

UACES 43rd Annual Conference

Leeds, 2-4 September 2013

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

Mobilising for Independence on the EU Front? - The SNP's European Strategies

Dr James Smith
Department of Social Sciences, Media and Journalism
Glasgow Caledonian University

(Paper delivered to UACES Annual Conference, September 2013, University of Leeds)

Introduction

Scotland's place within the European Union (EU) and how the nature of this relationship might evolve in the future have become the focus of intense debate and controversy in recent times. During the deliberations of the Calman Commission and the subsequent passage of the Scotland Act 2012, the Scottish Government made very vocal calls for the introduction of statutory devolved inputs to EU policy-making. This was followed, in late 2012, by intense speculation on the future constitutional status of an independent Scotland within an EU context. Amidst these debates, however, relatively little attention has been paid to the roles currently played by the devolved Scottish administration in EU policy processes and in particular, how these roles might be interpreted within the context of the SNP government's 'Action Plan on European Engagement'.

Following the election of a minority SNP administration in 2007, the Scottish Government published an initial 'Action Plan on European Engagement' in April 2008 (Scottish Government 2008) and a follow up in September 2009 (Scottish Government 2009a). The over-riding aim of these documents was to highlight how the Scottish Government might seek to maximise its inputs to EU policy and in particular by way of liaising closely with UK government, the Scottish Parliament, the governing institutions of the EU, local government, non-governmental interests and the other devolved administrations. In addition, however, an arguable dual theme bridging rhetoric and reality could also be seen to run through the Action Plan. On the one hand, the SNP made much of decrying Scotland's limited influence in the EU due to existing constitutional constraints:

'...we are seriously limited in our ability to freely represent Scotland's interests while having to work within the strict constraints that arise because EU affairs are considered part of foreign policy and therefore reserved to UK government. The subordinate role that Scotland is forced to play in Europe is a clear example of why the current constitutional arrangements in the UK simply do not work. An independent Scotland would have the same status and normal rights of representation as all other member states.' (Scottish Government 2009a, p.3)

On the other hand, the SNP also expressed a desire for pragmatic engagement and admitted that EU-related objectives could be achieved even within the constraints of the existing constitutional settlement (Scottish Government 2009a, p.2). In an earlier study (Smith 2010) an attempt was made to present an initial assessment of the extent to which rhetoric for radical change might in reality co-exist alongside successful exploitation of existing mechanisms for devolved inputs to EU policy in the UK. These initial findings highlighted a

state of affairs whereby the SNP government was able to make inputs to EU policy in much the same way as preceding devolved administrations. It was also clear that whilst relations between the SNP administration and London on EU matters were sometimes strained, such tensions and disputes did not differ greatly from those which had arisen on occasion prior to 2007. Furthermore, the potential for radical overhaul in the nature of devolved inputs was only deemed likely in the event of a total breakdown in intergovernmental relations in this field (eg. if UK government were to withdraw existing, non-statutory forms of sub-national inputs to EU matters) or in the event of Scottish independence.

The election of a majority SNP government in May 2011, the extension of devolved powers heralded by the Scotland Act 2012 and the impending referendum on independence set for autumn 2014 demand a reassessment of what the Scottish Government's Action Plan on European Engagement has actually achieved and where this strategy might be heading in light of current debates and controversies surrounding Scotland's present and possible future status within the EU.

Majority Government in Scotland post-2011

The outright electoral victory achieved by the SNP in May 2011 may be regarded as a historical watershed in various respects. Of fundamental significance was the fact that the SNP were able to form a majority administration when, prior to 2011, the perceived wisdom had been that the electoral system would make it unlikely if not impossible that one party would ever be in a position to do so (and that this state of affairs had been deliberately engineered by the architects of devolution in order to prevent the nationalists from ever gaining majority control in Scotland) (McCrone 2012, p.69). In terms of intergovernmental relations between UK government and the devolved administrations, the non-statutory Memorandum of Understanding and concordats underpinning these relations had been little referred to in the initial years of devolution from 1999-2007. This was partly because these mechanisms sought to promote processes of 'communication, confidentiality and forward notice' which were largely happening anyway under a unified civil service infrastructure and also due to a heavy degree of uniformity in terms of political control at the time with Labour exercising predominant influence at both national and devolved levels (Cairney 2012, pp 233-234). Even the initial coming to power of the SNP in 2007 did not fundamentally threaten the status quo. Although the rhetoric of the Scottish Government changed noticeably and there were more in the way of high profile disagreements between Edinburgh and London, the SNP's minority governing status allowed it arguably limited manoeuvre to challenge the established intergovernmental order (Cairney 2012, p.236; Parry 2012a, pp.286-287).

