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UK DEVOLUTION AND THE EUROPEAN UNION:
A TALE OF COOPERATIVE ASYMMETRY?

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ABSTRACT

The post 1999 devolution project has resulted in a major recalibration of the pre-existing arrangements for making European Union policy within the UK. The devolved administrations in Scotland and Wales (but not the English regions) have gained in electoral legitimacy and legislative powers, and thereby a greater claim to consultation with UK central government. Four key characteristics of EU policy making in a devolved UK are identified. The legal contingency of the ‘devolveds’ status has not yet impeded traditional cooperative relations between government tiers, but the stability of the new arrangements remains in question. The UK case is compared to EU regionalisation in other member states and a distinction is drawn between a cooperative regionalist approach (the devolveds) and a consultative one (the English regions).

INTRODUCTION

This paper examines how devolution has impacted upon UK arrangements for handling European Union (EU) matters. In 1997, the new Labour government launched a wide-ranging project for constitutional modernisation, with devolution as one of the key features. Under the devolution settlement, responsibility for EU matters is reserved to the UK national government. However, as many of the specific policies devolved to the new administrations in Scotland, Wales and Northern Ireland are significantly affected by EU legislation, the understanding is that they should be drawn into the processes for determining the national EU policy on matters of concern to them. Originally, the Labour Government had intended the devolution project to be extended to English regions if

there was popular support. Consequently, in May 2003, the Regional Assemblies (Preparations) Act was passed, paving the way for referendums to be held across England to gauge support for elected regional assemblies. In the event, following an unexpected 'no' vote in the first such referendum held in the North East of England, plans for English devolution effectively have been shelved. The democratisation of these areas is not now expected to take place, at least in the foreseeable future, although the administrative structures at regional level will remain and in some cases will be augmented. This has resulted in a rather 'untidy' constitutional situation in the UK. While it is clear which administrations now speak on behalf of Scotland and Wales, on reserved matters, including the UK's EU policy, it is unclear 'who' speaks for England.

These developments in the UK need to be placed in the wider context of European regionalism over the last few decades. Indeed the interaction between sub-national authorities (SNAs) and the European Union has developed into a significant field of study since the 1980s. By 'interaction' we refer, firstly, to the fact that SNAs have had to adapt to the changing configuration of the EU itself. However, these changes have in turn led the SNAs to seek new powers within their national political system and at EU level in order to ensure their voice is heard within the EU. The field of study is generally termed 'multi-level governance' and has charted change in the activities of SNAs, driven by European integration. According to some analysts, this change has transformed the role of SNAs in the EU at the cost of national governments (for instance, see Marks et al, 1996). Yet other commentators have argued that the growth in SNA *activity* does not of itself denote any impact upon the primacy of national governments' influence in the EU (Pollack, 1995; Allen, 2000). This controversy has reflected a broader debate in EU studies about whether the power within the Union

is concentrated on the member state governments or is shared upwards with supranational institutions and downwards with SNAs (see Rosamond 2000).

The literature on the relationship between UK devolution and European policy has eschewed this discussion. Arguably the key reason for this has been the fact that devolution did not come about as a direct result of UK SNAs' dissatisfaction about the impact of the EU upon their powers, but rather principally for domestic reasons. In fact, UK SNAs had been significantly involved in EU policy before devolution. The focus of this article is the considerable impact devolution has had on these pre-existing patterns of involvement.

In his contribution to the literature on SNAs and European integration, Charlie Jeffery has taken what we might term a third way between the two polar arguments: of a 'Europe of the regions' on the one hand, and a Europe still dominated by national governments, on the other. He has argued that the debate has tended to neglect the 'intra-state environment in which SNAs are embedded' (Jeffery, 2000:3). Further, he argues that there has been a lack of attention to the 'influence-creating channels of access to EU policy-making ... which exist within Member States' (Jeffery, 2000:3). This position is axiomatic in our analysis of how EU policy is made within the devolved UK. We argue that, both before and after devolution, it is the channel of access running from the SNAs through the national government to the EU that matters, but that dealings within this channel have undergone specific changes that promise to alter the relationships between these levels of governance.

Let us spell out the arguments and issues that we will pursue in this paper.

First, we argue that the involvement of UK SNAs in EU policy-making sheds important light on the devolution settlement itself. The UK as a member state is itself constrained in its policy actions by virtue of membership of the European Union (EU) and the legal primacy of agreements reached in that arena. Thus in areas such as rural affairs, fisheries or the environment, British policy is constrained by EU commitments. Given the pervasive impact of the EU, it is critical to an understanding of how devolution works generally to see it in this multi-levelled context. Is there actually any scope for distinctive input from UK SNAs in policy areas such as these, and has devolution expanded that scope?

