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committee series

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97

C703/2PT1

FILE TITLE

Ministerial Committee on Devolution to Scotland,
Wales and the English Regions

(DSWR)

FILE BEGINS

~~14.5.97~~
7.5.97

ENDS

10.7.97

FILE No.

C703/2

PT1

INDEX HEADINGS

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Folio Sheet For File C 703/2 Part 1

Folio	Ref No.	Date	Subject
1	A5235	07/05/97	DSWR MTG, THUR 8 MAY
1M	A5637	14/05/97	DSWR MTG THURS 15 MAY
2	AO1561	10/07/97	DEVOLUTION CIRCULATION OF DRAFT SCOTLAND & WALE
3	A9305	10/07/97	DEVOLUTION

CJR.
8 Oct., 1998

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1	A5637	14/05/97	DSWR MTG THURS 15 MAY

file *o/k.* *19.5.97.* *M. aspey.*

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CABINET OFFICE
 A 9305
 10 JUL 1997
 FILING INSTRUCTIONS
 FILE No. C703/2



FROM: KENNETH MACKENZIE
DATE: 10 JULY 1997

Yes thanks. As slightly amended.

~~MS POLLEY~~

Sir Robin

Content with the attached?

*RB
10.7.*

cc: Mr Britton
 Mr Cooke

DEVOLUTION: CIRCULATION OF DRAFT SCOTLAND AND WALES WHITE PAPERS TO CABINET

Further to my minute of 8 July, I attach a draft submission to the Prime Minister as Sir Robin requested, for discussion at their bilateral at 9.30am on Monday 14 July.

KJM

K J MACKENZIE
 Head/Constitution Secretariat

Room 405, 70W
 ☎ 270 5907

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Kmo.096

DRAFT

1561

PRIME MINISTER

**DEVOLUTION: CIRCULATION OF DRAFT SCOTLAND
AND WALES WHITE PAPERS TO CABINET**

The Lord Chancellor's DSWR Committee has almost completed its work on the White Papers. They are to be considered at the Constitutional Reform Policy Committee (CRP) which you chair on Thursday 17 July. You will need to settle the outstanding issues and agree the White Paper texts on that occasion if they are to be published as planned the following week and debated before Parliament rises.

2. I am assuming, given the political sensitivity of some of the issues, that you will not want a discussion at full Cabinet. If so, you will wish to consider the position of those Cabinet Ministers - the Secretaries of State for Defence, International Development and Social Security, the Chancellor of the Duchy, and the Minister of Transport - who are not on either DSWR or CRP and also of those DSWR members not on CRP who will obviously be interested to see the White Papers in the versions which your Committee will be considering. These Ministers should perhaps be given some opportunity to comment.

3. To cater for that I suggest we should circulate the draft White Papers to all Cabinet Ministers, on a personal basis, simultaneously with the circulation to CRP under cover of a note from me along the lines of the attached draft. If this were to be issued to Cabinet members on Monday 14 July, that would allow a reasonable time for comment and minimise any confidentiality risks.

4. Any points which the Scottish and Welsh Secretaries wish to make to CRP on their White Papers or on the outstanding issues will be conveyed in separate CRP papers which would be circulated to members of that Committee only.

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Perhaps we might have a word

5. ~~I would be glad to discuss this way of proceeding with you at our~~
bilateral on Monday morning *about whether you are*
content with this way of proceeding.

ROBIN BUTLER

CONFIDENTIAL: POLICY

Kmo.089

CP(97)

and CRP(97)

**DEVOLUTION: DRAFT SCOTLAND AND WALES WHITE
PAPERS**

Note by the Secretary of the Cabinet

1. The Ministerial Committee on devolution to Scotland and Wales and the English Regions (DSWR) has now almost completed its consideration of the draft White Papers produced by the Secretaries of State for Scotland and Wales. These drafts, together with a number of unresolved issues arising from them will be considered at a meeting of the Ministerial Committee on Constitutional Reform Policy (CRP) under the chairmanship of the Prime Minister on 17 July. Subject to CRP clearance, the Secretaries of State plan to publish the White Papers in the course of the following week.

2. These draft White Papers are significant documents not only in relation to the Government's constitutional reform policies and legislative programme but to delivery of the Government's manifesto commitments as a whole. Previous drafts have already been seen by most members of the Cabinet during their consideration in DSWR, but the Prime Minister would like Cabinet colleagues who are not members of DSWR or CRP also to have an opportunity to consider them. This

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paper is therefore also being circulated to all members of the Cabinet. There is an obvious sensitivity about these near final drafts of eagerly anticipated White Papers. ^{see} Ministers are asked to treat these copies as being on a personal basis and to arrange for their careful handling within private offices.

3. Any drafting or other comments which Ministers who are not members of CRP wish to register on these drafts should be sent to the Secretariat copied to CRP members by 3pm on Wednesday 16 July.

