Public policy in Scotland after devolution: convergence or divergence.

Rachel Haydecker

Abstract:
Public policy in Scotland after devolution has significantly diverged from policy at Westminster due to the political nature of devolution, and the wide legislative remit of the Scottish Executive and Parliament. Devolution has provided Scotland with the policy-making autonomy to continue historic policy differences in health, higher education and local government. Before devolution, these policy variations tended to be expressed through differences in implementation of Westminster legislation in Scotland. However, policy divergence is not guaranteed by the devolution settlement, as the fiscal and political requirements for divergence are influenced by the actions of the UK Government at Westminster. Policy convergence in the future is likely if the current financial and intergovernmental frameworks persist.

Introduction
Bogdanor states that devolution was ‘the most radical constitutional change’ (1999: 1) the United Kingdom had seen since the Great Reform Act of 1832. The Scotland Act 1998 established a set of clearly separate Scottish institutions: the Scottish Parliament, the Scottish Executive¹ and a First Minister, and diminished the role of the Secretary of State for Scotland and the Scottish Office (McGarvey and Cairney, 2008: 37). The powers of legislative competence reserved by Westminster are enshrined in the Scotland Act, with the effect that any area not specifically stated as reserved falls under the remit of the Scottish Parliament (Bogdanor, 1999). Devolution has provided Scotland with substantial areas of legislative competence, such as health, education and training, local government, law and home affairs, agriculture and sports and arts. The Scottish Parliament also has limited tax-varying powers, enabling it to vary the rate of income tax by up to three pence in the pound. However, the majority of the funding for the legislative agenda of the devolved institutions is determined by Westminster through the Barnett Formula (Cowley, 2000). Devolution has enabled

¹ After the 2007 Holyrood election, the SNP rebranded the Scottish Executive as the Scottish Government, which has been colloquially accepted in Scotland. However, the official title under the Scotland Act remains the ‘Scottish Executive.’ This dissertation will refer to the Scottish Executive as the ‘Scottish Government’ when discussing policies introduced or events taking place after the 2007 election.
Scotland to follow a distinct policy-making agenda, allowing clear policy divergences from the rest of the United Kingdom to occur during the first ten years of devolution. However, the ability for Scottish public policy to vary significantly is restrained by factors such as the common security area and the single market area across the whole of the UK. Scotland has, in fact, chosen to reproduce policies introduced at Westminster in some instances, despite having the opportunity to follow a different policy path.

Policy divergence in Scotland is not a new phenomenon; Mitchell states that the Act of Union in 1707 ‘did not entail uniformity and assimilation’ (2003: 162) between Scotland and the rest of the United Kingdom. Political devolution built upon a history of administrative devolution and policy differences in areas such as law, education, the Church and local government. Before devolution, policy in these areas could differ to maintain Scottish traditions, meaning policy in Scotland sometimes diverged from policy in England. This scope for distinctiveness was facilitated by the creation of the Scottish Office in 1885, and a Secretary of State for Scotland to represent Scottish demands at Westminster. Divergence tended to occur only where there was a clear Scottish precedent for a different policy, or in areas of no real political significance (Kellas, 1989). The Scottish Office mainly influenced and implemented the policies of other departments, and rarely initiated policies (Midwinter et al, 1991). Kellas (1989) argues that there was a Scottish ‘political system’ before devolution due to strong Scottish traditions. This is countered by authors such as Midwinter et al (1991), who state that the main political institutions in Scotland before devolution were British institutions, and as power was retained by Westminster, the existence of a separate Scottish political system was not possible. Policy divergence before devolution was more a difference of implementation or emphasis, rather than concrete, substantial divergence (Midwinter and McGarvey, 2001; Mitchell, 2003).

This dissertation will focus on the policies introduced by the devolved institutions in the areas of health, higher education and local government, with a specific focus on the high profile, ‘flagship policies’ (McGarvey and Cairney, 2008: 204) of free personal care for the elderly, the abolition of tuition fees, and the use of Single Transferable Vote (STV) in local elections. Health, higher education and local
government have been selected because policy divergence in these areas occurred before devolution, and so they have been identified as areas where further divergence would be highly likely. It is acknowledged that Wales and Northern Ireland have followed distinct policy paths from Westminster in some of the policy areas examined in this dissertation, however the exploration of differences in policy across all four nations forming the United Kingdom is not within the remit of this work.

It can be argued that the ‘aim’ of devolution is ‘less about pursuing distinctive policy agendas in different places,’ and is instead about ‘a sense of ownership of the policy process in more “proximate” devolved settings’ (Jeffery, 2006b: 153; Jeffery, 2009; Mitchell, 2006). The Scottish Executive and Parliament can choose to prioritise legislation affecting important Scottish industries, such as whisky or fisheries, or emphasise areas such as council housing or public health, where Scotland has historically differed from the rest of the United Kingdom. Devolution can therefore be seen as reinstating Scottish ownership of politics, as decision-making now occurs as close as possible to the people who will be directly affected. This dissertation argues that the point of devolution is to enable the devolved institutions in Scotland to make their own choices and decisions, allowing a different approach to issues and resulting in divergent policies.

Although there has been clear divergence in public policy in the areas considered in this dissertation, the capacity for continued divergence is not guaranteed. The devolved institutions are constrained by the single market and the common security area throughout the whole of the United Kingdom, as well as the welfare state settlement and membership of the European Union (Keating et al., 2003; Keating, 2005b). These factors encourage policy convergence with the rest of the United Kingdom. The capacity to fund generous policies in Scotland, such as free personal care for the elderly and the abolition of tuition fees, relies heavily on favourable financial decisions made at Westminster, due to the workings of the Barnett formula. If cuts are made at Westminster level, the Scottish budget would be decreased as a result, and convergence could occur, as the devolved institutions would no longer be able to continue to fund such policies. Convergence in health and welfare policies may occur in the future, due to the continued presence of Scotland in the United
Kingdom, as citizens expect a similar standard of service and provisions, regardless of where they live. If health policy continues to diverge in Scotland, there could be discontent voiced by residents in other parts of the UK, putting pressure on Westminster to encourage a convergence of policy.

Divergent public policies in the areas examined in this dissertation have been introduced since devolution. Upon closer examination there have also been changes in the policy-making process in Scotland since devolution; consensus and compromise is often required due to the likelihood of a coalition or minority Scottish Government. However, the informal nature of the current intergovernmental framework and the significant financial impact of spending decisions made at Westminster on the policy-making capacity of the devolved institutions means that policy convergence should be expected in the future.

**Literature Review**

It is argued that a new ‘Scottish policy style’ has been created after devolution. A policy style is described as the ‘repeated choice of policy tools, and the adoption of the same tools in different policy fields’ (Greer and Jarman, 2007: 167). This new ‘Scottish policy style’ is based on consensus and a more open, inclusive consultation process (Cairney, 2007, 2008; Keating et al, 2003). The use of proportional representation in Scottish Parliamentary elections gives a greater likelihood of a coalition or minority government, necessitating consensus on policy decisions. The smaller political arena in Scotland leads to closer personal contacts, and ministers who personally manage policy communities, encouraging meaningful consultation (Cairney, 2008). The Scottish Executive frequently consulted a wide range of interest groups in Scotland in the early years of devolution due to its limited legacy of policy-making, as the Scottish Office had previously implemented rather than formulated policy. Keating et al describe the Scottish Office’s policy-making role prior to devolution as simply ‘putting a Scottish face on British policy’ (2003: 454). Nonetheless, the importance of interest groups in policy-making after devolution should not be over-exaggerated. Despite expectations, devolution did not lead to the creation of new Scottish interest groups; Cairney et al (2009) state that only a small proportion of Scottish interest groups were created after devolution. Existing interest
groups instead shifted their focus from Westminster to the Scottish Parliament by increasing their policy capacity and resource levels in Scotland.