Secondly, we believe that there is merit in understanding the interaction of the devolved UK with the EU in comparative context. Distinctive though the UK settlement may be, the challenges faced by the devolved authorities are common to all SNAs in the EU. The key common feature is that the EU has been granted policy responsibilities by the member governments, and these responsibilities are subject to change each time the EU treaties are re-negotiated. At the same time some of those responsibilities are shared domestically with SNAs: here the UK devolved authorities. These SNAs have to give effect to some EU policies and therefore expect to have opportunities to make an input into the making of European policy, both through national channels and directly at EU level. Comparison can help shed light on the distinctive UK approach to this situation. This issue of constraints on SNAs and how to engage them in national EU policy making is of long standing for several partner-states in the EU. What devolution brought that was new to the UK was the creation of a new tier of *elected* authorities with the ability to draw on a new source of legitimacy in their claims to participate in EU policy.

Thirdly, the challenge of SNA participation in EU policy is not unique to the UK. We argue that the nature of change following devolution has to be understood both in the context of pre-existing UK arrangements and in a wider comparative context. Elsewhere we have argued that devolution represented a critical juncture in the handling of European policy within the UK (Bulmer et.al., 2002, chapter 7). However, when seen in comparative perspective the changes appear less striking. This is explained by the fact that the changes are in keeping with distinctive British constitutional practice, which is evolutionary, somewhat *ad hoc* in character and with considerable reliance on informal understandings rather than explicit constitutional provision (Street and Brazier, 1985: 26-30; Turpin, 1995: 87-92). There are attendant risks in this informal approach. In particular, the stability of the arrangements might come under threat if the Labour Party's prominence across the key tiers of authority were to decline. Hence we shall reflect on the durability of the post-devolution arrangements.

Our third argument thus aims to position UK devolution by identifying its distinctive structural and behavioural characteristics in terms of debates relating to the involvement of SNAs in other member states. The key questions about the involvement of SNAs' in EU policy-making are summed up by Jeffery as follows.

- Are SNAs endowed with constitutionalised status as regards participation in EU policy-making (Jeffery, 2000: 6)? The distinction made by Jeffery is between situations where participation in EU policy-making is provided in the constitution itself and other lesser-order, but nonetheless formal, participation arrangements.
- Do the SNAs emphasise *extra-state* engagement direct with Brussels rather than *intra-state* engagement with the national government (Jeffery, 2000: 2)?

- Do they pursue a competitive, confrontational strategy or a cooperative one (see Börzel, 1999: 573-96)?

UK devolution lacks a formally codified, constitutional status, thereby setting it apart from Germany or Belgium (for instance, see respectively Jeffery 1997; and Bursens and Helsen, 2001). The contingent nature of the relationship between the devolved authorities and the UK government is defined and interpreted largely by central government. The former owe their status to statute law passed by the Westminster parliament. The lack of formal constitutional status, together with the asymmetrical characteristics of UK devolution, would suggest a highly unstable arrangement for European policy-making. Combined with local accountability of devolved authorities – to directly elected assemblies in Scotland, Wales, Northern Ireland and greater London, to indirectly elected ones elsewhere in England – the circumstances would suggest competitive devolution: a situation whereby devolved authorities confront or circumvent the UK state. As will be clear in the following pages, nothing could be further from the truth. In legal terms, the UK devolveds' status is highly vulnerable and yet the mode of interaction between government tiers has to date remained resolutely cooperative.

Against this backdrop the research question addressed in the paper is: what impact has devolution had on the making of EU policy in the UK? Our argument is that there has been a major recalibration of the arrangements that held prior to devolution. The recalibration has led to a stronger set of arrangements for Scotland and Wales, based upon intra-state engagement with UK government. For Northern Ireland there is a potentially stronger set of arrangements but the suspension of devolution has meant that they have not yet been operationalised. The English regions' involvement is much weaker. These findings derive from two research projects that were based on

extensive elite interviewing across the UK. The first project examined the institutional changes brought about by devolution and explored them in Scotland, Wales and UK central government (Bulmer et. al, 2002). The second project looked at the impact of the institutional changes across the UK as a whole in several policy areas – agriculture, fisheries, environmental and regional policy (see authors' note for fuller details).

What follows is structured in three sections. First of all we outline the changed framework for UK SNAs' access to European policy-making following the devolution settlement. We then explore its leading characteristics and consider why EU policy-making in the devolved UK has hitherto defied inherent risks of territorial conflict and has been relatively problem-free and cooperative. We then look at the robustness and sustainability of present arrangements before concluding. Owing to the periodic suspension of the Northern Ireland Assembly arrangements most of the analysis in this article excludes that case.

