Scottish Executive direct. But the Secretary of State will want to keep himself informed about sensitive issues which involve both reserved and devolved matters, and more generally about relations with the Scottish Executive ...

Role of the Secretary of State for Wales

DGN 4 describes the role of the Secretary of State for Wales in different terms which reflect the different nature of the devolution settlement in Wales:

2. The new role of the Secretary of State for Wales is:

- to act as guardian of the devolution settlement in Wales
- to ensure that the interests of Wales are fully taken into account by the UK Government in making decisions which will have effect in Wales
- to represent the UK Government in Wales...

Guardian of the devolution settlement

3. This does not mean that the Secretary of State is a channel of communication between the UK Government and the Assembly. Normally Departments should deal with the Assembly direct. The Secretary of State and his Department will:

- give advice on the handling of business in the light of devolution
- act as honest broker should there be any dispute between the Assembly and Whitehall or Westminster
- explain the nature and consequences of devolution to the Assembly on behalf of the UK Government ...

Voice of Wales in the Cabinet

5. The Secretary of State for Wales will speak for Wales in the UK Cabinet and will ensure that decisions are taken with full regard to any matters where Wales has particular interests or concerns. He will not be a mouthpiece for the Assembly but he will need to know the views of the Assembly Cabinet before deciding his own line. This is particularly important in relation to proposals for primary legislation that affect Wales ...

8. None of this affects the Secretary of State's duty under the Government of Wales Act 1998 to consult the Assembly on the Government's legislative programme. This clearly means consultation with Assembly Members and will be carried out in a formal and public way ...

9. It will be the responsibility of the Secretary of State to steer through Parliament any clauses in legislation relating solely to Wales ...

Role of the Secretary of State for Northern Ireland

DGN 5 describes the role of the Northern Ireland Secretary in different terms again:

5. The Secretary of State for Northern Ireland continues to have overall responsibility for maintaining political stability in Northern Ireland. He wishes to promote the effective working of the institutions set up under the Belfast Agreement and encourage close working relationships between the UK Departments and Northern Ireland Departments. Normally, UK Departments should deal direct with their Northern Ireland counterparts.

6. The Secretary of State continues to have responsibility for a wide range of 'excepted' and 'reserved' matters. These include security, policing, prisons, criminal justice, public order and elections. He also represents Northern Ireland interests in all matters in the UK cabinet. In financial matters, he has responsibility for giving rounded advice to the Chancellor, in particular regarding any bids for additional resources which may be made by the devolved administration ...

7. The Secretary of State has statutory responsibility for giving consent to Assembly Bills where these impact on reserved matters other than incidentally, and for forwarding all Assembly Bills for Royal Assent. If the Secretary of State considers that an Assembly Bill is incompatible with international obligations, defence or national security or public order he may decide not to submit it for Royal Assent ...

8. ... the intention is that Northern Ireland Departments and Ministers should maintain and continue to develop strong bilateral links with their Whitehall/Westminster (and Edinburgh and Cardiff) counterparts ... But the Secretary of State will want to be kept informed of any sensitive issues or problems which develop in relations between Whitehall Departments and the Northern Ireland Administration. It would be helpful therefore if Departments could copy to the Secretary of State or the NIO all correspondence between UK Ministers and NI Ministers.

Hague pledges to preserve the Scottish and Welsh Secretaries: or does he?

9. In his pre-election briefings with the Cabinet Secretary Sir Richard Wilson, William Hague has indicated that he would reduce the size of the Cabinet by three members.⁸ He recognises that the role of Welsh Secretary is much reduced from when he held the post until 1997, and that it is now difficult to justify a full-time Cabinet post for the Scottish Secretary. He would achieve two of the reductions in his Cabinet by merging the Scottish Secretary and Welsh Secretary with other Cabinet posts. But in articles in the Scottish and Welsh press he presented the decision as preserving the separate office of the Secretary of State:

A crucial question is the future of the historic office of the Secretary of State for Scotland ... It is now widely believed that Labour intend to abolish the office of Secretary of State and to create a new ministry led by a 'Secretary of State for the Union' who would have responsibility in the Cabinet for Scotland, Wales and the English regions. Such a change would be a serious mistake ...

Conservatives believe that there are a number of reasons why there should continue to be a dedicated champion of Scottish interests in the British Cabinet. There will be the need for advice on the Scottish implications of new UK policies. The resources allocated by Westminster to the Scottish Executive will be decided within the UK Cabinet. There needs to be effective liaison with the Scottish Executive.

Surely it must be better to entrust these tasks to a Scottish Secretary rather than a Secretary of State responsible for a number of different parts of the United Kingdom. Under Labour's likely reforms, a Secretary of State for the Union would almost certainly be unable to secure anything like as good a deal for Scotland as a Secretary of State for Scotland.