By 2011, however, with an outright SNP majority in Scotland and a much more diverse complex of governing make up across the various levels of the UK (Conservative-Liberal Democrat coalition at Westminster, a minority Labour administration in Wales) it became arguably 'unwise for intergovernmental relations to continually rest on a principle of goodwill' (Kenealy 2012, p.69; see also Burrows 2010, p.131). In particular, as arrangements for intergovernmental relations post-devolution were very closely modelled on the pre-devolution set up involving territorial and Whitehall departments where one political party held control (Gallagher 2012, p.199; McEwen, Swenden and Bolleyer 2012, p.188; see also Bulmer and Burch 2009 and Smith 2006), there was clear scope for increased tensions, conflict and pressures upon arrangements with increased 'party political incongruence'

(McEwen, Swenden and Bolleyer 2012, p.190) across the constituent parts of the UK. With specific reference to the EU dimension, the Calman Report had indicated in 2009 that the mechanisms for devolved inputs to EU policy 'generally work well' (Calman Commission 2009, pp 135-136) although there were some concerns regarding transparency and adequate parliamentary scrutiny (Calman Commission 2009, p.140; see also Burrows 2010, p.131). By 2011, however, the new majority SNP government was demanding amendments to Westminster's post-Calman Scotland Bill, amendments which would have introduced statutory forms of devolved inputs to EU policy (Bowers 2012, p.6). In the event, the Scotland Act 2012 granted new taxation and borrowing powers to the Scottish Parliament and extended devolution to areas of policy such as speed limits and drink driving legislation (Parry 2012b, p.249) but heralded no change regarding Scottish Government involvement in EU affairs.

Dual Strategy

As highlighted earlier, from 2008 the Action Plan on European Engagement had arguably encapsulated the SNP's dual strategy on EU affairs, namely to advance calls for radical change to devolved inputs to the EU arena whilst at the same time recognising that existing mechanisms could be exploited nonetheless. In terms of the latter strategy, the SNP government have highlighted a range of examples and areas where success might arguably be perceived. In 2010, for example, the European Commission's Urban Mobility Action Plan had prompted the Convention of Scottish Local Authorities (COSLA) to raise concerns with the Scottish Government that the Commission initiative might lead to encroachment by the EU into areas of urban planning traditionally within the policy domain of local government in Scotland. The Scottish Government channelled its concerns through the UK Department for Transport which in turn raised the matter through the Committee of Permanent Representatives (COREPER) in the EU Council of Ministers. In the event, revised wording forwarded by the Scottish Government was supported by a number of member states and led to a revision of the original Commission proposals (Scottish Government 2010a, p.6). Transposition of the EU Marine Strategy Framework Directive was also trumpeted by the SNP as a prime example of the Scottish Government and Whitehall departments working closely together in order to ensure that legislation was implemented in a manner suited to the Scottish context (Scottish Government 2010a, p.9). A close and fruitful working relationship between the Scottish and UK levels of government might also be discerned in Brussels itself. Thus, such is the perceived closeness of working relations that some parts of the Scottish Government EU Office (SGEUO) may be seen to operate as a subsidiary of the UK Permanent Representation (UKREP) (Scottish Parliament European and External Relations Committee 2011a, p.18). This may be contrasted with the 'tense' relations which can sometimes exist between sub-national offices and the Permanent Representation of member states such as Germany and Spain (Greenwood 2011, p.443). The SNP government also makes much of its ability to co-ordinate its inputs alongside the other devolved administrations (Lynch 2009, p.634) and in so doing pack a greater devolved punch at the UK level.

There is certainly some evidence to suggest that this approach has succeeded in altering UK government perspectives in areas such as agriculture, fisheries and EU Structural Funds on occasion (Scottish Parliament European and External Relations Committee 2011b, col 30). Sharing of expertise is seen to be equally important in this context. In April 2010, for example, responsibility for justice and home affairs policy was devolved to the Northern

Ireland Executive. In view of the fact that Scotland had already exercised long-standing devolved authority in this area (and also in view of the increasing prevalence of the EU's Justice and Home Affairs agenda) the Northern Ireland Executive sought to work closely with the Scottish Government in co-ordinating its responses and approaches to this particular area of EU policy (Scottish Government 2011a, p.9).