The existence of a new ‘Scottish policy style’ should not be accepted without question. Parry (2002) suggests that if devolution had not occurred, the Labour government at Westminster would have continued to give the Scottish Office the relative autonomy it enjoyed between 1997 and 1999, which would have had almost the same effect on policy as the Scottish Parliament. This implies that the Scottish Parliament simply followed the policy path of the Scottish Office, and that devolution did not symbolise a true change in direction for Scottish policy. The concept of a new ‘Scottish policy style’ can be negated by the suggestion that the most publicised policy divergences in Scotland, such as the abolition of up-front tuition fees, were simply due to the Liberal Democrats pursuing their UK-wide policy agenda as junior coalition partners (Devolution and Constitutional Change Programme, 2006). Yet Scotland’s historical distinctiveness in education, health and local government should not be dismissed. Devolution has allowed this distinctiveness to continue, and the autonomy of the devolved institutions has allowed significant policy divergence from Westminster, as well as providing some protection against the imposition of unpopular policies in Scotland.

Devolution has significantly changed the political arena in Scotland. The devolved institutions have the ability to create and follow their own legislative agenda; dealing with distinctly Scottish problems and following the precedent set by the Scottish Office in the years before devolution in areas such as education and health. Policy divergence is facilitated by the lack of formal, systematic co-ordination across the United Kingdom. The UK Government is not able to legally constrain the policy-making of the Scottish Government and Parliament, as there are no UK-wide framework laws covering matters devolved to Scotland. Instead, the UK can only ‘inconvenience or obstruct’ (Trench, 2009: 129) the devolved government at Holyrood by failing to create the space for devolved policies in UK legislation or programmes, or by following policy directions with knock-on effects for Scotland without consulting the devolved government. Asymmetrical devolution has encouraged bilateral, rather than multilateral discussions between governments at
Westminster and Holyrood over policy ideas and objectives (Schmueker and Adams, 2005), especially before 2007, as some intergovernmental problems could be handled within the internal machinery of the Labour Party. The election of a different political party at Holyrood from the party of government at Westminster has exposed the limitations of the informal intergovernmental understandings that underpinned devolution for the first eight years. Giving evidence to the House of Commons Justice Committee, Jeffery states that the arrangements for dealing with differences in territorial interests ‘appear unfit for purpose now that they connect governments led by different political parties’ (2008: 34).

The creation of new political focal points in Scotland, the devolved institutions, also encourages policy divergence. The pattern of party politics has changed and policy divergence is more likely as different political parties compete in Scottish Parliament elections, leading to a wider variety of policy suggestions than at Westminster. Devolution also presents a specific challenge to the Labour party, which can be seen as being ‘pulled in different ways’ (Greer, 2004: 10) by the need to compete for voters with different priorities in Westminster elections, and then in Scottish Parliament elections. In the Scottish electoral arena, Labour MSPs face competition from parties on the left of the political spectrum, such as the SNP, the Scottish Socialist Party and the Scottish Green Party, whereas at Westminster, Labour’s main competition is from the Conservatives, on the right of the political spectrum. Party politics in Scotland have also changed due to the increased likelihood of coalition government. After the formation of the first two Scottish Executives, Scottish Labour was forced to move away from the party line preferred by Westminster due to the coalition with the Liberal Democrats. As junior partners in the first two coalition Executives, the Liberal Democrats were able to insist on the introduction of headline policy divergences, such as the abolition of up front tuition fees and the introduction of STV in local elections. The political dynamic of devolution also means that the new Scottish institutions may wish to demonstrate that devolution does make a difference by introducing divergent policies (Hazell and Jervis, 1998). There were high public expectations that devolution would bring improvements in the NHS, education, welfare services and the economy, which can partly explain why major policy divergences occurred in some of these areas (McEwan and Parry, 2005: 48).
Although devolution has led to the introduction of significantly different policies in Scotland from those in England, there are several contextual and political factors encouraging policy convergence in Scotland. In the early years of devolution, the devolved government in Scotland appeared to take its policy cues from Westminster, and then modify the proposals to reflect the consultative and more collaborative Scottish policy style (Laffin, 2007). Nelson (2001) refers to this as the Scottish Executive ‘regurgitating work done in London and passing it off as its own,’ and argues that devolution has ‘barely changed the output of Scottish government.’

Contextual factors encouraging convergence are the UK single market area, the welfare state settlement and the common security area throughout the whole of the UK (Keating, 2005b). It is necessary for security policy to be consistent across the UK to ensure uniformity in law enforcement and regulation, and the reservation of the bulk of social security policy at Westminster means that the devolved institutions have a very limited ability to create new legislation in this area. Membership of the EU also constrains Scottish policy-making, as the Scottish Executive can sometimes find itself caught between European and UK requirements. Although agriculture is a devolved issue, Scottish policy has to comply with European requirements, and as European issues are reserved, Westminster plays a role in Scottish policy-making by ensuring that all legislation is compatible with European legislation.

A major constraint on policy-making is the financial settlement used to fund the devolved government in Scotland (Keating, 2005b; Jeffery, 2006b). Scotland has no borrowing power and no significant revenue raising power, apart from the power to vary the basic rate of income tax in Scotland by up to 3 per cent of the rate in the rest of the United Kingdom, which has not occurred to date (Bogdanor, 1999). The Scottish Executive and Parliament receive funding through the Barnett Formula, which allocates money to Scotland at the same rate per capita levels as funding decisions for political programmes in England, so any spending increases or cuts directly affect the amount of money received by Scotland. The Barnett Formula encourages policy convergence as it gives Westminster a significant amount of influence over the Scottish Government’s budget; public expectations encourage the Scottish Government to match spending increases pledged by the UK Government,
and English spending increases can be exempted from Barnett calculations, such as extra spending on the Olympics in 2009 (House of Commons Justice Committee, 2009). The Barnett formula may lead to greater convergence in public policy within the United Kingdom in the future; the amount in the block grants given to each area of the UK was intended to converge over time, as the amount received by Scotland was originally set at levels higher than per capita spending in England (House of Commons Justice Committee, 2009: 73). This convergence has not occurred to date, but it could eventually mean Scotland could not fund policies such as free personal care for the elderly and the abolition of top up fees, leading to policy convergence with England (Hazell and Jervis, 1998). Despite this, the devolved institutions are not obliged to follow any spending promises made by Westminster, giving them a large amount of freedom to decide how the money allocated from the Barnett formula is spent (Keating, 2005b).

Although there is no formal requirement for Scotland to follow the lead from Westminster regarding spending increases, the ‘concept of equity’ (Hazell and Jervis, 1998: 69) can dictate any decisions made over spending increases in Scotland. British citizens expect the same basic levels of public services wherever they live, and significant differences in health, education or welfare policies could lead to calls of inequality, and a perceived better standard in one country over another (Woods, 2002). However, it can be argued that territorial variability has always been a feature of British social policy, and that devolution cannot undermine the British welfare state, which never had a classic unitary structure (Wincott, 2006; Mitchell, 2006). Before devolution, differences between Scottish and English education and health policies were seen as ‘benign’ (Wincott, 2006: 185), however divergence since devolution is considered to be a problem by some. Devolution could create a tension between the ‘logic of social citizenship and the logic of federalism,’ (Banting, 2006: 44) although the UK is not a federal system. The logic of social citizenship suggests that there should be policy uniformity and national standards, whereas the logic of federalism allows for regional diversity, so a federal government can reflect the needs and priorities of their electorate through differing policies. The permissive nature of the UK’s devolution settlement, and the unconditional nature of the block grant used to fund the devolved administration’s policies, gives Scotland considerable scope to
vary social citizenship on a territorial basis (McLean *et al*., 2009). However, the Scottish Executive may feel obliged to ensure parity in services with the rest of the UK, leading to policy convergence. Public opinion could also encourage convergence, as the public favour common standards in services across the UK (Schmueker and Adams, 2005). There is no discernable difference between public opinion in Scotland and England in polls conducted about free long-term care for the elderly, the public in both countries are in favour of the Government paying for the care needs of the elderly (Curtice, 2005). Yet Scottish policy has diverged significantly in this policy areas, raising questions about the fairness of only providing free personal care for the elderly in Scotland, when this is also supported in England. The presence of seemingly more generous Scottish policies does not correlate with the principle of having a set of ‘common citizenship rights and values’ across the UK (Greer, 2007: 158). However, Jeffery (2005) believes that divergence is necessary to express the distinct Scottish identity and sense of national community.

