

White Paper or white rabbit?

Elected regional assemblies and local government reorganisation

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Background

The government White Paper *'Your Region Your Choice'* extols the importance of 'the most effective working relationships between regional assemblies and central government, local authorities [...].' It also admits that 'the prospect of establishing a regional assembly will have some major implications for governance in a region, not least for local government [...]'. However, the White Paper avoids detailed discussion of the relationship between regional and local authorities. One positive interpretation is that the spirit of devolution precludes prescription. An alternative hypothesis suggests an absence of strategic thinking about developing relationships between different tiers of government. Nonetheless, the current phase in the devolution process does directly involve local government for the first time, albeit through a narrow prism.

'Your Region Your Choice' put what was in effect a 'double lock' on regional devolution in England. Formally, the establishment within any region of a directly elected assembly would be dependent on a 'Yes' vote in a referendum without a qualified majority being necessary. However, any referendum would in reality bring together two questions – for or against a directly elected assembly and for or against the replacement of any two-tier local government in the region by a single tier of unitary authorities. This needs some explanation.

Over the years Britain has used two different structures for local government. One has been based on all-purpose unitary authorities, carrying out all the functions devolved by central government. The other has divided the functions between what we term district and county authorities. Technically there is no hierarchy between these authorities. However, since the county authorities cover much larger geographic areas including several or many districts, there is a tendency to describe them as being the 'upper level': districts in that sense are the 'lower level'.

Legislation by Edward Heath's government in the early 1970s established a two-tier system throughout Britain, although the exact distribution of competences varied in different parts of the country – particularly between the large metropolitan areas and the predominantly rural or mixed areas. In terms of structure, this was the biggest overhaul of local government for almost one hundred years, but the new system was not to last. Within less than twenty-five years, the process was reversed – again by Conservative governments! 'Upper tier' authorities in the major metropolitan areas were abolished and new unitary authorities were established throughout Scotland and Wales. In the early 1990s the Banham Commission was set up to look at the rest of England. It was widely surmised that its brief was to consolidate a single uniform system of unitary authorities. Mainly as a result of a powerful campaign by the county councils, the process was not in fact completed along the expected lines. A considerable number of new unitary authorities were established for large and medium cities and in some other areas, but in many of the English shire counties the two-tier system remained in place.

Labour had long been an advocate of unitary authorities, but was not keen to re-open the issue following the 1997 election – in part because so many county councils were at the time under Labour control. There were further factors. In the overall programme of devolution, the English regions were well down the list of priorities. Labour's major priority for local government was concerned with the way in which it operated rather than the number of authorities or their inter-relationship. Much importance was attached to a division between executive and scrutiny functions and the consequent abolition of the traditional committee system. The new government was also keen to see the introduction of directly elected mayors. It seemed that any completion of the Banham process could for the moment be put to one side; some would perhaps have preferred for it to be forgotten entirely!

Local government reorganisation

In the run-up to the White Paper *'Your Region Your Choice'* there was much speculation regarding the imposition of the 'double lock' referred to at the very beginning of this article. It was surmised that this had been inserted at the behest of the Prime Minister's office: in effect against the wishes of the Deputy Prime Minister. Reference to Labour's 1997 election manifesto allows of another, rather less conspiratorial explanation. Labour undertook to ensure that 'only where clear popular consent is established will arrangements be made for elected regional assemblies' and 'this would require a predominantly unitary system of local government'. This section of the manifesto ended with a very clear commitment: 'Our plans will not mean adding a new tier of government to the existing English system.' The approach was confirmed in the 2001 manifesto, but, since the final commitment was not reiterated, an ambiguity remained.

There are four regions – Yorkshire and the Humber, North East, North West and West Midlands – with predominantly unitary local government, but all have some areas with a two-tier system. In the absence of local government restructuring, establishment of directly elected assemblies in any of these four regions would be compatible with the 2001 manifesto but not with the specific additional commitment made in 1997.