The SNP have also highlighted the extent to which direct bilateral contacts between Edinburgh and the governing institutions of the EU have borne fruit within the parameters of existing mechanisms for sub-national inputs to EU policy. Frequent interaction between Scottish Government ministers and civil servants and their counterparts in the Commission, Council of Ministers and European Parliament are cited in this respect (Scottish Government 2011b, pp 4-5); in particular, much is made of Scottish Government inputs to Council working groups, the European Parliament Fisheries Committee and on talks with the Fisheries Commissioner on the specifics of reforms to the Common Fisheries Policy (CFP) in late 2011 (Scottish Government 2012a, p.6). There is also an awareness within Scottish Government circles of the shifting dynamics of EU governance and the fact that potential routes of influence may change over time. Thus, the explicit recognition by both the Scottish Government and the Scottish Parliament that extension of the ordinary legislative procedure under the Lisbon Treaty would have implications for how the devolved institutions interact with the EU institutions and the European Parliament in particular (Scottish Parliament European and External Relations Committee 2010a, p.2; Scottish Parliament European and External Relations Committee 2010d, p.4).

Flashpoints

As noted earlier, in 2009 the Calman Commission concluded that the mechanisms for devolved inputs to EU policy 'generally work well' (Calman Commission 2009, pp 135-136). This was also the general conclusion reached by the House of Commons Scottish Affairs Committee in 2010 (Scottish Affairs Committee 2010a, p.45). However, it is nevertheless the case that a number of specific fault lines may be discerned within broader intergovernmental relations on EU affairs. Such fault lines centre upon on-going disputes over certain areas of policy, concerns regarding access to particular channels of institutional input at the EU level itself (Council of Ministers in particular), flashpoints within the Whitehall co-ordination machinery and more general questions concerning the long-term sustainability of an essentially non-statutory framework for intergovernmental relations.

In terms of particular areas of policy, the Scottish Parliament's European and External Relations Committee has voiced concerns regarding co-ordination of justice and home affairs policy. The extension of EU competences in this area is seen to present a particular challenge given that the Scottish legal system stands somewhat separate from that of the rest of the UK. This challenge is arguably reinforced in view of the ability of UK government to 'opt-in' to specific EU policy measures in this field but the danger that it may opt to do so in terms which may prove incompatible with Scots law (Scottish Parliament European and External Relations Committee 2010d, p.4). The respective cases of CFP and the Common Agricultural Policy (CAP) also make for interesting comparisons. The SNP government have consistently displayed open hostility to the CFP and expressed a desire for repatriation of this area of policy back to the national (Scottish) level (Hepburn and McLaughlin 2011, pp 389-390). However, whilst this has led to clear differences of opinion between the Scottish and UK governments on particular aspects of CFP reform, it would appear that each have been able to

accommodate their differences to a large extent. Transferable Fishing Concessions (TFCs) present a prime case in point. If implemented, TFCs would allow fishing quotas to be traded within and also possibly between member states. Due to the differing profile of fishing fleets in Scotland and England, the Scottish Government is largely opposed to the measure whereas the UK Department for the Environment, Food and Rural Affairs (DEFRA) is relatively relaxed about its introduction in England. The UK Fisheries Minister has nevertheless offered an assurance that if TFCs were to be introduced, implementation within the UK would be handled on a devolved basis and the Scottish Government need not feel obliged to take up the policy (Scottish Parliament Rural Affairs, Climate Change and Environmental Committee 2011c, pp 5-6); such instances have been heralded as indicative of the effectiveness of intergovernmental relations between Edinburgh and London on fisheries policy (Scottish Parliament Rural Affairs, Climate Change and Environmental Committee 2011c, pp 11-12). The state of affairs with regard to CAP, however, may be regarded as less harmonious (Scottish Parliament Rural Affairs, Climate Change and Environmental Committee 2011b). Richard Lochhead, Scottish Cabinet Secretary for Rural Affairs and the Environment, has highlighted fundamental disagreements between the UK and Scottish governments on CAP reform:

‘In my view, it is clear....that the UK government is likely not to be able to deliver for Scotland’s farmers. Its flawed position of phasing out direct payments and retaining coupled payments would be potentially disastrous for Scotland’s agriculture sector and our rural economies.’ (Scottish Parliament Rural Affairs and Environment Committee 2011a, col 3902)

Lochhead also refers to the fact that the Scottish Government felt the need to communicate directly to the European Commission that the UK position on CAP reform was not necessarily that held by the Scottish Government (Scottish Parliament Rural Affairs and Environment Committee 2011a, cols 3903-3904). It was also noted that where CFP discussions are concerned, the Scottish Minister accompanies his UK counterpart in direct bilateral talks with the Commission President, Fisheries Commissioner and other member state ministers but that the UK government does not extend this invitation to equivalent talks on agriculture (Scottish Parliament Rural Affairs and Environment Committee 2011a, col 3904). Equally, CAP is cited by the Scottish Government as an area where the UK government signs up to specific pieces of EU legislation without consulting the Scottish Government or taking into account the possible ramifications of differential policy impact in Scotland and the rest of the UK (Scottish Affairs Committee 2010a, p.36). Agriculture can thus be seen to represent an area of EU-related policy where intergovernmental relations between the Scottish and UK governments are far from harmonious.

