

The Educational Institute of Scotland

EIS Submission to the Smith Commission

1. The Educational Institute of Scotland is Scotland's largest education trade union with over 55,000 members (80%) of all teachers and lecturers in membership. The EIS represents members employed in all sectors of education in Scotland including: Nursery, Primary, Special, Secondary and Further and Higher.

2. During the recent referendum campaign the EIS did not adopt a position with regard to supporting or opposing Scottish Independence nor did we recommend any position to our members. The EIS did, however, support the STUC "A Just Scotland" Campaign throughout, and, as part of its response to the 2012 consultation on the organisation of the referendum itself (Your Scotland, Your Referendum), supported the following provisions:

(a) that the referendum should have been organised on a single question, three option, preferential vote covering:

(i) Status quo;

(ii) Devo-Max (fiscal autonomy) or Devo-Plus;

(iii) Independence;

(b) the extension of the voting franchise to all 16 and 17 year olds;

(c) the regulation of the referendum by the Electoral Commission.

3. As a Scottish education trade union, based in Scotland and recruiting teachers, lecturers and other educational personnel, the vast majority of our areas of activity and interest are already fully devolved to the Scottish Parliament/Scottish Government. Indeed since 1999 there has been a sea change in terms of the level of consultation, communication and cooperation between the Scottish Parliament/Scottish Government and the EIS at both official and elected member levels. It is probably true to say that, since the establishment of the Scottish Parliament in 1999, the EIS and its members are closer to the decision making process than ever before. As far as education policy is concerned, the EIS regards both the effectiveness of policy delivery and the level of parliamentary scrutiny and oversight to have been enhanced significantly since 1999.

4. Public Sector Pensions Recent negotiations with the Scottish Government on the Scottish Teachers' Superannuation Scheme have highlighted an anomaly which, ultimately, led to the collapse of these talks. Essentially, while the regulatory administration of similar schemes is devolved to the Scottish Parliament, overall control of Public Sector Pensions Policy remains a reserved matter. This has resulted in the Westminster Government (i.e. the Treasury) holding a veto over decisions covering the Scottish Teachers' Scheme despite the fact that the enabling regulations require to be approved by the Scottish Parliament. This is a matter which the Institute would ask the Commission to consider as part of its deliberations.

5. There are, however, four areas of policy and policy delivery (currently reserved) which the EIS would argue should be devolved to the Scottish Parliament and these are:

- (a) Employment Law;
- (b) Industrial Relations Legislation;
- (c) Health and Safety at Work;
- (d) Equalities Legislation and Enforcement Agencies.

6. Employment and Industrial Relations In June 2003 the Annual General Meeting of the EIS approved the terms of the following resolution:

"That this AGM instructs Executive Council to campaign for an amendment to the Scotland Act (1998) to devolve Employment Law and Industrial Relations Law to the Scottish Parliament".

The EIS remains critical of the refusal of all UK Governments to contemplate anything other than very minor concessions in relation to the Anti-Trade Union Legislation brought in by the previous Conservative administration. It is probably true to say that there is more state interference in the activities of independent trades unions in this country than in many other European and OECD countries. This state interference, e.g. in the requirement to maintain a separate Political Fund and the rules for the election of the "General Secretary" and the "Principal Executive Committee" is both unnecessary and inimical to the principles of free collective bargaining in a democratic society.

As far as employment law is concerned, many of the major improvements in the area of employment protection (particularly for vulnerable employees) over the last few decades have had

their geneses within the European Union and there is a logic in giving the Scottish Parliament responsibility for this area of legislation as it should be in a better position to take account of Scotland's economic circumstances and employment and industrial relations culture. The recent behaviour of the UK Government, particularly in relation to the introduction of punitive fees associated with employment tribunal applications, makes this proposition all the more urgent.

7. Health and Safety In March 2004 the, then, Executive Council of the Institute carried the following resolution:

“That this “Executive Council calls for the transfer of all powers over legislation on matters of Health Safety and Welfare at work from the Westminster Parliament to the Scottish Parliament.”

It is accepted that much of the existing “reserved” health and safety legislation is implemented by devolved “supervisory agencies” and enforced through the Scottish courts which are, themselves, accountable to the Scottish Parliament. The revelations surrounding the Stockline disaster in Glasgow in May 2004 suggest that a more localised approach to the setting of health and safety legislation (e.g. in relation to corporate homicide) would be a logical move bearing in mind that “enforcement” is, to all intents and purposes, already devolved.

8. Equalities and Equality Legislation In June 2001 the EIS responded to the, then, Scottish Executive consultation “A Human Rights Commission for Scotland” in the following terms:

“Full devolution of legislative responsibility for equality issues would create a “level playing field” which would allow proper consideration to be given as to whether another new agency is required, how it would fit within the framework of human rights and equality already established north of the border.”

The main argument for the EIS to support the further devolution of Equality matters and enforcement agencies is that Scotland has its own Parliament, legal system, penal system and education system. Many of the concerns we have – the need to uphold the Scottish comprehensive education system, to promote a curriculum in which equalities are embedded, to eradicate poverty, to end racism, to continue to challenge gender inequalities, to counter discrimination linked to actual or perceived sexual orientation and to combat sectarianism – would be better supported by the ‘full devolution of legislative responsibility for equality issues’.

Again, the recent behaviour of the current UK Government and its decimation of the powers, roles and responsibilities of the Equality and Human Rights Commission only adds to our conviction that equality legislation and enforcement should become the responsibility of the Scottish Parliament.

9. Fiscal Autonomy The EIS did not, and has not, adopted any position (since the referendum) with regard to the extent of fiscal autonomy for the Scottish Parliament. This is largely the result of the extremely restricted timescale available to the Commission which has made it impossible for the Institute to consult as widely as we would have liked on this issue. As a consequence, therefore, what follows is essentially a restatement of existing EIS Policy. The continuum between devo-plus and devo-max should be populated by proposals which provide the best possible settlement for the people of Scotland and any final outcome should be based on this principle and not on the basis of ideological dogma from any group or faction. However, in its response to the Commission on Scottish Devolution 2008-09 (chaired by Sir Kenneth Calman) the EIS made the following points:

“The provision of sufficient funding to provide a high calibre education service is a priority for the EIS and the Institute remains to be persuaded that any alteration to the current financial arrangements as part of the existing devolution settlement would be justified at this time. Indeed, careful consideration will have to be given to any alternative revenue raising powers which may impact on the continued application of the Barnett Formula.”

In short, the EIS is of the view that any change to the mechanism for funding Scotland’s vital public services must ensure that, as an absolute minimum, the provision of resources for all public services (including education) must be no less favourable than under the existing taxation regime and block grant arrangement involving the UK Government.

10. During the Referendum Campaign itself, the EIS organised a number of regional debates for members at which leading members on the “Better Together” and “Yes Scotland” campaigns presented their arguments. What became clear from these members’ meetings was the strong desire, irrespective of views on the constitutional issue, for politicians to concentrate on issues of social justice, challenging the impact of poverty and tackling inequality. We would commend this approach to the members of the Commission.