Policy convergence during the first eight years of devolution was encouraged by the ‘pan-British hegemony of the Labour Party’ (Jeffery, 2005b: 114; Keating, 2005b). Labour politicians at Westminster and Holyrood would be expected to share broadly the same ideas and party loyalties, and Scottish Labour MSPs would not want to offer a radically different platform of policies for fear of embarrassing their English counterparts, or forcing them to introduce similar policies. Parry argues that the full potential of devolution in Scotland has been constrained by a ‘perceived need for compatibility’ (2002: 322) with UK policy, partly due to Holyrood’s political alignment with Westminster before 2007. The Labour Government at Westminster could influence the Scottish Executive, and try to discourage any embarrassing divergences from UK policy before 2007; no real safeguard against political interference from the UK Government exists (Simeon, 2003). However, Scottish Labour has moved away from the party line followed in Westminster, for example by introducing the ban on smoking in public places in 2005 in direct defiance of John Reid, the Labour Secretary of State for Health at the time (McGarvey and Cairney, 2008: 207). The civil service can also be seen as a ‘unifying force,’ encouraging the convergence of policy across the UK (Keating *et al*., 2003).
The ability of the devolved institutions to produce divergent policy is limited by the retention of certain powers by Westminster in the devolution settlement, and the overlap between some areas of devolved and reserved policy. This is apparent in areas such as the relationship between the social security system, which is reserved, and forms of social intervention such as housing, training and social work, which are devolved. Social security in the UK is an aspect of central economic sovereignty, and therefore cannot be used as an instrument of devolved social policy (Keating et al., 2003). This can, and will, cause problems for a Scottish Executive that wants to radically change social policy in Scotland, as there are a lack of fundamental economic powers to create more meaningful policies. It is also important to remember that although legislative competence in many areas is devolved to the Scottish Parliament, Westminster retains the ability to produce legislation that will affect Scotland, even if the matter is devolved, through the use of Legislative Consent Motions (LCMs)\(^2\).

The claim that public policy in Scotland after devolution has diverged implies that there is a norm from which Scottish policy-makers are departing, namely the policy-making approach of the UK Government (Trench, 2007). However, if the policy-making and direction of the Scottish Office before devolution is instead taken to be the norm in Scotland, it can be argued that policy is not diverging as dramatically as it appears. Policies such as free long-term care for the elderly and the abolition of up-front tuition fees can be seen as continuing tradition of Scotland as a socially democratic country with support for egalitarian issues, social justice and redistribution (Hassan and Warhurst, 2000). The headline divergence of free personal care for the elderly was introduced in Scotland following the Sutherland Royal Commission, a pre-devolution report for the whole of the UK (Parry, 2003). Some policy changes which can be perceived as being ‘divergent’ are simply a difference of style and implementation of a policy introduced across the UK, such as less target-setting in the health services (Adams and Robinson, 2002: 14). This tactic was normal when there was administrative autonomy under the Scottish Office, and does not necessarily

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\(^2\) LCMs are colloquially called Sewel motions. An LCM is used when UK bills make provision for a matter on which the Scottish Parliament has the power to legislate, when they vary the legislative competence of the Scottish Parliament, or when they vary the executive competence of Scottish Ministers. An LCM means that this will only happen if the Scottish Parliament has given its consent (House of Commons Library, 2005).
represent a change in policy-making post devolution. It can be argued that devolution has allowed Scottish politicians to reinforce their ‘welfarist spirit’ (McEwen and Parry, 2005: 43), and that Scotland’s tradition of placing priorities on social democracy increased the likelihood that some aspects of health and education policy in Scotland would diverge from England after devolution.

There appears to be the potential for the emergence of a different ‘Scottish policy style’ as the devolved institutions mature. However, the devolution settlement must be able to prove that it can withstand the political pressure it may be placed under after the General Election in May. The devolved administrations rely heavily on informal arrangements and the ‘goodwill’ (Trench, 2008: 222) fostered during Labour’s dominance at Westminster and Holyrood in the first years of devolution. In the future, it will be necessary to use more formal mechanisms to manage intergovernmental relations and the complex relationships between the administration in Scotland and at Westminster, with their overlapping interests and roles (Trench, 2008).
Health

Health is one of the most important, complex, and politically visible policy areas for the devolved government in Scotland, and Scottish policy can be seen to be taking a different path to the rest of the UK (Greer, 2004). Due to the prominence of health and NHS policy in the devolved administrations’ responsibilities, it is important that the public view the actions of the devolved institutions in this area as successful (Woods, 2002). Devolution was seen as a prime opportunity to address the poor health status of Scots, and the health inequalities between Scotland and many parts of England, as policy could be tailored to meet specific Scottish needs. Despite the relatively short time period since devolution in 1999, and strong links between the health systems throughout the United Kingdom, divergent health policy has been introduced in Scotland by the devolved institutions.

Scottish health policy differed from the rest of the UK prior to devolution. The informal autonomy of the Scottish Office enabled some policies to be implemented differently, although this autonomy was limited. The Scottish Office developed close links with the health policy communities built around Scotland’s medical schools and Royal Colleges, and most of the distinctiveness in Scottish health policy before devolution is due to the reliance of the Scottish Office on these medical elites (Greer, 2004). Scotland consists of ‘policy villages with tight policy and professional networks’ (Hazell and Jervis, 1998: 9), enabling policy makers to come to agreement over policy more quickly and easily than in other parts of the UK. After Labour’s victory in 1997, and before the formal handover of powers to the new Scottish institutions, Scotland was given the opportunity to further depart from UK-wide health policy to ‘prepare for devolution’ (Greer, 2004: 79). The NHS reforms introduced in Scotland in 1998 differed from English proposals, as they aimed to preserve the ability of ‘trusts’ (i.e. hospitals) to organise themselves, leaving broader strategy issues to boards. By the time the Scottish Parliament was introduced, Scotland had formally made trusts responsible for self-administration, giving boards control over policy. This showed that Scotland wished to return to the concept that doctors should play a major role in the allocation of resources, rejecting the policy pursued in England that management was better able to fulfil this job (Greer, 2004).
After devolution, organisational structures within the NHS in Scotland have been based on the idea of partnership, leading to a system largely dominated by professionals and staff. This reflects the more communitarian leanings of Scottish politics as a whole (Greer, 2003; Woods, 2002). The National Health Service Reform (Scotland) Act 2003 legally enshrined the existing differences between Scotland and the rest of the UK by abolishing the ‘internal market’ (Keating and Cairney, 2009: 39) within the NHS in Scotland, at the same time that it was being extended in England through the introduction of foundation hospitals. Scottish policy regarding public services since devolution has been able to ‘drift…away from the English model of consumerism and competition’ (Keating and Cairney, 2009: 40), and retain more of the traditional public service model than England (Keating et al., 2003). Historically, there has been a higher amount spent on health in Scotland in comparison to England. This has led to more beds in Scottish hospitals, more GPs per capita and a higher level of prescribing, which can be seen as necessary due to Scotland’s poorer standard of public health. Scotland also has a smaller private healthcare sector in comparison to England (Woods, 2002). The Scottish Executive purchased Scotland’s most prominent private hospital, the HCI Hospital in Clydebank, in the summer of 2002, expressing a clear policy choice in favour of the NHS over privately provided healthcare (Greer, 2003). Scotland concentrated on rebuilding a unitary NHS after Labour’s election victory in 1997, in comparison with England, where reforms were more market-based (Greer, 2003).