Yet as a result of devolution these needs will only arise from time to time. As such it is difficult to justify a full-time Cabinet post as it existed in the past. I do not believe the present Secretary of State can find the job an onerous responsibility ... I am announcing that the next Conservative government will preserve the office of Secretary of State for Scotland. In recognition of the fact that the role has been substantially reduced by devolution, when I am Prime Minister the Secretary of State for Scotland will have an additional role within the Cabinet.⁹

10. And in Wales under the heading 'Hague pledges to keep Welsh Secretary of State' he made a similar announcement:

... even after devolution, Wales needs a strong voice at the heart of the UK Cabinet ... So after a widespread consultation with Conservatives in Wales I am today announcing that the next Conservative Government will preserve the office of Secretary of State for Wales. To take account, however, of the changed

⁸ *The Times, Financial Times, Guardian* 2 March 2001.

⁹ *Scotland on Sunday*, 4 March 2001.

role of the Secretary of State for Wales - much reduced from when I held that position - I shall, as Prime Minister, give the incoming Secretary of State for Wales an additional UK role within the Cabinet.¹⁰

11. Combining the post of Scottish Secretary or Welsh Secretary with another Cabinet job amounts to a downgrading of the office of Secretary of State. The other, more heavily loaded, and more senior post will dominate; and the role of territorial Secretary risks being marginalised. This is how the role of Minister for Women has been perceived, when it was first combined by Harriet Harman with the post of Social Security Secretary; and since it has been held by Baroness Jay, whose main position in Cabinet is Leader of the House of Lords. It would also fragment responsibility for devolution within Whitehall, and would risk making the devolution settlement even less coherent than it currently is. The Scotland Office and Wales Office would become footloose departments, answering to a Secretary of State who might be the head of any one of the main Whitehall departments.

12. These issues were raised in the annual St David's Day debate in the House of Commons the day after Hague's announcement, by Nigel Evans, shadow Welsh Secretary:

Mr Evans: ... what would happen to the position of Secretary of State for Wales? ... We already know that an incoming Conservative government will create the position of Secretary of State for Wales, and that that will not be merged with responsibilities for Scotland, Wales or Northern Ireland. The Secretary of State will have extra responsibility in recognition of the post-devolution position.

However I was unable to get any guarantee whatever ... that an incoming Labour Government would ensure that the position of Secretary of State for Wales would be retained. From the silence of the Secretary of State, I take it that the Government have already written it off .. and Wales will lose its separate and special voice [in Cabinet].

Mr Murphy: The hon Gentleman is aware that there are no plans to change the position of Secretary of State for Wales and that it is based firmly on the devolution settlement, which was voted on by the people of Wales ... To me, the part-time position of Secretary of State for Wales that is proposed by the Conservative party is rather peculiar.¹¹

The importance of a separate voice in Cabinet

13. There remains a strong attachment to holding on to a separate voice in Cabinet. It is reflected in the descriptions given by the Government of the current posts. In the Cabinet Office Devolution Guidance Notes cited above, elements in all three descriptions reflect vestigial elements of the 'old' role. We have the Scottish Secretary 'representing Scottish

¹⁰ *Wales on Sunday*, 4 March 2001.

¹¹ HC deb 5 March 2001, col 56.

interests in reserved matters within the UK Government', the Welsh Secretary 'speaking for Wales in the UK Cabinet', and the Northern Ireland Secretary 'representing Northern Ireland interests in all matters in the UK cabinet'. It is worth pausing and asking, do we still need special Ministers to represent Scottish, Welsh and Northern Irish interests in this way? Why do the Scots and the Welsh continue to get special treatment? Post-devolution, are the Scots not having their cake and eating it? The position is rather different in relation to Wales. So long as the National Assembly has no powers of primary legislation, it will require someone to look after Welsh interests in Westminster and Whitehall when primary legislation affecting Wales is being prepared. But even in the case of Wales, it is worth asking whether that guardian of Welsh interests needs to be a separate member of the British cabinet. And perhaps adding the rider that the Welsh 'London office' in Gwydyr House might instead be an outpost of the Welsh Assembly, answerable to the First Minister and his colleagues in the Welsh Cabinet.

14. The answer given in Whitehall and in Wales is that so long as the devolution settlements remain so different from one another, each does need its own defender and advocate within the British government. There is a tendency in Whitehall to reduce all the settlements to a lowest common denominator (exemplified in the division of reserved and devolved matters in the Scotland Act), and little understanding of the fundamental differences and the nuances between them. So long as Wales remains dependent on Whitehall and Westminster for its primary legislation, they would prefer the Secretary of State to press their case rather than deal direct with the Whitehall departments. The reason given for this is that to do otherwise would entail Wales justifying their approach in the context of UK or English policy. That would defeat their purpose. They are not asking for something which works within or alongside an English policy, but something which is different, which reflects the perceived needs of Wales. This will sometimes involve asking UK or 'English' Ministers to agree to an approach which differs markedly from their own. In at least one case the UK Minister felt unable to support the Welsh proposals as they would contradict his own within the same bill.

15. Wales finds it easier to sell their proposals to the Secretary of State as representing a vindication of the Welsh settlement as it currently operates, ie almost (so far as the UK government is concerned) a matter of devolution policy rather than health policy, education policy or whatever. In time the impact of devolution should be more mainstreamed into departments' thinking, and this will be part of the 'bedding down' process. But Wales sees that as some way off, and requiring not only an increase in understanding of the Welsh settlement, but a relaxation of the whole culture of defensiveness which surrounds the preparation of primary legislation in Whitehall, and which encourages Ministers to resist any meddling with 'their' bills. So long as that remains the case, they value the Secretary of State as their advocate within the British government; and do not believe that having a London ambassador of the National Assembly would be an adequate substitute.