ACCESS TO EUROPEAN POLICY MAKING: THE POST DEVOLUTION FRAMEWORK

Devolution and EU policy making

Devolution has brought with it a significant challenge to the UK Government's approach to the handling of UK EU policy. A commitment was given in the devolution proposals to include the devolveds – that is, the Scottish Executive and Parliament, the National Assembly for Wales and the Northern Ireland Assembly and Executive – in the process of formulating the UK position where EU proposals touched on a devolved competence. As EU policy was (and is) an issue of party political sensitivity, involving the devolveds in what could be disputatious internal government discussions clearly carried attendant political risks. The approach taken to handling EU policy post-devolution

has attempted to minimise these risks by devising procedures that permit the devolveds some scope for articulating and pursuing their particular interests, but which do not compromise the Government's sole authority to represent a single UK position on all EU issues. The upshot is that the devolveds enjoy substantial access to the UK's EU policy-making machinery, at least compared to non-constitutionalised regions in other member states and to the English regions.

Prior to devolution to the countries of the UK, the territorial input into UK EU policy making was provided by the Scottish, Welsh and Northern Ireland Offices of UK government and their respective ministers. Although these territorial offices have been retained post devolution, in the cases of Scotland and Wales they have fulfilled what is mainly a liaison function and most of their staff have been absorbed into the devolved administrations. Consequently the initiative in developing, clarifying and pursuing the UK territories' interest in EU proposals has passed to the devolveds who have inherited the territorial offices' considerable experience of handling EU policies. This transfer of functions and staff from the territorial offices has ensured continuity in practices and understandings and this has undoubtedly been a vital factor in the success of the post-devolution arrangements in general.

Clarifying new access arrangements

The general framework for involving the devolveds in UK central government's EU policy making was set out in the course of 1999 and is central to the non-conflictual approach to inter-administration relations that has developed in the UK since devolution. The key document, the Memorandum of Understanding (MoU), elaborated the general principles for inter-administration policy coordination and cooperation in '...areas where it is necessary to ensure *uniform*

arrangements between the UK Government and the three devolved administrations...' (ODPM, 2001). One such area was EU policy, and the MoU incorporated a concordat laying down the means for co-ordinating EU policy across the UK. This included arrangements for the provision of information; involvement in the formulation of UK EU policy; attendance at EU Council of Ministers and related meetings; implementation of EU obligations; and infraction proceedings (see the Concordat on Co-ordination of European Union Policy Issues in Cabinet Office, 1999 and ODPM, 2001; also Scott, 2001). Similar provisions for inter-administration consultation and co-operation were agreed over an extensive range of devolved competencies and not only with respect to UK policy towards EU matters. These frameworks were developed largely by civil servants based in Whitehall and in the devolving territories. Given the unitary civil service in Britain, it is not surprising that the negotiations reflected the expectation that EU policy coordination under devolution would proceed more or less as it had done prior to devolution. That is, relevant officials in the devolveds would continue to engage with counterpart officials in the relevant Whitehall department on EU matters in order to represent their specific interests. (Although the unitary civil service does not extend to Northern Ireland, here too strong traditions of cooperation support a common ethos with the rest of Britain.) At the political level provision was made in the MoU for the creation of a Joint Ministerial Committee on Europe (JMC(E)) which would be used to enable ministers to resolve inter-administration disputes over UK EU policy where agreement could not be brokered by relevant officials.

The MoU and the attached EU Concordat set out two key principles underlying the UK approach. Implicit in both documents is the notion that the relevant administrations would observe a principle of 'no surprises'. In the EU policy context this implied that UK government would keep the

devolveds closely informed of relevant discussions and debates on EU legislative and policy proposals. In exchange, the devolveds would be obliged to observe any degree of confidentiality required by UK government with respect to information supplied by it. A second key principle underlying the UK approach is its reliance on established Whitehall ways of doing business based on sharing information and involvement which are reflected in civil service norms of trust and reciprocity. These understandings are fully evident in the concordats and in the ways in which the UK EU policy making process has worked under devolution.