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C703/3

Mr Mackenzie

Mr Lapsley

FOLIO 2

This was not sent in the end but the PM agreed tonight that he was content with the advice set out here.

Polley 10/7

Ref. AO97/1561

~~PRIME MINISTER~~

Devolution: Circulation of Draft Scotland and Wales White Papers to Cabinet

The Lord Chancellor's DSWR Committee has almost completed its work on the White Papers. They are to be considered at the Constitutional Reform Policy Committee (CRP) which you chair on Thursday 17 July. You will need to settle the outstanding issues and agree the White Paper texts on that occasion if they are to be published as planned the following week and debated before Parliament rises.

2. I am assuming, given the political sensitivity of some of the issues, that you will not want a discussion at full Cabinet. If so, you will wish to consider the position of those Cabinet Ministers - the Secretaries of State for Defence, International Development and Social Security, the Chancellor of the Duchy, and the Minister of Transport - who are not on either DSWR or CRP and also of those DSWR members not on CRP who will obviously be interested to see the White Papers in the versions which your Committee will be considering. These Ministers should perhaps be given some opportunity to comment.

3. To cater for that I suggest we should circulate the draft White Papers to all Cabinet Ministers, on a personal basis, simultaneously with the circulation to CRP under cover of a note from me along the lines of the attached draft. If this were to be issued to Cabinet members on Monday 14 July, that would allow a reasonable time for comment and minimise any confidentiality risks.

4. Any points which the Scottish and Welsh Secretaries wish to make to CRP on their White Papers or on the outstanding issues will be conveyed in separate CRP papers which would be circulated to members of that Committee only.

5. Perhaps we might have a word at our bilateral on Monday morning about whether you are content with this way of proceeding.

R.B.

ROBIN BUTLER

10 July 1997

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Kmo.089

CP(97)
and CRP(97)

**DEVOLUTION: DRAFT SCOTLAND AND WALES WHITE
PAPERS**

Note by the Secretary of the Cabinet

1. The Ministerial Committee on devolution to Scotland and Wales and the English Regions (DSWR) has now almost completed its consideration of the draft White Papers produced by the Secretaries of State for Scotland and Wales. These drafts, together with a number of unresolved issues arising from them will be considered at a meeting of the Ministerial Committee on Constitutional Reform Policy (CRP) under the chairmanship of the Prime Minister on 17 July. Subject to CRP clearance, the Secretaries of State plan to publish the White Papers in the course of the following week.

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3. Any drafting or other comments which Ministers who are not members of CRP wish to register on these drafts should be sent to the Secretariat copied to CRP members by 3pm on Wednesday 16 July.

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Sur Robm

DC 005



FROM: DAVID COOKE
DATE: 14 MAY 1997

ASG

LORD CHANCELLOR

cc: Mr Lapsley
Ms Polley
Mr MacKenzie
Mr Britton
Mr McFadden



**DSWR MEETING: THURSDAY 15 MAY, 8.30am,
CONFERENCE ROOM A**

1. You are to chair the second meeting of your Committee, to make a start on the heavy agenda of settling policy issues for the Scotland and Wales devolution White Papers and drafting instructions. A list of the Ministers currently expected to attend is at Annex A.
2. The meeting will focus on the main constitutional issues. DSWR(97)3 deals with constitutional policy and relations between Edinburgh and Whitehall, and DSWR(97)5 with the powers of the Welsh Assembly and its relations with Whitehall. DSWR(97)6 is the note by the Secretaries, which you have seen, which aims to indicate, on the basis of discussion by officials so far, which issues might be ready to be settled tomorrow, and which might be suitable only for short Second Reading debates. A handling brief for all these items is at Annex B.
3. Next week's meeting will take a first look at the proposed functions of the Scottish Parliament and Welsh Assembly.

DKC

DAVID COOKE
Room 409, 70W
270 6077

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ANNEX A

**MINISTERIAL COMMITTEE ON DEVOLUTION TO SCOTLAND, AND
WALES AND THE ENGLISH REGIONS**

LIST OF ATTENDEES

The Rt Hon Lord Irvine of Lairg (Chairman)

The Rt Hon John Prescott MP, Deputy Prime Minister and
Secretary of State for the Environment, Transport and the Regions

Derek Fatchett Esq MP, Minister of State, Foreign and Commonwealth Office

The Rt Hon Jack Straw MP, Secretary of State for the Home Department

Dr Kim Howells MP, Parliamentary Under Secretary of State, Department for
Education and Employment

The Rt Hon Margaret Beckett MP, President of the Board of Trade

The Rt Hon Dr Jack Cunningham MP, Minister of Agriculture, Fisheries and
Food

The Rt Hon Donald Dewar MP, Secretary of State for Scotland

The Rt Hon Frank Dobson MP, Secretary of State for Health

The Rt Hon Ann Taylor, President of the Council and Leader of the House of
Commons