The headline health policy divergence in post-devolution Scotland has been the introduction of free personal care for the elderly in 2002. The Scottish Executive pledged up to £145 per week for individuals to provide personal care, and an additional £65 for nursing care, as well as £50 million to be used to improve home care services (Simeon, 2003). This was a clear divergence from Westminster on a high profile policy issue, and means a substantial amount of money has to be provided from within the Barnett provisions to fund this policy. Greer states that the Scottish Executive’s decision to fund long-term personal care for the elderly was ‘the most important divergence in policy in the UK in four years of devolution’ (2004: 77). However, the origins of this policy were in a pre-devolution report by the Royal Commission on Long-Term Care, meaning that the policy was not completely
formulated by the devolved institutions and the Scottish health policy community (Parry, 2003). The UK Government established the Royal Commission in 1997 to examine the options for the provision of long-term care for elderly people. The Commission’s report, published in 1997, recommended that personal care, including nursing care and some social care tasks, should be funded from general taxation. The UK Government chose not to follow this recommendation, stating that the proposals carried a ‘very substantial cost, both now and in the future’ (Department of Health, 2000: 11). The Scottish Executive chose to adopt the Commission’s recommendations, a move which can be attributed to Henry McLeish, Scotland’s second First Minister. McLeish became First Minister in the shadow of Donald Dewar, and was keen to make his own mark on the office and make Scottish health policy, and policy more generally, distinctive from the rest of the UK (Greer, 2004). The Commission’s report provided an opportunity for McLeish to distinguish his leadership of the Scottish Executive, and simultaneously introduce a policy which was popular with the Scottish electorate. The introduction of this policy can therefore be seen as being due to a political imperative, rather than an impartial judgement. The health policy community was very influential in the first few years after devolution, due to the relative lack of experience in policy-making of the Scottish Executive and Parliament. The fact that the health policy community was in favour of the introduction of free personal care for the elderly can be seen to have encouraged the Scottish Executive’s actions in deciding to follow the Commission’s recommendations. Simeon argues that ministers did not have the ‘firmness of purpose’ (2003: 228) to stand up to pressure from the public and the media, who were all in support of the policy.

There has been additional health policy divergence in Scotland since devolution. The Mental Health (Care and Treatment) (Scotland) Act 2003 was a significant piece of legislation passed by the Scottish Parliament with no Westminster counterpart, until the Mental Health Act 1983 was amended by a short bill at Westminster in 2007. Devolution has allowed Scotland to take a distinctive policy direction on mental health, which is described as a ‘national public health priority for Scotland’ by NHS Health Scotland (2009). Mental health policy developed differently in Scotland before devolution, and the establishment of the Scottish Parliament and Executive provided
the opportunity, in terms of time and legislative capacity, for divergent legislation. Unlike the previous Mental Health Act, the new Scottish Mental Health Act is based on a set of guiding principles, to ‘set the tone of the Act and guide its interpretation’ (Scottish Association for Mental Health: 2004). These principles include ensuring non-discrimination against people with mental health disorders, and encouraging the use of informal care rather than compulsory powers. The new Scottish Mental Health Act did not follow controversial plans put forward at Westminster to detain people with personality disorders preventively. The legislation introduced at Westminster contained a provision allowing for the detention of people suffering from severe personality disorders who are viewed to be dangerous, even if they have not committed a crime (Keating and Cairney, 2009: 38, House of Commons Library: 2007). The progressive attitude in Scotland towards mental health can be seen by the introduction of a comprehensive new Act dealing with mental health in Scotland years before a limited version of the same Act was introduced in Westminster.

The current Scottish Government can be seen to be working towards a health care system that is truly free at the point of delivery, with the announcement in 2007 that prescription charges would be gradually phased out, and completely abolished in 2011. This marks a clear divergence from policy in England, and the policy of the previous Scottish Executive, who favoured the retention of prescription charges (BBC News, 2007). Currently, prescription charges in Scotland are £3 per item, in comparison to £7.20 in England (Sturgeon, 2010). The Scottish Government is following in the footsteps of the Welsh Assembly and the Northern Ireland Assembly, who have already introduced free prescriptions. However, the UK Government eliminated prescription charges for cancer patients in England in 2009, and state that charges for sufferers of other long-term conditions will be abolished in the future (BBC News, 2009), suggesting that convergence on this issue could eventually occur. Divergence in health policy is also evident when policies developed in England are not adopted in Scotland (Woods, 2002).

The ability of the Scottish Executive to formulate a distinctively ‘Scottish’ health policy is limited by a lack of control over the amount of money granted to Scotland through the Barnett Formula. Funding presents a dilemma for health policy-makers in
Scotland, as although they can propose policies within the competences of the devolved institutions, the funds available through the Barnett Formula are decided by policy decisions taken in Whitehall (Wood, 2002). The Scottish Executive was able to fund the generous policy of free personal care for the elderly due to spending increases on health made at Westminster, which resulted in an increase in Barnett funding. The expectation was that this extra funding would be also used for the health services in Scotland (McEwan and Parry, 2005). However, the ability of the Scottish Government to continue to finance such an expensive policy is dependent on the fiscal decisions made by the Government at Westminster.

Divergence in health policy is also limited by the ‘concept of equity’ (Hazell and Jervis, 1998: 69). Residents in the United Kingdom expect the same basic levels of public service wherever they live, meaning that any significant difference in health policy could lead to calls of inequality, and create a perceived better standard of care in one country over another. There is a lack of general guiding principles for the UK-wide NHS, despite the assumption that there should be equity in health service provision across the UK (Simeon, 2003). If health policy divergence leads to a situation where access to certain services, or the standard of services, depends on where a citizen lives, this challenges the assumption of the right to a common set of welfare state programmes and services that UK residents are currently entitled to. McEwan and Parry argue that devolution has challenged the principle at the heart of the UK welfare state, which is that ‘broadly equivalent services are available, as a right of citizenship, to all citizens according to their needs’ (2005: 59). Greer claims that an ‘underlying sense of common citizenship rights and values’ (2007: 158) exists across the UK, and that if policies diverge significantly in Scotland, this could eventually cause problems due to public expectations of equity in the health service provision across the UK.

The dominance of the English health service and its policy choices, and the desire for continuity in policy by the health policy communities across the UK can lead to convergence. Hazell and Jervis note that professional bodies in Scotland are likely to prefer conformity in areas such as clinical practice, education and training, which acts as a ‘brake’ (1998: 14) on divergent policy. Wincott (2006) also suggests that the
medical elites in Scotland are keen to protect the health policy legacies that they inherited from the pre-devolution era, so health policy suggestions may be less radical than those proposed in other policy areas. The Commission on Scottish Devolution\(^3\) recommended that the regulation of health professionals in Scotland was brought under the control of Westminster, leading to convergence. The Commission stated that the regulation of all health professionals, not just those professionals specified in the Scotland Act 1998, should be reserved at Westminster. A curious situation affecting the regulation of healthcare professionals had arisen; new professions which had emerged since devolution, such as dental nurses and dental technicians, were regulated by the Scottish Parliament as anything not listed in the Scotland Act as reserved is devolved. The Calman Commission did not consider this potential for different standards to be in the best interest of patients across the UK. The UK Government supported the recommendation, and the regulation of all healthcare professionals is now reserved at Westminster (Scotland Office, 2009: 16). This also demonstrates the unintended consequences that can arise from the devolution settlement.

Devolution has allowed Scotland to tackle a history of health problems, and emphasise specific areas of health, such as mental health. There has been a clear divergence in health policy due to the introduction of free personal care for the elderly, which was explicitly rejected by the UK Government. However, the introduction of this policy can be seen as an opportunistic move by Henry McLeish to distinguish his leadership of the Scottish Executive, and to capitalise on the public support for the policy. Further divergence in health policy remains constrained by the financial framework of devolution and the dominance of the English health service. It is important to remember that the English health service represents eighty-five per cent of the total of the UK health service, meaning that the direction that it takes, and policies it introduces, are less likely to be influenced by the actions of the NHS in Scotland (Hazell and Jervis. 1998: 15). During the first years of devolution, the Scottish Executive was in a favourable financial situation due to the priority placed on healthcare by Westminster, and the resulting spending increases. If spending on health is cut in the future, this will have a negative effect on the ability of the Scottish

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\(^3\) The Commission is colloquially referred to as the Calman Commission.
Government to continue the provision of free personal care for the elderly, and meet their pledge to abolish prescription charges by 2011. Convergence in health policy may be likely in the future, due to common standards of citizenship in the UK. A situation where citizens in one part of the UK receive significantly different standards of healthcare, or provision of healthcare, is not desirable while a UK-wide welfare state remains in existence.