16. The Secretary of State for Wales defended this role last year when appearing before the Welsh Affairs Select Committee. Paul Murphy emphasised strongly the legislative role, describing how his Parliamentary Under-Secretary, David Hanson, had been safeguarding Welsh interests on three different Standing Committees at once.¹² He also stressed the importance of Wales continuing to have a voice in Cabinet: he and David Hanson sit on 23 Cabinet Committees, and between them had attended 102 Cabinet Committee meetings between October 1999 and June 2000.

Combining two out of the three Secretaries of State

17. The next section considers combining the territorial Secretaries of State: not as William Hague proposes, with other Cabinet posts, but with each other. Hague is right that the posts are lightly loaded, and this is privately recognised within the Government. The Scottish Secretary has the least responsibilities, because the Scottish Parliament has much greater autonomy; it does not require a godfather figure at Westminster, and the devolution settlement in Scotland appears to be the most stable of the three. So the Scottish Secretary is likely to be the first to go, because that office is the most obviously redundant. It is also the most resented. Even though the personal relationship between John Reid and Donald Dewar was much better than sometimes portrayed in the Scottish press, some of the friction was because John Reid took an expansionist view of his role, and did occasionally tread on the First Minister's toes. If initially just two out of the three offices are merged, the most likely combinations are going to be those including Scotland: SO-WO or SO-NIO. In workload terms it makes sense to combine Scotland with Wales, because those two offices are more lightly loaded than NIO. But in functional terms it may make sense to combine SO with NIO, because the devolution settlement is more similar: both assemblies enjoy significant legislative powers. And other similarities of history, geography and demography result in Scotland having greater affinity, and more dealings with Northern Ireland than with Wales.

18. But Wales will demand, and probably get, legislative devolution in the medium term (2003-7), which will bring Wales closer to Scotland. Northern Ireland trumps everything else, and the Unionist and nationalist communities will both have strong views about losing 'their' Secretary of State. The key factor which will push matters towards a SO-WO merger is that Northern Ireland is, and will continue to be a special case. Take the role of promoting the Union, which John Reid espoused so strongly in Scotland. That approach could not be adopted in Northern Ireland, where it would be regarded as seriously one-sided. Northern Ireland is governed more and more in co-operation with the Republic of Ireland, a process given fresh momentum by the Belfast Agreement. While the roles of the Scotland Office and Wales Office will increasingly converge, that of the NIO and the Northern Ireland Secretary will remain very different. The fundamental task of the Scottish

¹² Presenting his annual report to Welsh Affairs Select Committee, 27 June 2000.

and Welsh Secretaries is to keep Scotland and Wales happily within the Union. The task of the Northern Ireland Secretary is more nuanced, because the British government has long said that it has no selfish or territorial interest in retaining Northern Ireland within the Union.¹³

Merging all three Secretaries of State

19. For this reason combining all three offices may never happen. If it did, the combined job description of all three Secretaries of State would include the following:

- Guardian of the devolution settlement
- Ensuring effective working relationships between UK government and devolved administrations
- Troubleshooting and resolving disputes
- Representing Scotland, Wales and Northern Ireland in Cabinet: sitting on 19 Cabinet committees
- [*Northern Ireland*]: policing, security policy, prisons, criminal justice, international relations, inc relations with Republic of Ireland
- [*Wales*]: Representing Welsh interests in the drafting and passage of primary legislation at Westminster
- Promoting the Union and presenting UK government policies in Scotland, Wales and Northern Ireland.

20. This list simply combines the existing functions of the three Secretaries of State. They or their junior Ministers sit on two-thirds of all Cabinet committees, covering economic affairs, the environment, biotechnology, better government, home and social affairs, the legislative programme, constitutional reform (and its sub-committees on ECHR and freedom of information), devolution policy and European issues. The full list of Cabinet committees on which the Scotland Office, Wales Office and Northern Ireland Office are represented is at Annex A. Even in an age when Cabinet committees seldom meet, but largely provide machinery for clearing collective business by correspondence, it offers a formidable range of opportunities for intervention. The functional case is that with an asymmetric devolution settlement Whitehall needs constantly to be reminded of the different circumstances of Scotland, Wales and Northern Ireland. The risk is that different circumstances becomes special needs, and intervention becomes special pleading.

21. The other aspect of the job description which needs questioning is the last item in the list, of promoting the Union and representing the UK government in Scotland, Wales and Northern Ireland. This is another vestige of the role of the 'old' Secretaries of State, and arguably should be discarded. The days are gone when it fell to the Scottish Secretary to

¹³ Eg *Frameworks for the Future*, in which John Major reiterated that the British government 'have no selfish strategic or economic interest in Northern Ireland', Cm 2964, Sept 1995.

announce good news in Scotland in relation to jobs, health or housing: those matters are now either devolved, or fall to other members of the UK government (eg DTI on inward investment, MoD on defence contracts, Gordon Brown on increased public expenditure).