The inter-administration arrangements set out in 1999 in the MoU and the Concordat were presented as a basic pre-requisite if the UK was to have a coherent and robust policy towards EU legislative initiatives. There were two reasons for this. First, devolution transferred primary legislative competence to Scotland and Northern Ireland in policy areas over which the EU level of governance was also competent to legislate. This raised a possibility that future legislative aims of these devolveds might be in conflict with prospective EU legislation. Politically, this could be problematic. If UK Government's view diverged from that of the devolveds, this might serve to buttress arguments by nationalist forces favouring independence over devolution. Only by including the devolved executives in the UK EU policy process could the Government ensure that the UK position took into account Scotland's and Northern Ireland's policy priorities and/or legislative ambitions. Extending involvement to Wales was not necessary for this reason, in that the Welsh Assembly did not have primary legislative authority. Nevertheless, it was important for a second, albeit related, reason: that the devolveds were responsible for the implementation of much EU policy within their territories. Thus it was deemed essential to involve the devolveds in the formulation of policy on administrative grounds. The aim was to ensure that the UK negotiating position at the EU

level reflected a consensus UK position. Otherwise the UK Government risked having its negotiating position undermined by one or more of the devolveds publicly criticising domestic policy. The position of the English regions was substantially different. The declared policy of the UK Government was that the English regions should not gain privileged access to UK government machinery in EU policymaking ahead of the creation of regional assemblies in England. Now that devolution to English elected regional assemblies seems unlikely, a broader issue of equity in this respect remains unresolved. Understanding this domestic political context in which devolution has taken place (and continues to unfold) is central to understanding the arrangements which permit the devolveds to contribute to the UK's EU policy processes. It is also key in assessing the robustness of current arrangements.

Using channels of access: capacity building in the devolveds, at the centre and in Brussels

Under the new settlement the key channel of influence for the devolveds' involvement in UK EU policy making has been their direct dealings with UK government. The devolveds and Whitehall have expanded pre-existing arrangements, but at the same time have had to adapt their respective EU-policy capacities to the new situation in ways that have subtly changed the working relationship between these two tiers of government.

Prior to devolution, the constituent departments in both territorial offices could fairly be described as 'branches' of the relevant parent Whitehall department. However, a central aspect of the internal political dynamic of devolution was to enable the devolveds to design policies that reflect distinctive territorial interests in devolved competences. Therefore both the Scottish and Welsh administrations have prioritised the creation of new EU policy capacities. This capacity was needed to coordinate a

distinctive territorial view on EU policy; to represent this to UK Government; and to service the (different) demands of the newly established devolved assemblies (Bulmer et al, 2002: 33-102). When viewing these developments in broad terms, it is clear that the devolved administrations were emerging as potentially powerful centres of influence over UK EU policy in ways that were, arguably, disproportionate to their economic, political and social status in the UK as a whole. Devolution's subsequent failure to engage the English regions inevitably creates a sense that their interests might not be prioritised with the same urgency as the interests of the devolved administrations in Edinburgh, Cardiff and Belfast. As already noted this question of the 'voice' of the English regions – not to mention England as a whole - when EU policies are being discussed in UK Government remains a live and problematic issue.

Devolution also necessitated changes within UK Government. For a transition period devolution 'desks' or 'units' were created across a range of departments in order to ensure that the commitment to include the devolveds in domestic EU policy was honoured. Again, the extent of this new capacity varied between departments, as did the novelty of the exercise. In the fields of agricultural policy and fisheries policy, for instance, there had been a long-standing interaction between Whitehall officials and their counterparts in the devolveds, whereas there was minimal tradition of this in relation to environmental policy.

In broad terms the aim of mainstreaming devolution within Whitehall was achieved with little apparent difficulty. Two related explanations can be offered for this. First, there was a determination at the level of senior officials to make the new arrangements work. A series of Devolution Guidance Notes (DGN) was issued by UK government officials on a departmental basis which elaborated the

obligations on Whitehall officials to ensure that their counterparts in the devolveds were included in the relevant policy information flows, including on EU matters (see DCA 2005). Moreover, since in many cases relations at the level of officials were long-standing, a good deal of goodwill and 'trust' was inherited by the devolveds so as to ensure that the terms of the MoU, especially regarding confidentiality of information, would be observed. Secondly, the evidence from the post-devolution period is that UK government has been prepared to fully involve ministers from the devolveds in the EU policy process where appropriate (i.e. where EU legislative proposals impinged on devolved competences). Not only was the JMC(E) created soon after devolution, but a range of *ad hoc* arrangements was established that ensured ministers and officials from the devolveds had access to the UK papers on EU issues and also were able to discuss UK EU policy with government ministers on an informal basis. These arrangements included the continuation of the practice whereby territorial ministers could attend EU Council meetings as part of the UK delegation. Initially the more formal channel for engaging the devolveds in EU policy making was centred on MINECOR, an inter-administration ministerial committee on EU Policy, which was chaired by the UK's minister for Europe, and to which counterpart ministers from the devolveds were invited. From 2003 it was superseded by a re-modelled JMC(E) which now forms the core of this process. To our knowledge it has never met, as originally intended, in dispute-resolution mode. Indeed, in recent times the Foreign Secretary, Jack Straw, has used the JMC(E) as a forum for widespread information-sharing with the devolved authorities in Wales and Scotland, preferring to convene this body rather than the UK Cabinet's European policy (EP) committee, from which representatives from the devolveds are excluded. Within the key relationship between the devolveds and UK central government, then, there has indeed been a major recalibration of the pre-existing arrangements for making European Union policy within the UK; one that has involved a measure of give and take between both parties.