**Higher Education**

Education has traditionally been identified as one of the institutions marking the cultural and social life of Scotland as distinctive (Humes and Bryce, 2003). Historically, Scotland has had a different relationship with the principle of education as a whole in comparison to England, with an education system based on a ‘widespread respect for learning,’ and ‘an egalitarian social outlook’ (Chitty, 2004: 100). There has been a separate provision for Scottish education in the machinery of government since 1872, when the Scotch Education Department was created, and administrative responsibility for education was then gradually devolved to the Scottish Office. Although higher education policy in the latter half of the twentieth century was determined by Westminster, Scottish universities were able to retain distinct features and develop their own traditions, as they developed separately from other parts of the UK. When devolution was proposed in the 1970s, Scottish universities were ‘deeply suspicious’ (Paterson, 1998: 467) of plans for a Scottish Parliament, as they felt that detaching themselves from the UK would lead to the decline of the high standards of universities in Scotland. However, the imposition of university funding cuts after 1979, and a Conservative government which did not accept the precedent for Scottish universities to develop separately, changed the view of the majority of the academic elite (Paterson, 1998). They felt that a Scottish Parliament would be able to protect Scotland’s distinct history in the higher education sector, and came out in support of devolution.

There are structural and cultural differences between the general education systems in Scotland and England. At the secondary level, Scottish students take Standard Grade examinations rather than GCSEs, after which the majority of students remain at school for a fifth year and complete Higher Grade examinations. Entrance to
Attitudes towards education in Scotland differ from those in England. There is a higher degree of confidence in the state system of education in Scotland, and few Scottish children attend private schools. There has been little enthusiasm for the creation of Trust Schools and Academies in Scotland, and league tables were scrapped in 2003 (Chitty, 2009). These differences also extend to the higher education sector. Keating states that the English approach to higher education emphasises ‘management, regulation, differentiation and competition,’ in comparison to the Scottish approach, which stresses ‘professional autonomy, consensus, egalitarianism and policy learning’ (2005: 430). There is a higher participation rate in Scotland than in England, and by 2003, Scotland had half of the relevant age cohort in higher education. This achievement was partly due to the presence of a higher education sector within further education colleges, where students can study for Higher National Certificates and Diplomas, as well as studying in traditional universities. Nonetheless, the number of students undertaking some form of higher education in Scotland remains higher than in England (Keating, 2005: 432). Universities in Scotland are also seen as part of the local community, and an essential part of Scottish civic tradition. However, the use of the Barnett Formula means that if cuts in higher education funding are made at Westminster, Scotland will face the prospect of having
to make equivalent cuts in higher education, bringing the ability of the devolved institutions to protect the Scottish higher education sector into doubt.

The headline divergence in Scottish higher education policy has been the abolition of tuition fees. The Scottish Executive abolished up-front tuition fees in Scotland for Scottish domiciled and EU students studying at a Scottish institution in 2000 (Keating, 2005; Rees, 2002). Every Scottish political party apart from Labour supported this policy during the first Holyrood elections. The abolition of tuition fees became a non-negotiable condition of the coalition deal for the Liberal Democrats when it came to the formation of the first Labour/Liberal Democrat Executive. As the parties’ opinions differed, an independent body, the Cubie Committee Inquiry, was created to consider the abolition of tuition fees. The Cubie Committee recommended the abolition of fees for all Scottish students, and the introduction of a Graduate Endowment. The Scottish Executive accepted these recommendations, and even proposed the abolition of tuition fees for Scottish students at Scottish universities a year earlier than recommended, and a reduction in the amount that graduates would contribute to an endowment from £3,075 to £2,000 (Scottish Parliament Information Centre, 2000: 3). The Graduate Endowment fee was used to fund bursaries for poorer students. Students were required to pay the Graduate Endowment after they finished their degree, either by making a lump sum payment, or taking out a loan from the Student Loans Company to cover the payment. This loan was subject to the same conditions as the loans made to students in England, meaning Scottish students repaid the loan for the Graduate Endowment when they were earning over £15,000. Rees (2002) suggests the Scottish initiative to abolish up-front tuition fees continues the well-established tradition of relatively equitable access to university education in Scotland.

The abolition of tuition fees marked a clear divergence in Scottish higher education policy concerning student support, with two important features of UK Government policy: the introduction of means-tested tuition fees and the ending of means-tested student grants, being overturned in Scotland (Caldwell, 2003). However, the ability to introduce a different repayment scheme for loans used to pay the Graduate Endowment was constrained by the overarching control of Westminster over student
finance. The Scottish Executive could not establish a separate repayment system for Scottish students who took out a loan to pay the Graduate Endowment, as it was not feasible for the Inland Revenue to set up a recollection scheme solely for Scotland. Instead, the collection of the Graduate Endowment loan in Scotland was combined with the existing system for the collection of student loans provided to other UK students by the Inland Revenue. Therefore, the amount that Scottish students had to earn before they began to repay their Graduate Endowment loan was decided by Westminster; the Scottish Executive and Parliament had no influence over this decision. Any increase in the income threshold for repayments of tuition fee and maintenance loans introduced by Westminster had a knock-on effect for Scottish students, despite the fact that higher education is a devolved issue (Scottish Parliament Information Centre, 2000b: 12). The interconnected nature of the system for repaying loans for student support meant that some convergence with the rest of the UK was forced upon Scotland.

The election of an SNP minority Government in 2007 led to further changes in the system of support for higher education students in Scotland. The Scottish Government introduced the Graduate Endowment Abolition (Scotland) Bill in October 2007, abolishing the Graduate Endowment fee for students finishing their studies on 1 April 2007 and after. It was felt that the Graduate Endowment fee had failed to deliver its original aims: to remove the barriers to widening access to, and participation in, higher education, and to use the revenue raised from the fee to fund higher education for future students from low-income backgrounds. The fee was seen as an extra burden on graduates and their families, and discouraged some from entering higher education. The abolition of the Graduate Endowment will cost the Scottish Government around £17 million in net income, however the Scottish Government has assured students that this would not affect funding for student support or for universities (Mullen, 2007). This legislation demonstrates the dedication of the Scottish Government and Scottish Parliament to the principle of having a ‘free higher education system for all’ (Mullen, 2007: 11). However, this aim may prove unrealistic in the immediate future, if cuts are made at Westminster.
The ability of the Scottish Executive and Parliament to introduce divergent policies from the rest of the UK is constrained by their financial capabilities. Funding for higher education policy is provided through the Barnett block grant, and problems will occur if England decides to fund higher education through fee increases rather than government spending, while Scotland wishes to retain the current system, as the block grant will be cut accordingly (Keating, 2005). Although the Scottish Government has the ability to make higher education policy, Scottish universities also depend on UK-wide systems of resource allocations for research funding. The Research Assessment Exercise, which allocates base research funding to universities, is conducted across the whole of the UK (Rees, 2002; Keating, 2005). The higher education policy community in Scotland operates within a broader UK and international framework, meaning that there is not as much emphasis on Scottish distinctiveness in this sector as in others (Humes, 2003). These factors can encourage convergence in higher education policy across the UK. It is also important that education and training policies ‘join up’ (Raffe and Byrne, 2005: 2) with reserved policy areas such as social security and unemployment, meaning that the scope to radically diverge in some areas of higher education policy is limited. Scotland must continue to award qualifications that are recognised as being equivalent to those awarded in England while it remains part of the United Kingdom. The movement of students and staff between institutions across the UK also leads to pressure for common, or at least compatible, qualifications (Adams and Schmueker, 2005). Scottish students could be put at a disadvantage if qualifications gained at a Scottish educational institution are not easily comparable with qualifications awarded across the rest of the UK, and employers throughout the UK must be able to equate Scottish qualifications with English qualifications. Although Higher qualifications currently awarded in Scotland are recognised by universities in other parts of the UK, further divergence in qualifications could cause problems.