The Rt Hon Chris Smith MP, Secretary of State for National Heritage

The Rt Hon Dr Marjorie Mowlam MP, Secretary of State for Northern Ireland

The Rt Hon Ron Davies MP, Secretary of State for Wales

The Rt Hon the Lord Richard MP, Lord Privy Seal

The Rt Hon Alistair Darling MP, Chief Secretary to the Treasury

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The Rt Hon Nick Brown MP, Parliamentary Secretary to the Treasury

The Lord Carter, Captain of the Gentlemen-at-Arms

The Rt Hon John Morris QC MP, Attorney General

Andrew Hardie Esq QC, Lord Advocate

Peter Mandelson Esq MP, Minister Without Portfolio

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ANNEX B

DC 004

DEVOLUTION TO SCOTLAND AND WALES (DSWR)97 2ND MEETING

HANDLING BRIEF FOR THE LORD CHANCELLOR

Overall aim

1. To give a steer to the drafters of the White Papers by settling recommendations which are now ready for decision, while confirming or commissioning further work on those points which need it. (It will be important to deal with Welsh as well as Scottish business, and you may want to aim to move on to it by about 9.30am).

Documents

2. DSWR(97)6 - Note by the Secretaries on "Constitutional Policy: Devolution to Scotland and Wales".

3. DSWR(97)3 - Memorandum by the Secretary of State for Scotland on "The Scotland Bill: Constitutional Policy and relations between Edinburgh and Whitehall".

4. DSWR(97)5 - Memorandum by the Secretary of State for Wales on "The Welsh Assembly: its powers and relations with Westminster".

5. The note by the Secretaries provides an annotated agenda on Papers 3 and 5, and might most conveniently be taken in conjunction with them

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rather than separately. Taking account of discussion by officials in DSWR(O) on 12 May, it aims to distinguish between issues that are ready for decision and those which need further work.

Overall handling

6. There is much more of substance to get through than at DSWR's first meeting. You will need to steer a course between deciding as many issues are as ready for decision, in order to give a steer to the drafters of the White Papers, while holding back from settling issues which require further work or reflection. Many of your colleagues have a legitimate interest in the constitutional issues under consideration, and may not in all cases yet have been able to establish clear positions with their departments.

7. In order to avoid the risk of the Welsh being squeezed out by the Scots, you should aim to start discussions of the Welsh Secretary's paper after an hour ie at about 9.30am.

8. You might want to confine your opening remarks to the following points:

- **We have a large set of key constitutional issues before us today.**

- **I envisage that DSWR will meet weekly from now onwards, to get through the formidable agenda ahead of us. We need over the next few weeks to settle what has to be said in the White Paper and, subsequently, in the substantive legislation.**

- **Next week's meeting will concentrate on the functions and powers of the Scottish Parliament and Welsh Assembly. At**

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subsequent meetings, we shall need to come on to financial and tax issues, and relations with the European Union.

- Today, we need to strike a balance between giving a steer to the drafters of the White Papers on as many issues as we can, while noting or commissioning further work on constitutional issues which we will need to return to at a subsequent meeting.

- The lead Ministers present at this meeting are responsible for driving forward their own measures, subject to collective approval.

- There are important differences between the devolution schemes for Scotland and Wales. In particular, the Welsh Assembly will not be responsible for primary legislation, and the Assembly will operate through a committee system. Other differences flow from these. It is therefore important that we should give proper attention today to the constitutional issues which arise with both the Scottish and Welsh devolution schemes.

- The note by the Secretaries - Paper 6, aims to signal for us, in the light of initial discussions by officials, which issues we might seek to settle today, and which we might hold over for further deliberation.

- I suggest we now turn to Paper 3, on Scottish constitutional issues, to be read with Annex A to the Note by the Secretaries.

The Scotland Bill: Constitutional Policy and relations between Edinburgh and Whitehall (DSWR(97)3)

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9. You should invite the Scottish Secretary to introduce each section of his Memorandum, and allow some discussion in turn. You may wish to move swiftly through the points for decision in paragraphs 3 - 6 of his covering paper. Corresponding parts of the note by the Secretaries (Annex A) aim to give a preliminary indication of which issues might be suitable for decision now, and which might need further work.

Entrenchment (2.1)

10. The Paper recommends that the Westminster Parliament should make a Declaration in advance of the Scotland Bill. At your bilateral with the Prime Minister, you suggested that entrenchment might be at odds with the Prime Minister's assurances that sovereignty would be retained by the Westminster Parliament. The President of the Board of Trade may be briefed to oppose a Declaration as unnecessary. Most other Departments seem to think that a Declaration would be preferable to an entrenching clause in the legislation, although the issue is really a political and constitutional rather than a departmental one. There is a read-across to devolution to the English regions: would entrenchment provisions really be necessary for Regional Assemblies? Some may seek to link the entrenchment issue with the controversial question whether there should be significant powers to over-ride legislation or administrative action by Edinburgh. The Scottish Secretary is strongly opposed to such powers. If this issue is raised, you may wish to suggest that it should be handled separately, taking account also of the fact that it arises specifically in the context of relations with the European Union. Overall, the entrenchment issue is one which you may prefer to return to rather than seeking to settle at this meeting. (It is possible that eventually there may be a trade off resulting in no entrenchment Declaration in return for no, or strictly limited, over-ride powers.)