22. But far more important than trimming vestiges of the old role is to realise the unfulfilled potential of the new. The whole could be so much greater than the sum of the individual parts. 'Guardian of the devolution settlement' and 'promoting the Union' need not simply mean defending the *status quo*. Nor should the role be restricted to defending the interests of Scotland, Wales and Northern Ireland (which may themselves be in conflict). Devolution leaves major unresolved issues, in particular in relation to finance, representation at Westminster, and the English Question. No one in government leads on these issues. There is no strategic thinking around the future of the devolution settlement, because no Minister is responsible for looking at it in the round. A Secretary of State for the Union, responsible for the whole devolution settlement, could take a more strategic, forward looking and rounded view.

Devolution finance

23. The funding arrangements will be called increasingly into question as Scotland uses its higher levels of public expenditure to fund free long-term care, higher levels of teachers' pay, and free tuition fees. A Secretary of State for the Union would do more than just defend the Scottish block or the Welsh block, but would be responsible for the whole system of funding the devolution settlement, not just one part of it. This would entail seeking to ensure that the funding arrangements were equitable between all parts of the UK: between the devolved administrations *inter se*; and between Scotland, Wales and Northern Ireland on the one hand, and the regions of England on the other. The Barnett formula is not sustainable as a means of funding devolution in the long term, and will come under increasing pressure from the devolved governments themselves. When the time comes to review it, and to undertake a fresh needs assessment, the Treasury will be the lead department, but the Secretary of State for the Union could play an important guiding role; in particular in trying to ensure the legitimacy of the process.

24. Another funding anomaly which needs to be addressed is the top-slicing of the budgets for the Scotland, Wales and Northern Ireland Offices. These costs are deducted by Whitehall before the Scottish, Welsh and Northern Irish block is passed on to the devolved administrations. The historic reason for this is that devolution was to be implemented at nil net cost: the cost of the small headquarters staff remaining in London to service the Secretary of State were to be found from within the existing Scottish block, as were the much larger costs of the Scottish Parliament and the new Executive. But John Reid took a more expansive view of the Secretary of State's role, and wanted teams of his own officials to advise him on all policy areas rather than being dependent on advice from the Scottish Executive. When he succeeded Donald Dewar he inherited a staffing complement of 30-40

(60 including the legal staff working for the Advocate General). He commissioned a staffing review, and in autumn 1999 the Treasury approved new staffing levels which have been steadily implemented, building up towards a new staff ceiling of 110. The cost of the Scotland Office will have risen from Donald Dewar's target of £3m in 1999-2000 to £7m in 2001-2. It is of course a matter for the UK government to decide what resources to devote to policing the devolution settlement and liaison with the Scottish executive and the Scottish Parliament. But it cannot be right that these resources can be increased at nil net cost to the UK government. Full responsibility for their running costs should be resumed by the UK government, without passing on the cost to the devolved administrations.

Title for merged office, number of junior Ministers

25. Apart from finance, other unresolved issues from devolution are representation at Westminster and the English Question. These can be more briefly dealt with. The Scottish seats at Westminster are to be reduced in line with the English quota in 2005. This will mean a reduction from 72 Scottish MPs to 60 or less.¹⁴ Welsh over-representation will then be called into question; especially if the Welsh Assembly at around that time is seeking legislative powers. (Wales has 40 seats at Westminster, when Welsh representation would be 33 seats if brought fully into line with the English quota). As important are the knock-on consequences for the size of the Scottish Parliament and Welsh Assembly, which currently replicate Westminster constituencies. A Secretary of State for the Union would help to ensure parity of treatment between Scotland, Wales and England, in terms of representation at Westminster; and parity of treatment in terms of the consequences for the Scottish Parliament and Welsh Assembly.¹⁵ The English Question is the biggest piece of unresolved business. A Secretary of State for the Union need not be directly in charge of policy on regional government in England, nor of guiding the debate about the handling of English (and English and Welsh) business at Westminster; but a wider view of the office could help to ensure that these issues are addressed, and not largely ducked as they are at the moment.

¹⁴ Strict application of the English quota would give Scotland 57 seats. But the Boundary Commission has some latitude to allow additional seats in sparsely populated rural areas, so the eventual figure is likely to be between 57 and 60.

¹⁵ This is quite a minefield. Reducing over-representation at Westminster without reducing the size of the Scottish Parliament and Welsh Assembly would involve breaking the link between Westminster and devolved assembly constituencies, which would cause problems for party machines at the local level. But both devolved assemblies will resist any reduction in their size, because their members already complain of the heavy workload. In particular it is difficult to envisage any reduction in the size of the Welsh Assembly, which is already half the size of the other two devolved assemblies. Indeed if given legislative powers the Welsh Assembly might seek an increase to 80 members (as Plaid Cymru has proposed).

26. Whether the office is given this wider role will be reflected in the title, which will convey a symbolic message as much as a substantive one. Titles just for the merged role of the Secretaries of State for Scotland, Wales and Northern Ireland could include:

- Secretary of State for Territorial Affairs
- Secretary of State for the Union
- Secretary of State for Devolution.