Caldwell states that there is a danger of overstating the changes that have occurred within Scottish higher education since devolution, claiming that ‘the similarities (between Scotland and England) still outweigh the differences’ (2003: 69). These similarities in policy can be seen as Scotland making autonomous choices to follow England’s lead, rather than having policy choices forced upon them by Westminster.
Scottish universities also wish to remain part of the UK wide higher education system while preserving important elements of Scottish distinctiveness, limiting the amount of divergence that is likely to occur (Keating, 2005). Devolution has been criticised for its impact on higher education in Scotland, with some claiming devolution will force Scottish higher education institutions into an ‘enforced allegiance to the Scottish nation’ (Paterson, 1998: 459). It is implied that higher education policy makers could feel pressure to create increasingly divergent policies to justify devolution, at the expense of the status of Scottish universities as ‘outposts of the British polity’ (Paterson, 1998: 459). However, Anderson suggests that the idea of a distinct Scottish academic elite may be a ‘sentimental or romantic fantasy,’ and that to outside observers, the differences between Scottish and English higher education are ‘less significant than the features which distinguish the British system as a whole’ (1992: 74).

Despite the general desire for convergence between the higher education systems across the UK, devolution has allowed a distinct Scottish approach to higher education to continue. Devolution has affected the approach of policy-makers in Scotland to higher education, rather than encouraging the introduction of an excess of divergent legislation. The Scottish education department has been split into two departments, one covering school education and the other concentrating on further and higher education. The department covering further and higher education, the Scottish Executive Enterprise and Lifelong Learning Department, links higher education with economic and regional development, a move which was supported by the business community in Scotland (Caldwell, 2003; Keating, 2005). The creation of a separate department for further and higher education policy may not necessarily lead to divergence, but demonstrates a different approach to policy in Scotland.

Devolution has led to divergence in higher education policy concerning student support. This is only one area of higher education policy, and the likelihood of further divergence in other areas is constrained by the need for compatible qualifications across the UK, and the financial implications of devolution. The Scottish Government has ruled out the use of tuition fees to fund higher education for the foreseeable future, meaning the higher education sector is now reliant on funding through the
Barnett formula. However, the Scottish Government has also made additional financial commitments in the years since devolution, and it may have to make difficult decisions over the funding of higher education in the future. In the current economic situation, and with the expectation that cuts will be made to the Scottish Government’s budget, such a generous higher education policy may not continue to be feasible. If the UK Government increases the use of fees to fund higher education, Scotland’s lack of significant revenue raising powers could mean that fees are introduced in Scotland, or that a cutback in other services occurs to provide funding for higher education. Devolution has provided a safeguard for the traditional aspects of Scottish higher education, such as the four-year Honours degree. However the nationwide context remains important for higher education policy-making in Scotland, and the higher education policy community is keen not to distance itself from the rest of the UK. Although higher education policy in Scotland has diverged since devolution, there may be a need for convergence over the issue of tuition fees in the future, if Scottish universities are to avoid a funding crisis and retain their highly regarded status.

**Local Government**

The system of local government in Scotland has always differed from the relative system in England. Before devolution there was separate legislation concerning the structure, organisation, functions and financing of local authorities in Scotland (Himsworth, 1998). The differences in local government are partly due to distinct conditions in Scotland; it is a smaller country than England, with a huge difference in population size and lifestyle between the central belt and the rural, Highland and Islands areas. These factors create different pressures and demands on local government in Scotland in comparison to the rest of the United Kingdom (Himsworth, 1998; Midwinter et al, 1991). As a result of the relative size of Scotland, there are fewer politicians and officials in Scottish local government, which led to a closer, more personal relationship between local government in Scotland and the Scottish Office before devolution than between local government and Whitehall in England (Kellas, 1989). It is argued that central-local relations have always been better in Scotland than in England (McGarvey and Cairney, 2008; Jeffery, 2006), however this ‘intimacy’ should not be overstated. During the period from 1979 to 1997, there was a
'sharp divide' (Himsworth, 1998: 21) in Scotland between the majority of local authorities, which were dominated by Labour, and the Conservative Government at Westminster. The system of local government in Scotland has consisted of 32 unitary local councils since 1995 (McGarvey and Cairney, 2008: 135). Previously, the recommendations of the Wheatley Commission led to the Local Government (Scotland) Act 1973, which created two, independent tiers of local government: a regional tier and a district tier. This system was attacked by critics due to the interdependency of the two tiers, despite the insistence that they operated separately from each other (Midwinter et al, 1991: 124).

Devolution has significantly altered the way that local government works in Scotland. There has been an opportunity for central and local government to work in greater proximity, and local authorities provided policy-making expertise to the Scottish Executive in the early years of devolution through the work of the Convention of Scottish Local Authorities (COSLA). Devolution has also changed the political landscape at a local level in Scotland, due to the introduction of a proportional voting system. This can be seen as encouraging the more consensual, inclusive style of politics that was promised in the run-up to devolution. Devolution has impacted on the relationship between the various tiers of government within Scotland, and also with Westminster. Carmichael stated that before devolution, Scottish local government differed from England more ‘in the way things were done, rather than in actions that were actually taken’ (1992: 30). To a certain extent, this difference in policy implementation has continued since devolution, rather than clear policy divergence occurring.

The creation of the Scottish Parliament has changed Scottish central-local relations. Bulpitt argued that the United Kingdom worked as a ‘dual polity’ (1983: 160) before devolution, a structure of territorial politics where the ‘centre’ and periphery interacted relatively infrequently, giving Scottish local authorities the ability to concentrate on ‘local’ issues concerning Scotland. He stated that the government at Westminster accepted that distinct policy patterns should be allowed in Scotland, however in practice this gave more autonomy to the Scottish Office, rather than local authorities. Before devolution, central-local relations were between the Convention of
Scottish Local Authorities (COSLA) and the Scottish Office, creating a bi-partite structure. Since devolution, these relations have been replaced by a structure involving local government interests, the Scottish Government and the Scottish Parliament, leading to a tri-partite structure (McGarvey, 2009). Since 2007, McGarvey (2009) states that the SNP minority Government has chosen to work more closely with local government than with the Scottish Parliament, due to the lack of an SNP majority in Parliament. This has marginalised Parliament’s role in the tri-partite structure. McGarvey and Cairney (2008) go as far as stating that there is an interdependent relationship between the Scottish Government and local authorities. In fact, the constitutional position of local authorities in post devolution Scotland remains the same as it was previously, and is similar to that of local government in England (McGarvey, 2009). Local government continues to be subordinate to the ‘centre,’ which has shifted from Westminster to the Scottish Parliament. The Scottish Parliament has the power to re-draw council boundaries, remove functions or even abolish local authorities. McConnell (2004) argues that the pattern of central-local relations in Scotland has not changed significantly since devolution, as although the ‘centre’ has moved from Whitehall to Holyrood, it is still responsible for the financial, legal and policy frameworks within which local authorities operate. Devolution has also changed relations between Scottish local government and the UK Government. Westminster has become less relevant to the workings of Scottish local government on a day to day basis, as most of the responsibilities of local councils are devolved to the Scottish Parliament and Executive (Bennett et al., 2002). However, Westminster is still influential in financial terms, as the resources to finance developments and actions at a local level are allocated through the Barnett Formula.