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11. You might say:

- **The entrenchment question raises important general constitutional and political questions.**

- **There is a read-across to devolution to the English Regions. Would we wish to seek to entrench Regional Assemblies?**

- **Interested to hear your preliminary views, but suggest that we come back to this issue once we have a clearer idea of the overall framework for devolution to Scotland.**

Executive powers (2.2)

12. The Paper recommends the Westminster model for the exercise of executive powers under the Scotland scheme. DSWR(O) on Monday suggested that this was an issue that might be settled now. The Deputy Prime Minister may be briefed to make the point that the White Paper wording should not imply that the local government model was ineffective in its own context. This could be accepted and need not impede a decision.

13. You might say:

- **Hope we are in a position to agree this recommendation today.**

- **Westminster model for executive formation would be flexible: for instance, it could permit coalitions without requiring them.**

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- **Need to be careful in framing White Paper language not to disparage the local government model, bearing in mind also that the proposal is for a committee system for the Welsh Assembly.**

Titles (2.3)

14. It may be possible to agree at the meeting the recommendation for standard titles for the Parliament and its Executive. You might say:

- **This is an issue capable of generating more heat than light, but I hope that we are in a position to agree the broad terminology today.**

Role of Secretary of State (2.4)

15. This recommends an initial role for the Secretary of State, but that no decisions about the long-term future need be made at this stage. (There is a contrast with the Welsh proposals, which envisage a clear continuing role for the Secretary of State, given that he will not lose responsibility for primary legislation, even on devolved subjects). Some may seek to link this issue with over-ride powers, or with relationships with the Crown, but it would be preferable to keep these separate.

16. You might say:

- **Paper recommends a flexible approach, with a clear initial role for the Secretary of State, but no need to settle the long-term future of the office in the White Paper.**
- **Important not to build up the role of the Secretary of State to a point incompatible with the Manifesto devolution scheme.**

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- **Can we agree today the broad terms of the proposal?**

- **Suggest we return at a later meeting to the question of over-ride powers, which will arise in any case in the European context.**

Relationship with the Crown (2.5)

17. The Home Secretary may express concern about this. It seems, however, that what really concerns the Home Office is whether Royal Assent should be sought directly by the Speaker of the Scottish Parliament, or whether there should be a residual over-ride power for someone, presumably the Secretary of State, to reject legislation of the Scottish Parliament in extreme cases. The Home Secretary may say that this is the model for legislation by the Channel Islands and the Isle of Man. An ad hoc group of officials has been established to do further work on this set of issues. You might say:

- **Proposals in Section 2.4 raise issues which require further work by officials.**

- **Suggest that we should await further proposals from the ad hoc group.**

Unified Civil Service (2.6)

18. It may be possible to agree this. There is a need to take account of Northern Ireland sensitivities, given that there is a separate Northern Ireland Civil Service. You might say:

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- **Committee may be in a position to agree today that Scotland and Wales should continue to be served by a unified Civil Service.**

- **Need to take care, in drafting, about the fact that there is a separate Northern Ireland Civil Service.**

- **Will be a subsequent issue about how the proposed new Civil Service Code should take account of devolution. But no need to settle this now.**

Law Officers (2.7)

19. The recommendation is that the Scottish Executive should have two Law Officers; and that there should be a new post of Scottish Law Officer for the UK Government. We do not yet know the considered views of either the Lord Advocate or the Attorney General. You may like to say:

- **Suggest that we should return to this proposal when further work has been done on the detail.**

- **In the meantime, helpful to have the views of the Lord Advocate and the Attorney General to give officials a steer.**

Resolution of disputes on vires (2.8)

20. Monday's DSWR(O) suggested that further work was needed on this. An ad hoc group of officials, particularly legal officials, has been set up to refine these proposals. You may like to say:

- **Interested to hear your preliminary reactions to what is proposed, but suggest that we should hold over decision on these**

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issues until further work has been done by the ad hoc group of legal and other officials which is being set up following Monday's DSWR(O).