Direct engagement with Brussels

Whilst there would appear to be inconsistency across different policy areas in terms of the ability of the Scottish Government to make successful inputs to EU policy-making, this inconsistency may also be discerned in terms of the Scottish administration’s direct engagement with the governing institutions of the EU. In some respects, the Action Plan on European Engagement is at pains to stress how the Scottish Government may seek to achieve its objectives by liaising bilaterally with the EU institutions; examples would include the Commission, Council of Ministers and European Parliament on marine environment policy (Scottish Government 2011b, pp.4-5) and discussions on justice and home affairs policy with

the EU Commissioner for Justice in June 2011 (Scottish Government 2011b, p.7). Devolved inputs through the Council of Ministers are in particular highlighted. Thus, the Scottish Government trumpets that in 2011 ‘during the December [Fisheries] Council we successfully achieved all but one of our priorities and were able to mitigate many of the significant cuts to quota that the Commission had originally proposed (Scottish Government 2012a, p.7). Similarly, the contribution of Scottish Government ministers and officials are highlighted within the context of meetings of the EU Environment Council in June 2009 and again from June to September 2011 (Scottish Government 2009b, p.2; Scottish Government 2011b, pp2-3; Scottish Government 2012a, p.2) and the EU Energy Council in November 2011 (Scottish Government 2012a, p.2). Each of these examples point to the SNP administration emphasising, through the context of its Action Plan, its ability to successfully exploit existing mechanisms and channels in the UK for sub-national inputs to EU policy.

At the same time, however, the Scottish Government have been keen to emphasise what they regard as the constraints and inadequacies of existing procedures for bilateral interaction between devolved and EU institutions. Agriculture is flagged up as a key area of concern in this respect. In contrast to the situation pertaining to fisheries, where the Scottish interest is more readily accommodated, the Scottish Parliament has felt the need to ask ‘the UK government to ensure that at the key Council meetings regarding CAP decisions, space is made for a representative from the Scottish Government.’ (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2012, p.2). Concerns were also raised when Scottish Government ministers were refused permission to attend a meeting of the Justice and Home Affairs Council in September 2009, ostensibly due to the agenda being dominated by immigration issues, an area reserved to Whitehall. Thus, even in an area where Scottish ministers are usually afforded direct Council input, UK government may turn down requests for Scottish attendance on the grounds that devolved competences are not under discussion (Scottish Parliament European and External Relations Committee 2010c). Such examples serve to highlight once again the strictly non-statutory basis of current arrangements for devolved input to EU policy in the UK. Thus, while the SNP government is willing to emphasise the extent to which existing mechanisms may be exploited for purposes of sub-national gain, it is equally vocal in criticising the perceived limitations of these arrangements.

This state of affairs led directly to SNP demands during the passage of the Scotland Bill 2012 that the eventual legislation include clauses which would have afforded Scottish ministers and officials a statutory right to form part of the UK delegation to sessions of the Council of Ministers, Council Working Groups and Commission meetings where devolved matters were under discussion (Bowers 2012, p.6). In the event, no such clauses were included in the Scotland Act 2012 and the non-statutory basis of arrangements continues as before. This was also despite the fact that this was one of the few areas where the Calman Commission had recommended changes to a system of devolved inputs to EU policy which it considered to ‘generally work well’. (Calman 2009, pp 135-136). Specifically, Calman recommended that tighter emphasis be placed on a ‘presumption’ that Scottish inputs take place where appropriate rather than a mere ‘expectation’. For example, when Scottish ministers request to attend sessions of the Council of Ministers covering devolved issues, such requests should be accepted immediately by UK government rather than merely be ‘considered’ (Calman 2009, pp.151-152). Beyond this, the Scottish Government argued that they should assume the lead role in representing UK interests in the Council of Ministers specifically in areas where Scotland might be seen to have a predominant interest or profile within the broader UK context (examples might include fisheries and also domestic ferry services). The SNP administration has also argued that where a UK minister is unable to attend Council, a devolved minister should assume the lead as opposed to a senior Whitehall civil servant.

Whilst this proposal was roundly rejected by London, on the broader issue of leadership the House of Commons Scottish Affairs Select Committee (2010a, pp 40-42) found that in practice there was a degree of flexibility as to who could assume the lead in Council negotiations and that this responsibility was often shared or split across UK departments and the devolved administrations.