There were initial concerns that the Scottish Parliament could encroach on the work of local government, as the Parliament’s main areas of responsibility, such as health, education and training and housing, all have important implications for the work of local government (Bennett et al., 2002). However, it was emphasised in the devolution settlement that an important feature of devolution in Scotland would be subsidiarity, and the Scottish Parliament and Executive were not expected ‘to accumulate a range of new functions at the centre which would be more appropriately and efficiently delivered by other bodies within Scotland’ (Scottish Office, 1997). It is explicitly
stated in the Scotland Act that the devolved administrations will respect the role of local government in practice. Devolution has changed the context within which local government in Scotland operates. Since devolution, close relations have been fostered between Scottish local government and the Scottish Parliament and Executive. Local authorities through COSLA have been actively engaged in policy formation, particularly in the first few years of devolution, as the Executive was relatively inexperienced in the policy-making field. The proximity of the Scottish Parliament and Government to Scottish local government is seen as an improvement on the previous relationship between the Scottish Office and local government. The work of local government was central to the delivery of many of the first Executive’s priorities, such as education and roads, making a good working relationship between the Executive and local authorities imperative (McGarvey, 2002). As many MSPs are former councillors, useful links have been created between politicians at a local and central level, which has fostered a sense of ‘shared ownership of Scottish policy’ (Jeffery, 2006: 61). Jeffery states that devolution ‘offered the opportunity (for local government) to reconnect with new central governments after the alienation of the Conservative era’ (2006: 63). However, this ‘opportunity to reconnect’ may only have been temporary, due to Labour dominance at both levels of government in Scotland.

Since devolution, the Scottish Executive has focussed on central-local relations in Scotland as a topic in its own right, instead of seeing it as a by-product of policy changes in other areas. The proximity of the governing institutions to Scottish local authorities has increased the capacity for the Executive to adopt a ‘more co-ordinated, integrated approach’ (McGarvey, 2002: 43). The Scottish Executive has adopted oversight mechanisms which are less regulatory to deal with local authorities in Scotland, in comparison with the mechanisms used by Whitehall in relations with English local authorities. Scottish local authorities appear to be directed with more of a ‘light touch’ (McGarvey, 2002: 43) than local authorities in England, and are even described as ‘docile’ (McGarvey, 2002: 44). In certain areas, this docility can be attributed to Labour domination at a local level, and the resulting close relationship with the Labour dominated Scottish Executive. There is also less need for local government to be controlled at a central level, due to the existing good relations
between the two levels of government, and the interlinked responsibilities over many areas of policy.

The headline divergence in local government policy in Scotland was the Local Governance (Scotland) Act 2004, which introduced a proportional voting system in local elections: Single Transferable Vote (STV). Local government elections in England continue to use the first past the post system, which is used across the UK in Westminster elections. The use of STV has dramatically changed the political landscape at a local level in Scotland. The introduction of STV in local elections can be seen as a result of Liberal Democrat pressure on the first two Scottish Executives, as the use of proportional representation in elections is a long-standing demand of the party. However, its introduction should not solely be attributed to the Liberal Democrats, as it was also recommended by the Commission on Local Government and the Scottish Parliament (McIntosh Commission) and the Renewing Local Democracy Working Group, appointed by Scottish Ministers to build on the recommendations made by the McIntosh Commission.

The first local elections in Scotland held using STV took place in 2007. The introduction of a proportional system of voting in local elections was extremely significant because it ended Labour’s dominance of Scottish local government, and considerably altered the party-political make up of Scottish councils. The impact of a proportional system of voting can be seen by comparing the 2003 local election results, the last elections held using the first past the post system, and the 2007 local election results, the first held using STV. In 2003, 509 Scottish Labour councillors were elected, making Labour the largest party in Scottish local government, and giving Labour control of thirteen out of the thirty-two Scottish councils. However, only 348 Labour councillors were elected in the 2007 election, leaving Labour in complete control of only three councils, and in minority control of two (Herbert, 2007: 8; COSLA, 2010), demonstrating that Labour has been negatively affected by proportional representation at a local level. The introduction of STV has benefitted the SNP at a local level. In 2003, only 181 SNP councillors were elected, but the SNP emerged as the largest party in Scottish local government after the 2007 elections, with 363 councillors (Herbert, 2007: 8). Despite having the largest number of
councillors, the SNP do not have overall control of any council in Scotland; they are in minority control of three councils, and control one council with Independent support (COSLA, 2010). The introduction of proportional representation has altered the way that local government operates on a council-by-council basis, as there are now 19 councils where multi-party coalitions form a governing administration (Herbert, 2007: 9). The greater likelihood of coalitions at a local level means there will have to be greater consensus between parties in order for council business to continue effectively, and concessions may have to be made by all of the parties. The introduction of STV and the resulting likelihood of coalitions have also changed the dynamic between central and local government, as the likelihood of a single party dominating both levels of government in Scotland, as Labour did before 2007, is reduced.

Legislation regarding the timing of local elections has also diverged in Scotland. The Scottish Local Government (Elections) Act 2002 states that local elections will be held at the same time as those for the Scottish Parliament, however the Westminster Act gives the Secretary of State the power to alter the frequency of local elections, and the years in which they are held (Keating et al, 2003: 122). Scottish local elections now also have fixed terms, which eliminates the opportunity for the timing of local elections to be manipulated by the party of government in Scotland. However, this move has been criticised as it has led to voter confusion due to two elections with different electoral systems being held on the same day, leading to thousands of spoilt ballot papers being discarded in 2007 (Tempest, 2007).

The ability of the current Scottish Government to introduce divergent policies concerning local government has been restricted by its minority status. The SNP’s 2007 manifesto pledged to abolish Council Tax and replace it with a Local Income Tax, which was described as a ‘fairer system based on the ability to pay’ (SNP, 2007). However, due to the lack of an SNP majority in the Scottish Parliament, this proposal faced almost certain parliamentary defeat, and the policy had to be dropped for the immediate future. The SNP minority Government has to rely on other parties in the Scottish Parliament to pass its legislation, and is therefore constrained by the need to gain other parties’ support. The opposition of Labour ministers at Westminster and in
the Treasury to a Local Income Tax may well have encouraged the Scottish Labour Party’s opposition to the policy (Carrell, 2009).

In the future, there is the possibility of convergence on the use of proportional electoral systems. The Labour Party’s manifesto for the 2010 election promises a referendum on the use of Alternative Vote in Westminster elections (The Labour Party, 2010), and the Liberal Democrats have stated they would introduce STV in Westminster elections without a referendum (BBC News, 2010). If either of these parties forms, or has significant influence in, the next UK Government, the introduction of a proportional electoral system would mean a convergence of policy, with Westminster elections coming into line with Scottish local and Parliamentary elections. Certain legislation introduced at Westminster covering local government in England has been adopted and adapted by the devolved institutions in Scotland, leading to convergence. Scotland chose to follow England’s lead and replace Compulsory Competitive Tendering (CCT) with a system of Best Value. However, Scotland has adopted a ‘more collaborative and less controlling approach’ to Best Value (Laffin, 2007: 82), and the consequences for local authorities for failing to meet targets are less punitive than in England (McGarvey and Cairney, 2008: 141), demonstrating the different approach taken in Scotland to a policy in effect across England and Scotland.

After devolution, Scottish local government has ‘unprecedented access’ (Bennett et al, 2002: 43) to central government, as there is greater proximity between the local authorities and the Scottish Parliament and Government. This allows local government to have an increased input into policy-making, particularly due to the Scottish Government’s extensive use of advice given by COSLA. Links between central and local government were important in the early years of devolution, and these links have become more significant since the election of the SNP minority Government, as an emphasis has been placed on working in partnership with the local tier of government in the absence of a parliamentary majority (McGarvey, 2009). Devolution has allowed for important policy developments and divergences in policy affecting local government, and the use of proportional representation in local elections is of particular consequence as it ended Labour’s dominance of Scottish
local government. However, the devolved institutions have been inclined to continue the practice of adapting Westminster policy on local government to suit Scottish circumstances, rather than introducing clearly divergent policy.