Scottish MPs at Westminster (2.9)

21. The recommendations that there should be no reduction in Scottish representation, and no special Parliamentary procedures to deal with the West Lothian question, are essentially for Ministers' political judgement. We understand that the Home Secretary may wish to argue that the number of Scottish MPs at Westminster should be reduced. (He has now written to signal that this is his view.) You might say:

- **Hope that we can provisionally agree today that there is no need for special parliamentary procedures as a response to the West Lothian question. This is, however, an issue in which the Prime Minister may have an interest.**

- **The question of the number of Scottish MPs at Westminster is separable, and a high level political issue. Suggest we should return to it at a subsequent meeting.**

Dual mandate (2.10)

22. You might say:

- **We may be in a position to agree today to a proposal that the Government will not prohibit dual mandate by statute.**

- **Further work is needed on the relationship with the House of Lords.**

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Format of Constitutional Legislation (Section III)

23. This will be one of the key issues for the devolution settlement. Discussion in DSWR(O) on Monday suggested that departments were evenly split as to whether they preferred a reserved list approach, a devolved list approach, or a mixed approach. DTI and the Department of Transport in particular may brief their Ministers to favour a devolved list approach, while DOE think a reserved list approach may be simpler. The ad hoc group of officials which is examining resolution of disputes has also been asked to do further work on the relative risk of legal challenge presented by each approach. It may be preferable to return to this issue in the light of further proposals from that group. In the meantime, the Scottish Office are conducting bilaterals with the main concerned departments on the content of the functions and powers concerned.

24. You might say:

- **Doubt whether we are ready to settle this key issue today. In particular, further work is being done on the relative risks of legal challenge in an ad hoc group of officials.**

- **Glad to have preliminary views but we need to come back to this at a subsequent meeting.**

Consultative Machinery (4.1)

25. At DSWR(O) on Monday there was some concern that the proposed generic published code, which might be put on a statutory footing, might not be flexible enough to cater for the wide variety of relationships between the UK Government and the Scottish Executive which will be needed. You might say:

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- **Hope we can agree the broad thrust that there will need to be a series of close consultative relationships between the UK Government and the Scottish Executive.**

- **May need a greater degree of flexibility here than is envisaged in the Paper.**

Reaching agreement (4.2)

26. You might say:

- **Believe we can approach this issue in the same way as the previous one.**

EU and International obligations (4.3)

27. Time will be pressing, so it could be as well to defer any discussion of this, given that the issues are controversial, and a separate paper has been prepared by an ad hoc group of officials. You might say:

- **Suggest we do not attempt to get into this subject until we have the separate paper prepared by the ad hoc group of officials.**

UK Public Bodies (4.5)

28. Following discussion at Monday's DSWR(O), the Scottish Office are undertaking further consultations on this topic. You might like to say:

- **A need has been identified for further work by officials on this set of issues.**

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- **Suggest we come back to this in the light of further proposals from the Scottish Office.**

The Welsh Assembly: its powers and relations with Westminster (DSWR(97)5) (taken with Annex B to the Note by the Secretaries (DSWR(97)6)

29. You should invite the Welsh Secretary to introduce his Memorandum. In doing so, you might like to say:

- **Important that we should give full attention to the Welsh as well as the Scottish devolution scheme.**
- **Although there are many similarities, there are important differences, flowing from, for instance, the fact that the Welsh Assembly would not have responsibility for primary legislation, and that the Assembly would operate through a committee system.**
- **The model which this implies may be unfamiliar in parts of Whitehall, but we must stick firmly to our Manifesto imperatives on both content and timing.**

30. On the substance of the Paper, the Deputy Prime Minister may be briefed by the Department of Transport to query how relationships will work between Whitehall, the Assembly Committees, and the Assembly itself: for instance, could consultation by Whitehall with the Assembly Committees be kept private if that was necessary, particularly if the Welsh Assembly had a different political complexion from Westminster? Secondly, assuming a Welsh Assembly of a different political complexion, might the Assembly be tempted to strain the vires of its secondary legislation powers? Thirdly, the Welsh Office needs to undertake a detailed exercise with Whitehall

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departments to establish proposals for which powers and functions would be specified in the initial Order transferring the powers and functions of the Welsh Secretary to the Assembly. At DSWR(O) on Monday, further work by the Welsh Office was commissioned on each of these points.

31. You may be able to settle the recommendations in paragraph 17 of the Paper, subject to the further work on these three points. You might say:

- **Further work by officials has been commissioned on the detail of the initial transfer of powers and responsibilities to the Welsh Assembly; on the relationships between Whitehall and the Assembly; and on dispute resolution if, for instance, the Welsh Assembly were to strain the vires of its secondary legislation powers.**

- **Subject to that further work, I hope we can agree the recommendations in paragraph 17 of the Paper as a guide to the drafting of the White Paper.**

Conclusion

32. Subject to the discussion, you may be able to sum up as follows:

- **On Scotland, we have agreed the steer to the drafters of the White Paper on executive powers; titles, the role of the Secretary of State; a unified Civil Service; the West Lothian question; and the dual mandate.**

- **Constitutional issues to which we will return will include entrenchment; relationships with the Crown; over-ride powers; resolution of disputes; the number of Scottish MPs at**

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Westminster; and the detail of the arrangements for Law Officers, consultative machinery, and UK public bodies.