The devolveds' engagement with EU policy processes is not confined to UK government, although that remains the primary focus of their efforts. A further channel of influence has been through the devolveds' direct links to Brussels. Post-devolution developments in this relationship appear to have been determined very much by the 'primary' relationship between the devolveds and UK central government. The devolveds have not attempted to use their Brussels links to by-pass national channels, but rather to supplement these without undermining them. Within their relationships with Brussels, the devolveds have attempted to co-ordinate Welsh and Scottish members of the European Parliament, to lobby interests and institutions at the EU level, to gather information about on-going and up-coming business, and to join with other regions in the UK and in other member states in joint promotional and lobbying endeavours. For the devolveds the key to doing these things has been establishment of representations in Brussels. Prior to devolution there was one formal representation of the UK government in Brussels, namely the UK Representation in Brussels, UKRep (on the role of this UK 'embassy' to the EU, see Kassim, 2001). After devolution, and as predicted in the devolution White Papers, all three devolveds established their own offices in Brussels. However, great care was taken to stress that these offices were part of the overall 'family' of the UKRep, rather than being independent agencies advocating a specific Scottish, Welsh or Northern Irish view of EU legislative proposals. These offices are there to augment UKRep; to support the work of UKRep; to focus on issues of particular interest to the devolved executive and perhaps also to engage with the EU institutions, but always within the broad framework of a single UK 'voice' in Brussels. Should divergent policy interests emerge between UKRep and a Brussels office of a devolved, this conflict would be managed 'back home' through established inter-administration procedures. In addition, even-handed practices of information sharing that have developed between UKRep and the

devolveds' representations have helped the territorial representations to add considerable value to their respective 'home' policy resources in those areas that interest them most directly. It is worth noting that the English regions also have established offices in Brussels. However they have a different function compared to offices of the devolveds, and concentrate solely on raising the profile of their regions within the EU institutions and gathering information on specific policies (e.g. structural funds) that are directly relevant to local interests. The effectiveness of these offices and the way they are organised varies enormously (Burch and Gomez, 2002).

Devolution has also offered the devolveds an opportunity to participate more fully in EU-wide coalitions of sub-national governments. Since the entry into force in November 1993 of the Treaty on European Union, the UK regions have been represented on the EU Committee of the Regions. With devolution, membership of the Committee now draws on the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly, as well as on the local authorities. Scotland and Wales are also members of the seventy four-region grouping of legislative regions (RegLeg) established in 2001. This networking of the devolveds into the EU-wide arena may well prove to be an important source of informal leverage in the context of EU-wide legislative discussions. In these ways, then, the devolution project has enhanced the legitimacy and potential for proactivity of the UK devolveds in processes of EU policymaking.

THE CHARACTERISTICS OF EU POLICY MAKING IN A DEVOLVED UK

There are four key characteristics of the pattern of arrangements for EU policy making as it has emerged in post devolution UK.

The first characteristic is its variety. Scotland, Wales and Northern Ireland each have different responsibilities, arrangements and practices for handling European policy. These are different again across and within the English regions. The asymmetries of the devolution settlement are manifest in variations in assembly structures and legislative competencies, the nature of access to the European policymaking process, and civil service structures. Moreover, the assemblies and executives are endowed with different levels of power; Scotland (and potentially Northern Ireland) having more authority than Wales. England, by contrast, has no assembly in its own right. There can therefore, for example, be no separate English scrutiny of EU proposals: this is conflated with UK scrutiny in Westminster (on scrutiny more generally, see Bulmer, et. al., 2002, chapter 4, also Carter and McLeod, 2004). As in other aspects of devolution, there is an 'English problem'.