**Conclusion**

Public policy after devolution has diverged significantly in the three policy areas examined in this dissertation. Devolution has provided the political impetus for divergent policy, as there is a desire to demonstrate that devolution makes a difference, and the political autonomy for divergent policy, as Scottish politicians can make the decision to follow the policy lead of Westminster or forge a separate, Scottish policy style. Devolution has fostered a more consensual policy-making style, encouraging the introduction of divergent policies. The election of an SNP minority Government in 2007 has signalled a change in the dynamics of devolution, as a party with different policy ideas and a clear interest in emphasising and developing Scottish distinctiveness formed a minority government, increasing the likelihood of a divergent policy trajectory. The tradition of Scottish differences in health, higher education and local government, and the willingness of the first two Scottish Executives to diverge from Westminster’s policy position despite the dominance of the Labour party in both executives, demonstrates a commitment by the devolved institutions to introduce policies that are the most suited to Scottish needs, regardless of policy decisions made elsewhere in the UK.

The scope for divergence during the early years of devolution was significantly augmented by the sustained increases in the level of expenditure available to the devolved administrations through the Barnett block grant, avoiding ‘tough policy trade-offs’ (Schmueker and Adams, 2005: 32) between priorities and areas where expenditure was necessary. Generous increases in Scotland’s share of the Barnett Formula meant that no intergovernmental disputes over financial resources occurred, which are a common source of strain in other multi-level governmental systems (Trench, 2007). A crucial factor enabling policy divergence during the period from 2000 to 2008 was the fact that public spending at Westminster was rising sharply in real, inflated adjusted terms. This allowed the Scottish Executive to introduce flagship policies, and still have the ability to fund other programmes (Schmueker and Adams,
2005). The first two devolved Scottish administrations could also afford to fund policies such as free personal care for the elderly and the abolition of tuition fees because the Labour Government’s spending priorities during this time corresponded with the Scottish Executive’s priorities: health and education (McEwen and Parry, 2005). English spending increases in these areas led to corresponding increases in Scottish spending. However, the current economic downturn may create tensions between Westminster and the devolved administrations, and lead to disputes between the governments (House of Commons Justice Committee, 2008). The Chancellor, Alastair Darling, confirmed that his 2010 Budget would have significant consequences for the Scottish Government’s spending plans, due to the consequences of cuts made at Westminster. The exact amount by which the Scottish Government’s budget will decrease has not been specified; it has been suggested that the Scottish Government’s block grant of £35 billion will face a £3 billion real terms cut by 2013-14 (Maddox, 2010). The repercussions of the financial downturn could potentially impact on Scotland’s allocations through the Barnett Formula, and have a negative effect on the Scottish Executive’s ability to provide divergent policies as a result.

The continued use of the Barnett formula has been questioned in recent years. The Commission on Scottish Devolution suggested that the Scottish Parliament should be able to determine a ‘Scottish rate’ of income tax, and the tax revenue would then be substituted for some of the block grant given to Scotland from Westminster. In practice, this means the Scottish Parliament would levy its own ‘Scottish rate’ of income tax to recoup the money from the decrease in the block grant. This would make the Scottish Parliament accountable to the Scottish electorate for the raising of a portion of its revenue, in the same way that it is accountable for how money is spent (Commission on Scottish Devolution, 2009). The UK Government agreed with the proposals for a new Scottish rate of income tax, but state that a move to the full tax model proposed by the Calman Commission will only happen ‘as soon as the economic and fiscal circumstances permit’ (The Scotland Office, 2009: 11). This could lead to the implementation of the proposals being postponed in a similar manner to Britain’s membership of the Euro. The Commission’s proposals require new legislation to be passed at Westminster; the UK Government envisages introducing the necessary legislation ‘as soon as possible during the next Parliament’
The introduction of these changes partly relies on the Labour party wielding some element of power after the General Election, although the Liberal Democrats also support the implementation of the Calman Commission’s recommendations (Liberal Democrats, 2010: 92). This demonstrates how the devolved administrations in Scotland are still restrained by the wishes and actions of the Government at Westminster.

Although a lack of formal intergovernmental relations between Holyrood and Westminster has enabled divergence, it is becoming apparent that after ten years of devolution in Scotland, the existing intergovernmental mechanisms may be too informal. There is a heavy reliance on goodwill between governments, which has only been tested after the election of a minority SNP Government in 2007. Jeffery and Wincott believe that not enough emphasis was placed on creating coping mechanisms for intergovernmental disputes and encouraging formal discussions over policy during ‘the relatively easy early years of devolution’ (2006: 13), and there has been minimal preparation for any future difficulties. The overlap between important devolved and reserved policy areas, such as welfare, and the impact of spending decisions made at Westminster on the Scottish budget, requires a good working relationship between the UK and devolved Governments. Some of these concerns were overlooked or underdeveloped when devolution was introduced, and Trench (2007) raises the issue of the ability of the devolved institutions to continue to operate successfully when they are faced with a serious political challenge. Political pressure resulting from the election of a party without a strong interest in making devolution work at Westminster could negatively affect the successful operation of the devolved institutions, and make them more vulnerable to the actions of the UK Government.

It is argued that focussing solely on flagship policies could exaggerate the levels of divergence in post-devolution Scotland (McGarvey and Cairney, 2008). The success of devolution is judged in part by policy outcomes, which encouraged divergence in the early years of devolution, as an obvious contrast could be made between Scotland and England. Academics have questioned whether the point of devolution is to enable the devolved institutions to do things differently, or simply to enable them to make their own choices (Trench and Jarman, 2007). This dissertation has argued that
devolution has given Scotland the ability to choose whether or not to implement policy from Westminster, which has led to divergence on occasion, but has also continued the practice of adapting Westminster legislation to Scottish circumstances in some areas. This element of choice means that Scotland can follow the lead of Westminster on policy, as frequently happened under Jack McConnell as First Minister, or choose a different policy path, such as abolishing up-front tuition fees. However, the policy direction followed during the second session of the Scottish Parliament appeared to follow the direction set by Westminster, rather than continuing to diverge further. This suggests that the first major pieces of legislation introduced at Holyrood were used to justify devolution, as it provided proof to Scottish voters that the devolved administrations could make a difference to their lives. Once this had been demonstrated, the Scottish Executive may have felt that it was less necessary to introduce radically divergent policy, as the worth of devolution had been proven.

Despite the presence of factors encouraging divergence, and the introduction of clearly different policy in Scotland, there is a strong likelihood that health and other welfare-related policy in Scotland will converge with policy from Westminster in the long term. This is due to the ‘concept of equity’ (Hazell and Jervis, 1998: 69), and the expectation of common welfare standards and policies across the whole of the UK. If health policy continues to diverge in Scotland, there could be discontent voiced by residents in other parts of the UK, putting pressure on Westminster to encourage a convergence of policy. The ability for divergence to continue in other policy areas is constrained by the ‘fragile’ (Greer, 2006: 98) nature of the devolution settlement. The current ability of the devolved institutions to provide divergent policies relies heavily on financial assistance from Westminster. If the Scottish budget was significantly reduced due to cuts made at a UK level, the capacity for the devolved institutions to offer free personal care for the elderly, prescriptions at a significantly reduced price and higher education without tuition fees would be severely impaired, and convergence could occur. England remains the dominant part of the United Kingdom, with the majority of the population, and the largest GDP of the nations in the Union, meaning that policies for England will always have an impact on Scotland. Holyrood
is guided by policy and actions taken at Westminster much more than Westminster is guided by Holyrood.

The powers and autonomy granted to Scotland in the devolution settlement have been seized and used to full advantage, with the exception of tax raising abilities, as demonstrated by the introduction of clearly divergent policies. Yet the ability of Scotland to introduce divergent legislation is not guaranteed. The ad hoc nature of the devolution settlement, and the lack of protection for Holyrood from the financial and policy decisions made at Westminster, means that divergence may only be possible under a tolerant Westminster Government. The combination of a reduction in the Scottish budget due to cuts made at Westminster, and serious intergovernmental disputes, would have the potential to cause convergence in public policy in Scotland after devolution.
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