In addition, the Scottish Government is acutely aware of the fact that formal decision-making in Council or through bilaterals with the Commission are not the sole routes to policy influence within the EU. As Sir David Edward, former judge on the Court of Justice has pointed out, channels of influence are often informal and often sit within the lower echelons of the EU hierarchy; such routes can prove highly effective with the committees and working groups of the Council of Ministers and interaction with officials from the Commission and the European Parliament all highlighted in this respect (Scottish Parliament European and External Relations Committee 2011c, col 109). Also of relevance are the shifting sands of potential channels of influence as the institutional power base of the EU is modified by way of treaty amendment. Thus, the SNP's Action Plan refers to the subsidiarity provisions contained within the Lisbon Treaty and the increased opportunity, in principle at least, for sub-national bodies to proffer their views on draft EU legislation (Scottish Government 2010a, p.2). In practice, however, the Scottish Parliament recognises that in order for it to challenge instances where the EU impinges upon devolved policy domains (under the Subsidiarity Protocol) the Scottish Parliament is required to channel its concerns through the Westminster Parliament. Moreover, the Scottish Parliament also highlights that under Article 6 of the Lisbon Treaty there is no *statutory* requirement that national parliaments consult with sub-national parliaments or assemblies on EU matters (Scottish Parliament European and External Relations Committee 2010d, pp3 and 8-9). In a similar vein, Donald Henderson, head of the SGEU Office in Brussels from 2008-2011, highlighted the enhanced role of the European Parliament with the extension of the co-decision ('ordinary') legislative procedure under Lisbon and the fact that the Scottish Government was consequently treating forms of liaison with the European Parliament on a par to equivalent interactions with the Council of Ministers and the Commission (Scottish Parliament European and External Relations Committee 2010a, col 1389).

Regardless of where or in what fashion the Scottish Government seeks to exert influence over EU institutions in direct and bilateral fashion this does not detract from the overarching fact that, in the absence of any statutory framework, such forms of interaction are heavily dependent upon the goodwill of the UK government of the day. As stated earlier, the SNP are acutely aware of this and whilst they seek to exploit existing channels of EU influence as far as possible, the Action Plan nonetheless makes clear that statutory forms of devolved input would be the preferred option. Below the level of interaction with the EU institutions themselves, the absence of a statutory framework also has implications for the nature of devolved inputs to EU policy at the national, member state level.

Transparency and accountability

In her introduction to the Action Plan on European Engagement Annual Report 2010, Fiona Hyslop, then Scottish Minister for Culture and External Affairs, praised the incoming Conservative-Liberal Democrat Coalition for heralding a more effective handling of EU-related matters in conjunction with the devolved administrations (Scottish Government 2010a, p.2). Such praise came, however, but a few months into the lifespan of the Coalition

and also in the continued absence of any statutory mechanisms underpinning devolved inputs to EU policy in the UK. It also came in the wake of a Scottish Parliamentary enquiry which was to some extent critical of existing arrangements and highlighted the need for 'improved mechanisms to ensure representation of the Scottish position in the UK negotiating line' (Scottish Parliament European and External Relations Committee 2010d, p.3). This enquiry also noted that co-ordination on EU matters between the devolved administrations and Whitehall was marked by inconsistency and that the blame for this rested with the fact that not all UK governments employed the most effective of channels for devolved inputs. The enquiry was also critical of the relatively 'closed' nature of formulating the UK negotiating line and consequent difficulties surrounding a lack of transparency and ascertaining in what ways devolved inputs are actually incorporated into a co-ordinated national negotiating position (Scottish Parliament European and External Relations Committee 2010d, p.8).

Issues surrounding transparency and a perceived lack of adequate parliamentary scrutiny were among the few areas where Calman believed improvement was required in the field of devolved inputs to EU affairs (Calman 2009, p.14). Part of the problem in this respect was seen to revolved around the Joint Ministerial Committee (Europe) – JMC(E). Chaired by the UK Foreign Secretary, this committee meets around four to five times a year and provides a forum in which the devolved administrations and UK government can discuss EU affairs and if necessary seek to resolve respective disagreements in this area (Trench 2007, p.167). Minutes and proceedings from JMC(E) are not generally made public and this in itself has been a subject of criticism from certain quarters and in particular due to a perception that this is where devolved inputs to the formulation of the UK negotiating line on specific EU policy proposals are finalised. For example, the HC Scottish Affairs Committee (2010a, p.38) accepted the need for confidentiality in drawing up the UK negotiating position; by the same token, however, it also felt that there was a need for greater transparency and recommended that the Scottish Parliament be offered a greater role in scrutinising some of these proceedings (albeit in private sittings). In 2010 Chris Bryant, then UK Minister for Europe, stated that in relation to JMC(E) sessions, 'scrutinising the meetings between the two sets of ministers would be inappropriate,' largely due to the need for confidentiality and so as not to reveal to other EU member states how the UK was formulating its position and might play its negotiating hand (Scottish Parliament European and External Relations Committee 2010b, col 1465). However, Bryant also suggested that perhaps Scottish Government ministers were guilty of over-egging the 'secrecy' pudding (in terms of what they claimed they could reveal to Scottish Parliament committees); he suggested that whilst the content of Council draft decisions had to remain confidential there was, in his view, no reason why Scottish ministers could not subsequently disclose to the Scottish Parliament what they had actually said in JMC(E) meetings (Scottish Parliament European and External Relations Committee 2010d, p.38). However, it must equally be borne in mind that JMC(E) is not actually the key decision-making forum as regards devolved inputs. It is essentially a forum of last resort for resolving disputes (Cairney 2012, pp 233-234) and in most cases such disputes are usually ironed out well in advance. As one civil servant has pointed out:

'It is a matter of ensuring, as far as possible, that such difficulties are not elevated to a level where ministerial engagement and involvement is necessary.' (Scottish Parliament and External Relations Committee 2010d, p.40)

Another area of arguable concern stems from complaints from the Scottish Government that its access to the 'fortnightly UK Government officials forum...where key decisions are made on UK policy in EU matters, including those which impact on devolved responsibilities' was withdrawn in 2008 (Scottish Affairs Committee 2010a, p.36). This refers to the so-called

‘Friday meetings’ or ‘Cunliffe-Rogers meetings’ which since 1975 have acted as a key forum within which the co-ordination of the UK line on EU policy takes place (Bulmer and Burch 2009, pp.115-116). The Scottish Parliament has demanded that a devolved presence be reinstated at these meetings and has pointed to poor lines of communication between the devolved administrations and Whitehall prior to the European Council session of December 2011 and the allegation that the UK government failed to inform Edinburgh, Cardiff or Belfast that the UK might veto what subsequently became the EU Fiscal Compact (Scottish Parliament European and External Relations Committee 2012d, pp.10-12).

Future prospects

From the preceding discussion it is clear that the SNP’s ‘dual strategy’ on EU matters would appear to have reaped some benefits in terms of desired policy outcomes and an effective functioning of existing arrangements for devolved inputs to EU policy in the UK. Equally, however, the presence of tensions and flashpoints and a desire for enhanced inputs from the SNP perspective are clearly evident. As suggested earlier, given the relatively harmonious operation of current mechanisms for sub-national EU involvement in the UK and the absence of any major reforms to existing procedures in this area heralded by the Scotland Act 2012, impetus for substantive change will be dependent upon the outcome of the independence referendum due to take place in September 2014. Much of the discussion in this respect has naturally focused, in the first instance, upon whether a newly independent Scotland would find that it had seceded not only from the UK but also from the EU (Thorp and Thompson 2011; Mullen and Tierney 2012, pp.35-37). To some extent the situation has been muddled by the refusal of both the Scottish and UK governments to divulge respective legal advice received by each on this question (The Scotsman 2012; The Herald 2012; Law Society of Scotland 2013, p.7). The position of the EU Commission as to whether an independent Scotland would have to apply for membership of the EU was made fairly clear in a submission to a House of Lords enquiry in December 2012:

‘The EU is founded on the Treaties which apply only to the Member States who have agreed and ratified them. If part of the territory of a Member State would cease to be part of that state because it were to become a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU and the Treaties would no longer apply on its territory.’ (House of Lords Economic Affairs Committee 2012)

This is also the view forwarded by UK government although there is additional recognition that the parameters for accession ‘negotiation’ would be somewhat uncertain given the lack of precedent for the particulars of the situation and that the political context of such discussions would be as significant as the purely legal and constitutional (Scotland Office 2013, p.8). Alternatively, there is also the possibility that, in the event of a ‘no’ vote in the referendum, enhanced Scottish inputs to EU policy may form part of a broader package of ‘devo-max’ reforms, if, as seems likely, Westminster were to devolve further powers to Holyrood in such a post-referendum scenario. For the time being, however, such outcomes and their consequences remain purely hypothetical.