A second characteristic is the emergence of a formal framework for multi-level engagement in EU policymaking. As far as the devolveds are concerned, devolution has opened up a range of opportunities in EU policy making, not all of which existed or were capable of being effectively exploited prior to devolution. These opportunities allow the devolveds to engage in shaping UK national policy through formal involvement in the processes for forming the UK position and, along with UK government, in negotiations in the EU. The devolveds have been proactive in this. They have produced more coherent and territorially focused EU strategies (NAAG 1998; Scottish Executive 2004) as well as specific territorial policy evaluations and programmes in particular policy fields such as agriculture and rural policy (Scottish Executive, 2002; Welsh Assembly Government, 2004). Also under devolution they have been better able to galvanise their regions' resources in order to take action on European issues. Shifts in policy outcome remain rather difficult to ascertain, but there is already some evidence of a 'devolution effect'. For example, in the most recent reforms of

the Common Agricultural Policy (CAP) in 2003 the option to allow regional variations in the ways of calculating new farm based subsidies was chosen by UK ministers and officials because that option was in keeping with the spirit and practice of devolution. The same considerations applied to the decision to allow variation in the package of environmental and animal welfare incentives that accompanies the new subsidy regime (Burch and Gomez, 2004). Another significant devolution effect is evident in the relatively generous provision by the UK exchequer of matching funds so as to allow the effective take-up of the significant EU structural funds allocated to Wales. In this case devolved arrangements allowed for a far more effective lobbying of the UK government than would previously have been the case. Of course these may be exceptional cases and the exact trend of policy change remains difficult to ascertain for certain in the short, six-year period of devolution's operation (Burch et al, 2005: 467-68).

A third characteristic of European policy-making under devolution has been the diversification of the policy networks used for handling European policy. In place of the single exclusive Whitehall network that operated prior to 1997, there are now four networks which together govern access to information, policy-shaping and decision-making. These are: the original exclusive Whitehall network (which extended to UKRep in Brussels); the increasingly formal network linking Whitehall and the devolveds (which in practice often runs largely on bilateral lines, such as in the field of environment); a network linking the devolveds to one another; and, finally, a network linking the devolveds, their Brussels-based representations and UKRep. As we have noted, in order to influence European policy, the key network for the devolveds is the second: that linking Whitehall and the devolveds. This diversification of policy-handling networks has in practice resulted in a greater focus on territorial pressures and interests. Moreover, these networks are still evolving. The network

linking the devolveds to one another has not yet been institutionalised to any great extent. It is currently characterised by informal consultations, often conducted by telephone or email at a 'functional' level, between individual officials and their policy counterparts in other devolved authorities. In the area of agriculture and rural policy, officials and sometimes ministers seek to meet on an annual or bi-annual basis to discuss matters of mutual concern. In future more routine or institutionalised forms of cooperation seem likely to evolve (Hogwood, 2004a). Notably, emphasising again the asymmetry of the settlement, the English regions remain outside all of these networks.

The fourth characteristic is that the devolveds' involvement in EU policy making is conditional and dependent. A critical point is that the new and enhanced opportunities noted above need to be exploited skilfully so as to ensure that galvanising and pursuing Scotland's or Wales's interests, on the one hand, does not jeopardise Scottish or Welsh involvement in the process of shaping the UK position on the other. In order to assert themselves successfully in shaping the UK's European policy, the devolveds need to balance their policy interests with the rules of engagement imposed on them by the prevalent Whitehall culture. This tricky balancing act is right at the heart of the task of conducting European policy making under devolution and it centres on the special relationship with Whitehall (Burch, 2004). Compared to the English regions and non-constitutionalised regions in other member states, the devolveds enjoy a privileged position in national EU policy making. They are treated as partners with UK government. They are not, however, equal partners. They lack the constitutional guarantees, the resources, the direct links to EU information sources, and the authority that UK central government enjoys in European business. The devolveds are in effect *dependent* partners in that they rely on the willingness of central government to continue to engage them in the

process of UK EU policy making. The relationship with Whitehall is, therefore, a special one but it is also highly *conditional*. It depends on good-will on both sides, on keeping within traditional Whitehall understandings about the way in which European business should be handled, and it relies heavily on the shared values and understandings of reciprocity and trust which are part of the ethos of the British civil service. If the devolveds engage in a conflictual manner with UK central government, they risk losing access.

A ROBUST AND ENDURING ARRANGEMENT?