- **For the Welsh scheme, we have noted that further work is in hand on dispute resolution; the detail of powers and functions to be transferred; and relationships between Whitehall, the Assembly Committees, and the Assembly.**

- **Subject to this further work, we have agreed the proposals in paragraph 17 of the Welsh Secretary's Memorandum.**

Constitutional Secretariat
14 May 1997

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Sur Robin

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FROM: KENNETH MACKENZIE
DATE: 7 MAY 1997

LORD CHANCELLOR

cc: Mr Lapsley
Ms Polley
Mr Britton
Mr Cooke
Mr McFadden



**DSWR MEETING: THURSDAY 8 MAY, 5.30PM
CONFERENCE ROOM A**

You are to chair the first meeting of your committee which has been advanced by a week to settle outstanding points for inclusion in the Referendums Bill remitted from the Prime Minister's CRP meeting. A list of the Ministers attending is attached at Annex A.

2 DSWR(97)1 sets out the composition and terms of reference for the Committee. In formally adopting them you may wish to take the opportunity to explain the intention of setting up this Committee. A possible speaking note from which to draw is at Annex B.

3 DSWR(97)2 covers CRP(97)3 on "Referendums on Devolution proposals for Scotland and Wales" and sets out the points remitted for this meeting of your Committee. A handling brief for these items is at Annex C.

4 Next week's meeting will take a first look at the proposed functions of the Scottish Parliament and Welsh Assembly and at their relationships with Westminster.

KJM

K J MACKENZIE
Head/Constitution Secretariat

Room 405, 70W
☎ 270 5907

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**MINISTERIAL COMMITTEE ON DEVOLUTION TO SCOTLAND
AND WALES AND THE ENGLISH REGIONS:**

LIST OF ATTENDEES

The Rt Hon Lord Irvine of Lairg (Chairman)

The Rt Hon John Prescott MP, Deputy Prime Minister and Secretary of State for the Environment, Transport and the Regions

The Rt Hon Robin Cook MP, Secretary of State for Foreign and Commonwealth Affairs

The Rt Hon Jack Straw MP, Secretary of State for Home Department

The Rt Hon Margaret Beckett MP, President of the Board of Trade

The Rt Hon Donald Dewar MP, Secretary of State for Scotland

The Rt Hon Frank Dobson MP, Secretary of State for Health

The Rt Hon Ann Taylor MP, President of the Council

The Rt Hon Chris Smith MP, Secretary of State for National Heritage

The Rt Hon Dr Marjorie Mowlam MP, Secretary of State for Northern Ireland

The Rt Hon Ron Davies MP, Secretary of State for Wales

The Rt Hon Lord Richard MP, Lord Privy Seal

The Rt Hon Alistair Darling MP, Chief Secretary for the Treasury

The Lord Carter, Captain of the Gentleman of Arms

The Rt Hon John Morris MP, Attorney General

**FIRST MEETING OF MINISTERIAL COMMITTEE
ON DEVOLUTION TO SCOTLAND AND WALES
AND THE ENGLISH REGIONS**

Speaking Note for Lord Chancellor

I am grateful to colleagues for attending this meeting at short notice. That was essential to deal with certain points affecting the devolution referendums legislation to be published next week remitted to us by the Prime Minister at a meeting on Tuesday.

Before we look at those, however, it may be helpful to pause briefly on our terms of reference in the first paper on the agenda since it is important to have a clear understanding of our role.

The Prime Minister had made clear that he regards the constitutional reform programme set out in our Manifesto as one of the major tasks for which the Government was elected. It is a large programme for a 5 year Parliament and presents an historic opportunity to make significant changes in the way this country is governed. That programme as a whole will be taken forward under the strategic oversight of the Ministerial Committee on Constitutional Reform Policy chaired by the Prime Minister himself. It will reach the main decisions on devolution and other elements of the programme.

The Prime Minister regards devolution to Scotland and Wales as much the most immediate and difficult part of the programme and he therefore wishes us to concentrate on delivering it, taking advantage of the full momentum of our electoral success. That will primarily be the responsibility of the lead Ministers, the Secretaries of State for Scotland

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and Wales whose departments will be drawing up the detailed proposals and taking the necessary legislation through Parliament.

Their activities will understandably have a profound effect on the Departments with equivalent responsibilities in England (and to some extent in Northern Ireland) but also on the Great Britain and UK Departments. It is therefore essential that the devolution proposals are subject to collective consideration and approval so that the details - which must be got right - are agreed and any outstanding issues resolved either in this Committee, or if necessary, by the Prime Minister's Committee.

That is our task and you will note that our terms of reference extend from considering the policy and other issues arising through to promoting progress of the relevant legislation and subsequent implementation so we are talking about quite a long task.