References

- Bowers, P. (2012), *Scotland Bill: Latest Developments*, HC Library Standard Note, SN/PC/06185, January 2012.
- Bulmer, S. and Burch, M. (2009), *The Europeanisation of Whitehall – UK Central Government and the European Union*, Manchester: Manchester University Press.
- Burrows, N. (2010), ‘Scotland’s European Strategy’ in Scully, R. and Wyn Jones, R. (eds), *Europe, Regions and European Regionalism*, Basingstoke: Palgrave.
- Cairney, P. (2012), ‘Intergovernmental Relations in Scotland: What Was The SNP Effect?’, *British Journal of Politics and International Relations*, Vol.14 No.2 pp231-249.
- Calman Commission (2009), *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century – Final Report*, June 2009.
- Gallagher, J. (2012), ‘Intergovernmental Relations in the UK: Co-operation, Competition and Constitutional Change,’ *British Journal of Politics and International Relations*, Vol.14 No.2 pp.198-213.
- Greenwood, J. (2011), ‘Actors of the Common Interest? The Brussels Offices of the Regions,’ *Journal of European Integration*, Vol.33 No. 4 pp.437-451.
- Hepburn, E. and McLaughlin, P.J. (2011), ‘Celtic Nationalism and Supranationalism: Comparing Scotland and Northern Ireland Party Responses to Europe,’ *British Journal of Politics and International Relations*, Vol.13 No.3 pp.383-399.
- House of Commons Scottish Affairs Committee (2010a), *Scotland and the UK: Co-operation and Communication Between Governments*, 4th Report (Session 2009-10), March 2010.
- House of Commons Scottish Affairs Committee (2010b), *Scotland and the UK: Co-operation and Communication Between Governments*, Oral Evidence, Tuesday 12th January 2010.
- House of Commons Scottish Affairs Committee (2010c), *Scotland and the UK: Co-operation and Communication Between Governments – Government Response to the Committee’s Fourth Report of Session 2009-10*, 1st Special Report (Session 2010-11), July 2010.
- House of Lords Economic Affairs Committee (2012), *Scotland and the EU: Barroso’s Reply to Lord Tugendhat*, Letter from President of the European Commission to Chair of HL Committee, 10 December 2012.
- James, S. (2010), ‘Adapting to Brussels: Europeanisation of the Core Executive and the “Strategic Projection” Model,’ *Journal of European Public Policy*, Vol.17 No.6 pp. 818-835.
- Keating, M. (2012), ‘Intergovernmental Relations and Innovation: From Co-operative to Competitive Welfare Federalism in the UK,’ *British Journal of Politics and International Relations*, Vol.14 No.2 pp.214-230.
- Kenealy, D. (2012), ‘Concordats and International Relations: Binding in Honour Only?’, *Regional and Federal Studies*, Vol.22 No.1 pp.61-85.

Law Society of Scotland (2013), *Scotland's Constitutional Future – Views, Opinions and Questions*, Edinburgh: The Law Society of Scotland.

Lynch, P. (2009), 'From Social Democracy Back To No Ideology? The Scottish National Party and Ideological Change in a Multi-Level Electoral Setting,' *Regional and Federal Studies*, Vol.19 Nos 4-5 pp.619-637.

McEwen, N., Swenden, W. and Bolleyer, N. (2012), 'Introduction: Political Opposition in a Multi-Level Context,' *British Journal of Politics and International Relations*, Vol.14 No.2 pp.187-197.

McCrone, D. (2012), 'Scotland Out Of The Union? The Rise and Rise of the Nationalist Agenda,' *The Political Quarterly*, Vol.83 No.1 (Jan-March) pp.69-76.

Moore, C. (2010), "'Fit for Europe?'" The German Lander, German Federalism and the EU' in Scully, R. and Wyn Jones, R. (eds), *Europe, Regions and European Regionalism*, Basingstoke: Palgrave.

Mullen, T. and Tierney, S. (2012), *Scotland's Constitutional Futures: The Legal Issues – Seminar Two: Intergovernmental Relations and External Affairs*, Edinburgh: Scottish Constitutional Futures Forum.

Parry, R. (2012a), 'The Civil Service and Intergovernmental Relations in the Post-Devolution UK,' *British Journal of Politics and International Relations*, Vol.14 No.2 pp.285-302.

Parry, R. (2012b), 'What Can UK Public Administration Learn From The Devolved Nations?,' *Public Policy and Administration*, Vol.27 No.3 pp.248-264.

Piattoni, S. (2010), *The Theory of Multi-Level Governance*, Oxford: Oxford University Press.

Rowe, C. (2011), *Regional Representations in the EU: Between Diplomacy and Interest Mediation*, Basingstoke: Palgrave.

Scotland Office (2013), *Scotland Analysis: Devolution and the Implications of Scottish Independence*, Cm 8554 February 2013.

Scottish Government (2009a), *Action Plan on European Engagement*, September 2009.

Scottish Government (2009b), *Action Plan on European Engagement – Scottish Government EU Review and Forward Look*, August 2009.