How well has the key relationship with Whitehall worked so far? Interviews suggest that Whitehall is generally becoming more aware of the territorial differences and needs represented by the devolveds. In most cases, Whitehall has made a genuine effort to respect the spirit of the devolution settlement. In practice, though, there are substantial variations in the devolveds' access to EU policy consultations across policy areas and departments. In some areas the devolveds have not always been kept fully informed or engaged; whereas in others, for example agriculture, they have been fully integrated into departmental processes. On occasions the Whitehall network has deliberately operated exclusively of the devolveds especially on EU matters concerning spending questions. At other times, though, exclusion appears to have been inadvertent. In some policy areas, the devolveds report a perceived hierarchy amongst themselves. In environmental matters, for example, it is commonly felt that Scotland is the most likely to have its voice heard in Whitehall, followed by Wales and then Northern Ireland. In this case, the disparities are accounted for by variations in resources amongst the devolveds, together with the fact that Northern Ireland is dealing with a backlog of infractions relating to EU environmental legislation. Whereas Scotland can currently

devote resources to preparing and negotiating a number of issues simultaneously with Whitehall, Wales must engage more selectively and serially, and Northern Ireland hardly at all.

In contrast to the devolveds, the English regions still struggle to remind many Whitehall departments of their existence and their role. English interests are paradoxically both underrepresented and overrepresented in terms of access arrangements. The English regions, lacking access to the formal processes of UK/EU policy making, must use the lobbying tactics of the outsider if they are to make their voices heard. All nine regions (including London) have now developed European strategies on which to base engagement with Whitehall over Europe (Gomez and Burch, 2002). However, the English regional networks lobbying into UK-EU policy making are in the process of emerging rather than, as yet, fully established. The extent to which they are exploited varies considerably from region to region. On the other hand, some ministries in London have overwhelmingly 'English' responsibilities even though they are part of the UK government; the Office of the Deputy Prime Minister being a particular case in point. In this sense there are also English 'insiders', but, since they are not explicitly territorial representatives, it is unclear what aspect of English interest these London ministries represent. Moreover as the English regional stance on most European issues is often unclear and not systematically drawn into central government, it tends to be generated in central government. There is some exception to this in relation to structural funds (EU regional development aid) where English regional input on matters concerning their implementation is significant. However, the formulation of the UK position on structural funds more generally and the negotiation of that position in the EU are processes dominated by central government.

There are a number of reasons why the devolved-Whitehall relationship has worked well to date. However, some of these serve as a clear indication that the relationship may not always be so harmonious. There are two main threats to the endurance of the current arrangements: the momentum for institutional change set in process by the launch of the devolution project, and the aspirations of the devolveds' political elites.

First, in addition to the instrumental reasons for compliant behaviour noted above, it is generally recognised amongst the devolveds that Whitehall's traditional approach to the formulation and representation of a UK line on EU policy has served the UK well and should be maintained (Bulmer et al, 2002: 64). The strength of civil service traditions can be seen, for example, in the current practice of low-key administrative resolution of difficulties wherever possible. It tends to be seen as a failure if a policy co-ordination problem must be passed up to ministers rather than resolved at official level. The original crisis-resolution function of the JMC(E) has been eschewed. The arrangements work to minimise overt political conflict in the resolution of territorial disputes. While this is recognised by all participants to serve the needs of efficient policy formulation, it could be argued that it simultaneously undermines the representative function of the devolveds in depriving them of a public platform on which to air grievances. In future, territorial governments may be less content to proceed in this way.

Another reason for the success of the arrangements to date is the cohesion lent to the relationship by the electoral coincidence of cross-territorial Labour party dominance of legislative bodies throughout the UK since devolution was introduced. If subsequent elections were to cast up variable majorities,

it is uncertain whether relations conducted through the current channels - largely of officials - would remain as cordial as they have been to date.

A further conditioning factor has been the extent to which the devolution settlement has built on established traditions of territorial administration. The asymmetric model of devolution introduced in the UK initially fostered acceptance for the project because it reflected long-standing differences in the bilateral relationships forged between each of the 'nations of the union' and UK central government. However, it must be questioned whether such an unequal arrangement can be sustained. Various cases could be made for under-representation within the system. For example, Wales has already conducted an internal investigation of its settlement, which currently restricts the Assembly to powers of secondary legislation (National Assembly for Wales, 2004: Wales Office, 2005). It is possible that a de-stabilising 'English problem' may arise from England's formal exclusion from the settlement, particularly now that the original proposals for elected English regional assemblies are on hold.

In this context, it should be recognised that the devolveds are still in the process of discovering the potential of their new role. Executive and legislative devolution involves the devolveds in aspects of policy participation and legislation that did not feature in their previous role in administrative decentralisation. As they grow in confidence, a conscious withdrawal from a subservient relationship with Whitehall – as long as the public support for such a move is in place - might appear worth the risk.