If the job did include the English regions, the title could extend to:

- Secretary of State for Devolution and Decentralisation
- Secretary of State for the Nations and Regions.

27. Another issue is the number of junior Ministers required to support the role. The current allocation is that the Northern Ireland Secretary has two, the Scotland Secretary one, and the Wales Secretary one. To assuage the feelings of those who feel that they have lost 'their' Secretary of State, an initial allocation could be one Minister of State with special responsibility for Scotland, one for Wales and one for Northern Ireland. Northern Ireland might require more junior Ministers if the executive collapsed again: under direct rule (re-imposed from February to May 2000) the two junior Ministers in NIO divided responsibility for the 10 departments of the Northern Ireland Executive between them. The current division is that the Minister of State is responsible for security, policing, criminal justice, prisons, while the Parliamentary Under-Secretary does political development, relations with the devolved institutions, Europe/constitutional issues, equality and human rights issues, and legislation.

Promotion of mutual learning

28. Another potential aspect of the role which risks being unfulfilled with three Secretaries of State is the promotion of mutual learning from the experiments released by devolution. In federal systems there is formal machinery which provides horizontal networks between the states: the Conference of Minister-Presidents in Germany, or the Council of Australian Governments. Its primary purpose is to ensure policy co-ordination; but a secondary function is to encourage policy transfer. In the UK there is no 'club' in which the devolved administrations learn from each other, and given the asymmetry in the devolution settlement it seems unlikely that one will develop. It falls to the UK government to facilitate such a process, as it has begun to do in the meetings of the Joint Ministerial Committee, in particular the Joint Ministerial Committee on Health.¹⁶ A Secretary of State for the Union who wanted to add value to the role could help to ensure that the results of new approaches to policy are shared between the devolved administrations; and, equally if not more important, that they are also shared with the rest of Whitehall. This last could

¹⁶ Robert Hazell, 'Intergovernmental Relations: Whitehall Rules OK' in *The State and the Nations: The First Year of Devolution in the UK*, Imprint Academic, p 166.

perhaps be done in conjunction with the new Centre for Management and Policy Studies in the Cabinet Office.

Symbolism of the Secretaries of State

29. So far this discussion of merging the Secretaries of State and the potential of the combined office has presented the arguments in functional and rational terms. But the office is also intensely political; political in the best and highest sense, since the essence of the role is to safeguard the Union and ensure good relations between its constituent parts. But there are important elements of low politics as well, in terms of symbolism, patronage and places in the Cabinet. It is the symbolism which William Hague has played upon in promising that he would retain a separate Scottish Secretary and Welsh Secretary (see paras 9-10).

30. The symbolism can be understood by comparing the practice in Canada, where by convention the federal Cabinet is expected to contain representatives of all 10 Canadian provinces.¹⁷ No such rule applies here, and the present Cabinet is severely unbalanced in terms of over-representation from Scotland and the North East of England. But Scotland, Wales and Northern Ireland have grown used to having 'their' voice in Cabinet. The Scots might be relaxed about losing their Secretary of State; but the Welsh might feel more slighted than released, especially when they still need a representative in Whitehall, because they do not have sufficient powers of their own.

31. The politics of identity can be appreciated in another way by asking the question, if the Scotland and Wales Offices are combined, from where should the new Secretary of State be found: from Scotland, from Wales, or from neither? And in future, when more front rank politicians in Scotland and Wales operate at the devolved level, how easy will it be to find Scottish and Welsh politicians of sufficient calibre at Westminster to fill the Secretary of State seats in the British Cabinet? This has been a problem for the Conservatives in the recent past, who have appointed a succession of English MPs to be Secretary of State for Wales; but in future it could be a problem for Labour governments as well.

Regional government in England

32. The second part of this paper considers adding responsibility for regional government in England to the merged offices of the Secretaries of State, creating a 'Department of Devolution and Decentralisation'. It begins by summarising the regional structures created in Whitehall in Labour's first term. In 1997 the new Labour government created a new Department of the Environment, Transport and the Regions (DETR). A Minister of State

¹⁷ Graham White, 'The Canadian model of Cabinet: Lessons from Canada's Provinces and Territories', September 2000, gwhite@chass.utoronto.ca

was appointed to lead on regional government: first Richard Caborn, and since July 1999 Hilary Armstrong, Minister for Local Government and the Regions. Reporting to her is DETR's Regional Policy Directorate, which is responsible for sponsoring the Regional Development Agencies (RDAs), and for 'development of policy on regional governance, including Regional Chambers and proposals for elected Regional Assemblies'. Another part of DETR houses the new Regional Coordination Unit, established following the Cabinet Office (Performance and Innovation Unit) report *Reaching Out*. The RCU includes the Central Unit for the Government Offices for the Regions (GOCU), which has dealt mainly with pay and support issues for the Regional Directors and staff from the three departments (DETR, DTI, DfEE) which have been brought together in the Government Offices for the Regions. Following the need for more effective co-ordination identified in *Reaching Out*, the RCU is responsible for more proactive promotion of the Government Offices for the Regions within Whitehall; and for promoting a stronger regional input into central government policy making. The RCU reports to John Prescott, but through a Ministerial committee chaired by Cabinet Office Minister Lord Falconer.