Scottish Government (2010a), *Action Plan on European Engagement – Annual Report 2010*, September 2010.

Scottish Government (2010b), *Action Plan on European Engagement – Scottish Government EU Review and Forward Look*, July 2010.

Scottish Government (2011a), *Action Plan on European Engagement – Scottish Government EU Review and Forward Look*, January 2011.

Scottish Government (2011b), *Action Plan on European Engagement – Scottish Government EU Review and Forward Look*, July 2011.

Scottish Government (2012a), *Action Plan on European Engagement – Scottish Government EU Review and Forward Look*, January 2012.

Scottish Parliament European and External Relations Committee (2010a), *Official Report*, 3rd Meeting 2010 (Session 3), 23rd February 2010.

Scottish Parliament European and External Relations Committee (2010b), *Official Report*, 5th Meeting 2010 (Session 3), 23rd March 2010.

Scottish Parliament European and External Relations Committee (2010c), *Official Report*, 7th Meeting 2010 (Session 3), 4th May 2010 – Annexe A: Letter from Minister for Culture and External Affairs Regarding Scottish Government Ministerial Attendance at Meetings of Council of EU.

Scottish Parliament European and External Relations Committee (2010d), *Inquiry into the Impact of the Treaty of Lisbon in Scotland*, 4th Report 2010 (Session 3), June 2010.

Scottish Parliament European and External Relations Committee (2011a), *The Scottish Government's International Engagement Strategy*, 1st Report 2011 (Session 3), March 2011.

Scottish Parliament European and External Relations Committee (2011b), *Official Report*, 2nd Meeting (Session 4), 28th June 2011.

Scottish Parliament European and External Relations Committee (2011c), *Official Report*, 5th Meeting (Session 4), 25th October 2011.

Scottish Parliament European and External Relations Committee (2011d), *Official Report*, 6th Meeting (Session 4), 1st November 2011.

Scottish Parliament European and External Relations Committee (2012h), *The Scottish Parliament's EU Priorities for 2012*, 1st Report 2012 (Session 4), March 2012.

Scottish Parliament European and External Relations Committee (2012a), *Official Report*, 3rd Meeting (Session 4), 7th February 2012.

Scottish Parliament European and External Relations Committee (2012b), *Official Report*, 4th Meeting (Session 4), 20th February 2012.

Scottish Parliament European and External Relations Committee (2012c), *Official Report*, 6th Meeting (Session 4), 20th March 2012.

Scottish Parliament European and External Relations Committee (2012d), *Developments in the Eurozone and their Implications for Communication Between the Scottish and UK Governments*, May 2012, SP Paper 139.

Scottish Parliament Rural Affairs, Climate Change and Environment Committee (2011a), *Official Report*, 5th Meeting (Session 3), 23rd February 2011.

Scottish Parliament Rural Affairs, Climate Change and Environment Committee (2011b), *Official Report*, 10th Meeting (Session 4), 9th November 2011.

Scottish Parliament Rural Affairs, Climate Change and Environment Committee (2011c), *Letter on 'Reform of the CFP' to UK and Scottish Governments, European Commission and the European Fisheries Committee*, 15th December 2011.

Scottish Parliament Rural Affairs, Climate Change and Environment Committee (2012), *Letter on 'Reform to the CAP' to UK and Scottish Governments, European Commission and the European Parliament Agriculture and Rural Development Committee*, 27th April 2012.

Smith, J. (2006), 'Government in Scotland' in Bache, I. and Jordan, A. (eds), *The Europeanization of British Politics*, Palgrave.

Smith, J. (2010), 'Sub-National Mobilisation and the Scottish Government's Action Plan on European Engagement,' *Public Policy and Administration*, Vol.25 No.2, pp.216-233

Swenden, W. (2010), 'The Belgian Regions and the European Union: Unintended Partners in Unravelling the Belgian State?' in Scully, R. and Wyn Jones, R. (eds), *Europe, Regions and European Regionalism*, Basingstoke: Palgrave.

The Herald (2012a), 'Bruised Salmond Denies Lying As Row Engulfs SNP', 24th October.

The Scotsman (2012), 'Full Hearing on Independent Status', 20th September.

Thorp, A. and Thompson, G. (2011), *Scotland, Independence and the EU*, HC Library Standard Note 6110, November 2011.

Tierney, S. (2009), 'Federalism in a Unitary State: A Paradox Too Far?,' *Regional and Federal Studies*, Vol.19 No.2 pp.237-253.

Trench, A. (2007), 'Washing Dirty Linen in Private: The Processes of Intergovernmental Relations and the Resolution of Disputes' in Trench, A. (ed), *Devolution and Power in the United Kingdom*, London: The Constitution Unit.