So how robust and sustainable are the arrangements for devolved access to EU decision-making? The long-term prospects for the devolved approach to UK European policy making is dependent on it becoming sufficiently embedded ahead of the inevitable situation where party politics are more diverse than at present. A gradual erosion of those values and understandings underpinning the operation of a unified UK civil service could also prove problematic. We have found that as the devolveds develop their own institutional integrity, despite the continued formal existence of a unified civil service, the socialising effect of Whitehall is proving more distant. And as the devolveds' recruitment patterns draw more heavily on home-based personnel a shift in perceptions and loyalties seems likely to become more evident (Parry, 2003). Clearly, as the relationship is dependent and conditional, the attitude of Whitehall to regional flexibility in the nature and application of EU policy is a key issue. Indeed there are signs that Whitehall is gradually taking a more relaxed stance on this, though this is truer in the case of some Departments than others. There is also an emerging trend within the EU for regional flexibility to be built into policy proposals. This scope for different applications of policy within a member state's territory could remove the potential for future conflict between the regional and the national tier. Though again much depends on the extent to which UK central government wishes to buy into such opportunities for variation and the extent to which the devolveds are able to persuade them to do so.

CONCLUSION

Our survey reveals that devolution is opening up new opportunities for regional actors even in a highly constrained area such as European policy making. This provides some indication of the significance of the changes that devolution is bringing about more widely. The structure of policy making has altered to allow a more territorially focused input to take place. The impact on policy

outcomes, however, is less clear-cut. In the UK, the key channel for exercising influence on the part of the SNAs is that linking the devolveds with central government. The effect of devolution has been to maintain and augment this channel and to create new channels and networks amongst the devolveds themselves and to UKRep in Brussels. These latter are in the process of emerging and the national channel remains by a long measure the most significant. Access to it conveys a special and rather privileged status.

There is, however, a very clear distinction to be drawn between the devolveds and the English regions. The former have insider access to national EU policy making. This can be contrasted with the outsider status of the English regions. These differences in position and potential require quite distinct strategies for engaging in European policy making. For the devolveds the key strategic challenge is how to stay inside the system while developing a more specific territorial stance. For the English regions the key challenge is to be heard at all. There is also the tricky question as to who actually can represent an English position – the UK authorities in London or the amalgam of bodies and groupings that come together to discuss European issues at regional level.

If we return to the points on the comparative features of regional engagement in the EU outlined in the introduction, we can conclude that the intersection between UK devolution and the EU is characterised by: a) its non-constitutionalised status; b) an emphasis upon intra-state channels; and c) a cooperative strategy (Scotland and Wales) or a consultative one (the English regions). Given these characteristics, the devolveds' involvement in European policy making can best be summarised as a type of 'co-operative regionalism' allowing them insider participation in national policy making. In the case of the English regions we have a highly restricted form of 'consultative regionalism' with

limited involvement on a few key issues – notably the structural funds - and much dependence on outsider lobbying.

Viewed in comparison with other EU member states, the unique character of ‘co-operative regionalism’ in the UK can be seen to have both advantages and disadvantages. Its non-constitutionalised status could prove problematic in a situation where territorial conflicts – particularly those between periphery and central state - cannot be contained within civil service channels. In Spain, for example, the formal constitution has served to frame the limits of the contingency relationship between the central state and the ‘autonomous communities’ and they have been able to appeal to the Constitutional Court in order to clarify such matters. In the UK, no forum of conflict resolution is available to the devolveds separate from the machinery of central government (Hogwood, 2004b). Moreover, the constitutional entrenchment of territorial relationships in other member states has arguably promoted an expansion over time of the sub-state tier with respect to EU policy making (Hogwood and Gomez, 2004). Particularly in the federal states of Germany and Belgium, the substantial exclusive and shared competencies enjoyed by the *Länder* (Germany) and regions and communities (Belgium) puts them in a powerful position to influence European policy. Such a degree of involvement is not guaranteed to the UK devolveds. At the same time, though, the informal character of the devolveds’ non-constitutionalised status, together with the ease and openness of access between levels of government plus a common horror of politicising policy conflicts, have promoted a highly cooperative approach to problem solving. An approach not commonly found in systems with more formal access arrangements such as in Germany or Spain.

Overall on 'co-operative regionalism', our findings do not fully support the intergovernmentalists' continued confidence in the dominance of national level decision-makers in EU policy-making. Neither do they fully uphold the implication of writings within multi-level governance that any enhancement of the role of SNAs will automatically come at a cost to the role of the national level in the EU arena. For the time being, the devolveds and UK government alike have chosen to adopt a cooperative approach to EU policy making in order to minimise open political conflict and to maximise their ability to forge a common UK position to take to Council. Both the success of the UK arrangements to date and their inherent structural, constitutional and electoral vulnerability demonstrates the relevance of Jeffery's focus on the 'intra-state environment in which SNAs are embedded' (Jeffery, 2000:3).

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