My role as Chairman is to co-ordinate all your efforts to ensure that we achieve our common objectives and deliver our Manifesto commitments as promised. To assist me, the Cabinet Office has established a new Constitution Secretariat to concentrate on this work in a proactive way working in close co-operation with all your officials. There will be official groups underpinning our activities and preparing the ground for our meetings. But the hard decisions will be for us as will the need to bring political judgement and a sense of vision to bear.

You will note that our terms of reference include devolution to the regions of England and that is deliberate and important. It would include our proposals for London government. While we must start with Scotland and Wales, we must avoid the impression in Parliament and

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elsewhere that they are to enjoy some exclusive advantage. Our Manifesto offered similar opportunities to the regions of England, building on existing institutions, as and when the people so wish. This Committee seems the right forum in which to make sure that happens as a natural development flowing from devolution to Scotland and Wales and not as an after thought or bolt-on.

Our prime task over the next 2½ months will be to decide what should be said on key issues in the White Papers on Scotland and Wales. The Prime Minister's Committee decided that these should be published as soon as the Referendums Bill receives Royal Assent and in good time for the referendums themselves. We will need to meet regularly over the next few weeks to read decisions on the key issues.

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**DSWR MEETING ON THURSDAY 8 MAY 1996, 5:30PM :
CONFERENCE ROOM A**

REFERENDUMS - HANDLING BRIEF

Questions to be asked (CRP(97)3 paras 9-11)

9. The topics are well established. The issue is the precise wording and the format. Officials have consulted electoral practitioners informally. They have argued strongly in favour of keeping the questions as brief as possible and avoiding a "yes/no" formulation. Simple questions at the level of principle are also consistent with the notion of a pre-legislative referendum which leaves the detailed scrutiny of the proposals to Parliament. It should also help resist detailed amendments to the questions during the passage of the legislation.

10. We envisage that the ballot papers would explain very briefly that the government has set out its proposals for a Scottish parliament/Welsh Assembly and then invite voters to endorse alternative statements. The proposition would be on the following lines:

"Parliament has decided to consult people in Scotland/Wales on the Government's proposals for a Scottish Parliament/Welsh Assembly.

Put a cross (X) in the appropriate box.

I agree that there should be a Scottish Parliament/Welsh Assembly.

I do not agree that there should be a Scottish Parliament/Welsh Assembly."

11. A similar format would be used for the tax varying question in Scotland. The Manifesto referred to power to vary "revenue". The Scottish Constitutional Convention favoured "tax" varying and specifically up to 3p on the basic rate of income tax. DSWR is to consider policy on the tax/revenue variation question. However, a decision is required now on the wording of the Bill. Either formulation ought to keep open our options for what powers in practice the Parliament is given in this area though that may need to be reviewed in the light of the DSWR consideration. The word "tax" is probably more easily understood by the average voter and, on that basis, we propose that the proposition should be on the following lines:

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"Parliament has decided to consult people in Scotland on the Government's proposals for a Scottish Parliament to have tax varying powers.

Put a cross (X) in the appropriate box.

I agree that a Scottish Parliament should have tax varying powers

I do not agree that a Scottish Parliament should have tax varying powers"

Issues:

Whether the text should include some reference to the White Paper.

Whether it should be in some ways more specific on the tax question.

Background:

At the meeting of CRP on Tuesday 6 May, the Secretary of State for Scotland argued that some reference to the White Paper should be included in the first question. There was also discussion of the desirability of a slightly more specific formulation on tax.

Position of Departments:

We understand Mr Dewar may not press strongly for a reference to the White Paper - the main problem being, on current plans, that the White Paper will not see the light of day until after the debates on the Referendum Bill have taken place. Including it in the wording may simply draw attention to a potentially sore point.

On tax, we understand that Mr Dewar may not argue for a change to the wording shown above, and the Chancellor of the Exchequer is likely to argue strongly that there is no meaningful distinction between "tax" and "revenue". There is a good deal to be said in favour of keeping it simple. If Ministers wish to keep options open, then the wording above does not really shut them off. The text of the White Paper will be the crucial determinant of which options are to be open to the Scottish Parliament in this area and which are not.

The Welsh Secretary is likely to be content with the wording as proposed in CRP(97)3.

Handling:

You might start by reminding colleagues of the pressing timescale for decisions, the need for clarity in language, and the role of the White Paper in defining the scope of the tax varying power.

You could then ask Mr Dewar if he wishes to press his point on the reference to the White Paper, and if so, why? Finally, you could repeat the exercise for the wording on the tax varying power.

Speaking Note:

- need to settle the wording now. Has to appear in the Bill.
- whatever words we use must be plain and readily understandable.
- the White Paper will not of course be available while the Bill is being debated. But when published it will set the context for the Referendum Campaign.

Funding the Referendums (CRP97(3) paras 15-18)

15. We do not propose to provide campaigning organisations with any funds. Although funding was provided in 1975, this was not done in 1979, mainly because of the difficulty in identifying clearly the different campaigning groups. We expect that similar, possibly greater, difficulties would emerge this time.