33. Shifting the lead for regional government from DETR to a new 'Department for Devolution and Decentralisation' does not depend on functional considerations. There is an argument of balance, in terms of how things are perceived in Whitehall. The territorial departments when merged will be seen in Whitehall as defenders of devolution, reinforcing asymmetry, and increasing the divide between them and the 'English' departments led by DETR. An element of 'Englishness' in their responsibilities would help to balance and round things out. But shifting the lead for regional policy would primarily be a political statement, giving higher priority to regional government in England, and a stronger push from the centre.

34. But the lead does not have to come from the centre. A strong lead could come from DETR, if No 10 backed the policy and Ministers collectively gave it support. During Blair's first term John Prescott has had no support to implement the 1997 manifesto policy on regional chambers and referendums on regional assemblies in England. An early discussion in the Cabinet Committee on Devolution in summer 1997 left him with authorisation only to proceed with Regional Development Agencies. Other departments (in particular DTI and DfEE) were reluctant to devolve power or money to RDAs, so most of their functions come from DETR. Gordon Brown's call in Manchester for stronger regions may start to tilt the balance: it is the first public support for regionalism from any other member of the Cabinet.¹⁸ Tony Blair's endorsement of party policy at the Labour spring conference in Glasgow will add to the momentum.¹⁹

¹⁸ Gordon Brown, 'Enterprise and the Regions' speech at UMIST, 29 January 2001.

¹⁹ Reported in *The Guardian* 19 February 2001, but in a report which attributed to Blair words from a speech delivered by John Prescott.

35. Labour's next election manifesto will roll forward the policy from 1997. The final policy statement approved at party conference in 2000 states that 'Labour intends, as soon as practicable, to move to directly elected regional government where and when there is a clear demand for it', and promises a Green or White Paper on regional governance. If the new government decides to introduce a policy of devolution on demand for the English regions, it will need first to decide the powers and functions of regional assemblies in England; their size and composition; method of funding; electoral system; relationship with levels of government above and below; and the appropriate test of public consent.²⁰ This last is likely to take the form of regional referendums, following the precedents set in Northern Ireland, Scotland, Wales and London. It is possible that all the English regions will vote no; but more likely that a rolling programme of English devolution will result in regional assemblies being established, at least initially, in some but not all of the English regions.

36. That will raise difficult machinery of government issues, because the centre will be dealing with regions with different sets of responsibilities. Sponsoring divisions in Whitehall will have one set of relationships with the devolved English regions, and another with those who have not yet taken the plunge. One of the main difficulties will be over finance: the means of funding, and the channel for it. If regional assemblies are financed by block grant, how is this determined; and who is accountable for it? Would the funding channels in the other regions remain unchanged? Another difficulty may develop over attitudes. Departments may find it difficult to 'let go' in relation to the devolved regions, while maintaining the existing set (and mindset) of Whitehall controls in relation to the rest. If letting go proves difficult, that might strengthen the case for a Department of Devolution and Decentralisation as the sponsoring department for the devolved regions. But even with such a department, the devolved regions will continue to have dealings with other parts of Whitehall, just as the Scottish and Welsh administrations deal with every Whitehall department, not just the Scotland Office and the Wales Office. The nature and tone of those relationships will depend not so much on the functional divisions in Whitehall but on the lead set by Ministers. If Ministers are hesitant or divided about regional government in England, officials will reflect that in their dealings with regional assemblies and other regional bodies. Officials cannot run ahead of Ministers in promoting a policy to which Ministers are not fully committed. But there are also control functions which Whitehall must exercise: to ensure that regional assemblies stay within their budgets, and their statutory powers.

²⁰ The Constitution Unit is doing research on these issues, in a project funded by the Joseph Rowntree Foundation which is due to report in summer 2001.

Local government in England

37. A further suggestion has been made that responsibility for local government might be added to the 'Department for Devolution and Decentralisation'. This has little merit. There is no functional case for moving the lead responsibility from DETR (even if the department is split up, with transport being hived off). There may be a functional case for brigading together regional government and local government: so that if regional government is moved, it is worth asking whether local government should follow. But local government has strong functional links with other bits of DETR: environmental protection, housing, urban regeneration, roads. It is also a bigger function than regional government: 210 civil servants work in DETR's Local Government Directorate and Local Government Finance Directorate, compared with 100 in the Regional Policy Directorate and Regional Co-ordination Unit. Moving local government to follow regional government would be to allow the tail to wag the dog.

Responsibility for other constitutional reforms

38. There is little direct connection between devolution and decentralisation and the rest of the constitutional reform agenda. The other items on the agenda for Labour's second term are Lords reform (stage two), the referendum on the Euro and the referendum on electoral reform. The Constitution Unit argued before the last election for a 'constitutional reform supremo' to co-ordinate the constitutional reform programme and to plan the timing and sequencing of its implementation, while leaving the policy responsibility with individual Whitehall departments.²¹ The case for a constitutional overlord is worth restating. Within Whitehall the constitution remains something of an orphan, with no department having overall responsibility. The Lord Chancellor might claim that he is in overall charge; but his contribution has been to manage a process, by chairing the relevant Cabinet committees. The Home Office might claim historic responsibility; but in the Civil Service Yearbook the extent of their claim is relations between Church and State, Royal and ceremonial matters, elections and human rights. Eight departments have custody of different bits of the constitution; but no department is charged with caring for the whole. More joined-up government is needed for the constitution as for anything else.