16. There will, however, be costs associated with the electoral process. The cost of holding the referendums will be around £4-5 million in Scotland and £2-3 million in Wales. There is an important point of principle here. Elections to the Westminster Parliament and to the European Parliament are paid for from the Consolidated Fund. This is expressly set out in the legislation governing both types of election. The main reason for these arrangements is that it would be wrong in principle for such an important part of the democratic process to be subject to monies having to be voted by Parliament or be the subject of the competing priorities of an individual Secretary of State.

17. We believe that the same principle should apply to the cost of pre-legislative referendums on major constitutional change, such as the referendums on the principle of Scottish and Welsh devolution. Such pre-legislative referendums are in themselves a constitutional innovation of significance.

18. We do not think that this proposal need conflict with our collective commitment to contain the costs of our programme within the existing

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spending plans. The latter provide for a contingency reserve of £2.5 billion, against which the cost of our point of principle is negligible.

Issue

Where should the resources to fund the two referendums come from- Contingency Reserve or the programmes of the Scottish and Welsh Secretaries? (The references to funding from the Consolidated Fund are a red herring because whichever source the resources are taken from, they would be paid through the Consolidated Fund).

Background

The argument at CRP was mainly based on constitutional principle, but also on the desire to avoid a costly precedent for the Home Office - a subsequent referendum on PR could cost around £50million, one for London around £10 million. This would be much more difficult for the Home Office to cope with than the cost of the current referendums for the Scottish and Welsh Offices.

Position of the Departments:

The Home Secretary is likely to stick to his guns. The Secretaries of State for Scotland and Wales will probably support. There is particular concern in Wales about the political impact of the devolution proposals being seen to hit programme funding.

The Chancellor of the Exchequer, will argue strongly that the costs of devolution referendums should be met by the relevant departments, on the grounds that if the Government is to be serious about controlling public expenditure then this is exactly the sort of decision it has to make. This being the first such decision it is vital to get it right. Furthermore, he is likely to argue that the position of the public finances does not allow for a more generous approach.

Handling

The Treasury feels strongly that a decision to allow access to the reserve for this issue would send entirely the wrong signal to spending ministers about the rigour of the Government's public expenditure control policies. There will be many other deserving causes, and if the Government's position was thought to be weakening, its ability to attain its economic objectives would be in jeopardy. The sums are not large in the context of the Scottish and Welsh blocks, or of total expenditure on e.g. schools or hospitals, and the Government's best interests would seem to lie in the direction of supporting the Treasury.

However, the Home Secretary would have a genuine difficulty if this decision was to create a precedent for future referendums. One way of resolving the issue therefore, if it were necessary to secure a sufficient measure of

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agreement, might be to treat the current decision as being self contained and having no implications whatsoever on the funding of future referendums. This does not address the presentational worries of the Scottish and Welsh Secretaries, but it would give the Home Secretary some comfort on his financial worries and it does have the merit of maintaining the credibility of the Government's position on expenditure control at this early stage.

You might therefore invite the Chancellor of the Exchequer to explain his difficulties before going on to the Scottish and Welsh Secretaries. If the discussion then allows, you could press the Scottish, Welsh Secretaries to accept the cost for the good of the Government as a whole, and if necessary offer the Home Secretary the chance to fight again another day (the Treasury would however have to be brought round).

Speaking Note:

- need to resolve this issue very quickly. Money resolution for Bill has to be ready tomorrow.
- Understand the constitutional points raised by the Home Secretary at the Prime Minister's meeting, but resources will be paid through the Consolidated Fund, and that is what the Bill will say, whether they are taken from the Contingency Reserve or from Departmental programmes.

[- Invite Chancellor of the Exchequer to explain expenditure position.
Invite Home Secretary, Scottish and Welsh Secretaries to explain their concerns.]

if possible

- invite Scottish and Welsh Secretaries to accept funding of these referendums because of expenditure control requirements.

If necessary to satisfy Home Secretary,

- However, no precedent would be created for future referendums. Home Secretary's important points can then be given the thorough consideration they deserve.

Broadcasting (CRP(97(3) para 24)

24. Colleagues ought to be aware for information that in 1979, an interim interdict was obtained in Scotland, preventing the use of party political broadcasts by the campaigning organisations. The argument was that since 3 out of the 4 main parties in Scotland supported devolution, the amount of time devoted to each case would not be balanced. There

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seems no good reason to expect a different outcome this time round. This is a matter for the Party Political Broadcasts Committee to consider.

Background:

The Lord Advocate was invited to consider the position on party political broadcasts. He will not have had a chance to do so given the fact that he was only appointed on Tuesday. In any event, there is no great urgency in receiving this advice.

Speaking Note:

The Lord Advocate has been invited to advise us on the position on party political broadcasts during the referendum campaign in the light of a legal action in the 1979 campaign.

There is no great urgency but the Committee looks forward to receiving his advice in due course.