39. A stronger Ministerial lead is necessary not only in Whitehall but outside, to explain the constitutional reforms to the wider public. Fundamental changes have been introduced in our system of government with a minimum of explanation. The bland theme of modernisation is not enough. To command public understanding and public support, there needs to be a strong and coherent story about the rationale for the constitutional reform programme, and a story which links the different items in the programme. This can only be delivered by someone in overall charge of the programme. But the political reality is that with constitutional reform further down the agenda there is little likelihood of a

²¹ Constitution Unit, *Delivering Constitutional Reform*, April 1996.

'constitutional overlord' being appointed now.²² The lead will continue to lie with individual departments, so that the Leader of the Lords will lead on Lords reform, the Treasury on the Euro and the Home Office on electoral reform; with the Constitution Secretariat in the Cabinet Office servicing the relevant Cabinet committees,²³ and providing the policy advice on Lords reform.

40. Two lesser suggestions are worth making. The first is to revive the suggestion that there be generic enabling legislation for referendums.²⁴ At present each referendum requires separate authorisation by statute. Separate Acts of Parliament were required to hold the referendums in Scotland and Wales, and in London. Separate Acts will be required before the referendum can be held on the Euro, or on the voting system, or in the English regions. Given the intense pressure on the legislative programme this seems unnecessary and short-sighted. Part of the statutory framework is now in place with responsibility for the conduct of referendums given to the new Electoral Commission.²⁵ The other part could be put in place by seeking statutory authority for the government to hold referendums, subject to parliamentary approval of the question. Such authority would be unlikely to be abused. Referendums cost time and money and consume a lot of political energy and capital. A government which resorted too readily to referendums would suffer low turn-out or defeat or both.

41. The second suggestion is to build a link between devolution and Lords reform. The Cabinet Sub-committee on Lords reform was deliberately kept very small, and is largely confined to those responsible for handling the government's parliamentary business in both Houses. Apart from the business managers the heavyweight members of the Committee are Lord Irvine, Jack Straw and (since autumn 2000) Robin Cook. Now that the Wakeham Commission has recommended that there should be an elected element to represent the nations and regions, and the government has accepted that recommendation in principle, it would seem sensible to include representatives of the nations and regions in any consideration of Lords reform stage two. Specifically, the territorial Secretaries of State (or their successor) should be on the Cabinet committee on Lords reform, as should the Secretary of State for the Regions.

²² Although the oft-mooted idea of creating a Ministry of Justice could lead to more constitutional functions being brigaded round a Minister of Justice, who could also be given a 'constitutional overlord' role.

²³ Lords reform has its own Cabinet sub-committee. The Chancellor would want the Euro to come under Economic Affairs, which he chairs; a new sub-committee might need to be created in the run-up to the referendum. Electoral reform could go to Home and Social Affairs, which deals with most Home Office business; or to Constitutional Reform Policy, although under the chairmanship of the Prime Minister that has tended to consider strategic issues rather than individual reforms.

²⁴ Constitution Unit, *Report of the Commission on the Conduct of Referendums*, November 1996, paras 59-67.

²⁵ Political Parties, Elections and Referendums Act 2000 Part VII.

Should the Department for Devolution be free-standing or based in the Cabinet Office?

42. The Cabinet Office has traditionally exercised a strong self-denying ordinance against developing its own empire. It has few staff of its own, with the majority on loan from line departments; it looks to departments to take the lead in developing government policy; its role is to co-ordinate and ensure collective approval of policy. Other parts of the Cabinet Office support the civil service as a whole (corporate management, modernising government, IT and e-government, the Centre for Management and Policy Studies and the Civil Service College). More pro-active units such as the Social Exclusion Unit or the Performance and Innovation Unit depend heavily on Prime Ministerial support and rarely survive from one administration to the next. But the Cabinet Office has grown significantly under Blair, from 1,260 staff in May 1997 to 1,750 in April 2000.²⁶

43. The Cabinet Office's starting assumption will be that the Department for Devolution should be free-standing. If it comprised just the staff of the Scotland Office (110) and Wales Office (40) it would have a staff of 150. That is not dissimilar in size from the Canadian Department of Intergovernmental Affairs, which is part of the Privy Council Office (equivalent to the Cabinet Office) and has a staff of 130, divided into four secretariats (policy and research, intergovernmental communications, federal-provincial relations and aboriginal affairs). But if to Scotland and Wales were added the Northern Ireland Office (200 London-based staff)²⁷ the Department would have a staff of 350. Regional government in England would add a further 100; while local government would add a further 200. The greater the overall size of the department, the greater the presumption that it should be free-standing rather than part of the Cabinet Office.

Implications for Cabinet, and the Cabinet Office

44. If the three territorial Secretaries of State were merged into one, the present Cabinet would reduce in size from 22 to 20 members. That would release spare seats for more 'without portfolio' members, such as the party chairman, or the 'Minister for the Today programme', or for new functions (eg transport).²⁸ There is an effective upper limit on the size of Cabinet set by the Ministerial and other Salaries Act 1975, which allows only 20 salaries to be paid to Cabinet Ministers in addition to the Prime Minister and Lord Chancellor. In terms of junior Ministers, if the new 'Devolution Secretary' were supported

²⁶ Cabinet Office summary tables of Staff in Post. Excluding agencies, save for the Civil Service College (now part of CMPS), which I have added to April 1997 staff total.

²⁷ Cabinet Office tables of Staff in Post, April 2000. The full staff of NIO is 1500, but these include staff based in Northern Ireland, where the numbers are large because of NIO's continuing responsibility for prisons, police and criminal justice functions.

²⁸ Lord Macdonald attends Cabinet meetings, but is not a member of Cabinet.

by three junior Ministers, there would be a net reduction of just one junior Minister (the second junior Minister in NIO).

45. The final consideration in deciding whether the new Department should be free-standing or based in the Cabinet Office is whether it would be helpful to have another heavyweight Minister in the Cabinet Office. This links to wider concerns about the role of the centre, and how to deliver more 'joined-up' government. One of the difficulties in delivering more joined-up government is that the Minister for the Cabinet Office (first David Clark, then Jack Cunningham, and then Mo Mowlam) has not made much impact as the Cabinet Office 'enforcer'. But that may say as much about them, and their position in Cabinet, as it does about the role. More senior holders of the role (Whitelaw or Heseltine) found it easier to knock heads together. If the Cabinet Office is to have more clout it requires No 10 to conduct more business through Cabinet committees, and to invest committee chairmen with more authority. That authority derives from their position in Cabinet, and the authority vested in them by the Prime Minister. Gordon Brown (who chairs 5 Cabinet committees), John Prescott (4) and Lord Irvine (4) command more clout simply by their seniority in Cabinet than the three Cabinet Office Ministers who also chair Cabinet committees: Mo Mowlam (4), Margaret Beckett (2) and Baroness Jay (1). It is worth considering what Cabinet committees the 'Devolution Secretary' might usefully chair; and whether he or she might chair meetings of the Joint Ministerial Committee on Devolution, which is the summit of the formal machinery in which the UK government meets with the devolved administrations. It matters less whether he or she does so from a department which is part of or outside the Cabinet Office.

The hidden costs of machinery of government changes

46. Lastly, a word of warning about the costs of changes in the machinery of government. Major institutional re-organisation is immensely disruptive and distracting. It absorbs huge amounts of senior staff time; time and energy which would otherwise be devoted to implementing the government's policies. It is made worse now that Whitehall departments are responsible for their own systems of pay and grading, and other terms and conditions, all of which have to be re-negotiated. It can take as long as three to five years before merged organisations settle down and start to work effectively together. It is not to be embarked upon lightly.

Annex A

Representation of Scotland Office, Wales Office and Northern Ireland Office in Cabinet Committees (as of October 2000)

<i>Cabinet Committee (italics indicate sub-committee)</i>	Scotland Office	Wales Office	Northern Ireland Office
Economic Affairs	Sec. State	Sec. State	Sec. State
<i>Productivity and Competitiveness</i>	Sec. State	Sec. State	Sec. State
<i>Welfare to Work</i>	Sec. State	Sec. State	Sec. State
The Environment	Sec. State	Sec. State	Sec. State
Home and Social Affairs	Sec. State	Sec. State	Sec. State
Legislative Programme	Sec. State	Sec. State	Sec. State
Constitutional Reform Policy	Sec. State	Sec. State	Sec. State
<i>Incorporation of European Convention of Human Rights</i>	Sec. State	Sec. State	Sec. State
<i>Freedom of Information</i>	Sec. State	Sec. State	Sec. State
Devolution Policy Committee	Sec. State	Sec. State	Sec. State
<i>European Issues</i>	Sec. State	Sec. State	Sec. State
Better Government Group	Minister	Sec. State	Minister
Biotechnology and GM Group	Minister	Parl. Under-secretary	Parl. Under-secretary
<i>Drug Misuse</i>	Minister	Parl. Under-secretary	Minister
<i>Women's Issues</i>	Minister	Parl. Under-secretary	Parl. Under-secretary
Crime Reduction and Youth Justice Group	Minister	Parl. Under-secretary	[Sec. State receives papers]
<i>Energy Policy</i>	Minister	Parl. Under-secretary	
<i>Health Strategy</i>		[Sec. State receives papers]	
Northern Ireland			Sec. State
Local Government		Sec. State	

Cabinet Committees without Scottish, Welsh or Northern Irish representation :

London Sub-committee

Rural Affairs Group

Civil Contingencies

Health Performance and Expenditure

Reform of House of Lords Sub-committee

Liberal Democrat Party

Joint Consultative Committee

Intelligence Services

Restructuring of European Aerospace and Defence Industry Group

European Trade Issues Sub-committee

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