Whatever the process of decision-making, the detail of *'Your Region Your Choice'* was fully compatible with the 1997 manifesto: there would be no extra tier of government. In principle this offered two potential routes to directly elected assemblies in any region. A positive referendum could be accompanied by local government restructuring, imposed by central government, or the referendum would, in effect, determine both issues. The government opted for the second alternative. It would undertake a 'soundings exercise' to determine the regions in which referendums would be held. The Boundary Committee for England (a sub-group of the Local Government Commission) would make recommendations concerning restructuring and the referendum would determine both issues. During the course of legislation the bill was modified so that the Boundary Committee would have to offer electors at least two alternative unitary structures in areas to be reorganised. The implications and potential anomalies are discussed at the end of this article.

Following the 'soundings exercise', the Deputy Prime Minister decided that in three regions – North East; North West; Yorkshire and the Humber – there was sufficient interest to justify holding a referendum. Interestingly, these were the three regions outside London with the highest percentage of unitary local government. Nonetheless, the Boundary Committee would be required to examine the structure of local government in six counties – Durham and Northumberland; Cheshire, Cumbria and Lancashire; and North Yorkshire. Its initial reports – one containing an overview and another six (one per county) – were published in early December 2003 for feedback and further consultation.

The proposals of the Boundary Committee for England

The general approach is defined in the overview – to propose at least two options designed to provide the best overall delivery of services. New authorities would have to be of sufficient size and capacity to deliver services effectively whilst at the same time reflecting community interests and identities. The capacity to

promote the government's modernisation agenda and the size of authority would be two themes running through the individual recommendations. Given the guidance from the Office of the Deputy Prime Minister (ODPM) that proposals should not involve further joint arrangements between different authorities, the Committee anticipated that its recommendations would be significantly different from those made during Banham.

This latter point was illustrated by the nature of the evidence and proposals submitted by existing local authorities and other interested groups. Whereas in the mid-1990s many district councils had urged that they become all-purpose authorities, there were few such proposals in 2003. Both the ODPM and the Committee were at pains to deny holding any particular view regarding optimum size, but there can be little doubt that the general approach would work towards larger authorities than many of those recommended and implemented in the 1990s. This is exemplified by the Boundary Committee reports. Quite apart from the 'county as unitary' option, most of the other alternatives envisaged are for sizeable new authorities.

Hardly surprisingly, all six of the affected county councils argued that they should be the new unitary authorities, despite very large geographic areas and high populations. A unitary North Yorkshire would cover the largest geographic area of any all-purpose local authority in England; a unitary Lancashire would have the highest population. There is a general comment in the overview to the effect that most of the proposals for larger units 'appeared to address the issues concerned with maintaining community involvement at local level'. Ideas advocated included area committees, boards and cabinets.

It would be outside the scope of this article to go into the fine detail of the options put forward in the county reports. In all six cases one option is for a unitary county. However, in the case of Lancashire two areas would be siphoned off and tacked on to neighbouring unitary authorities. The other two Lancashire options extend the process further: Blackburn, Blackpool, Rochdale, Sefton and Wigan – already all unitary authorities – would have their boundaries enlarged. There is some similarity with the proposals for North Yorkshire. A unitary county would cover the entire area within current boundaries; other options would link Selby with the East Riding unitary authority along lines proposed by the latter. Although parts of Cheshire, Durham and Northumberland are in close proximity to some relatively small unitary authorities, there are no firm proposals for merger. However, the Boundary Committee has indicated an interest in receiving views, particularly from Wirral, during the next consultation period in respect of a possible merger of Ellesmere Port and Neston District in Cheshire with Wirral unitary. This had been advocated by Chester City Council and Labour North West.

Another feature of the second and third Lancashire options is that they link the northernmost part of the county with the southernmost districts of Cumbria. This has one curious side effect. Cumbria would in effect be divided into two, largely on North/South lines. The northern part of Cumbria has long tended to look towards Newcastle and the North East rather than the North West. The Deputy Prime Minister insisted at the outset that regional boundaries were not for review – at least not in the short-term. A division of Cumbria along the lines of the second and third options for that county would surely ultimately re-awaken the issue.

Conclusion: Implications and anomalies

Analysis of central government thinking on English regional devolution suggests that there is only limited recognition of the importance of the relationships between different tiers of government. The relationship between regional and local government receives scant recognition in *'Your Region Your Choice'*. There is certainly no suggestion that the link between region and local might equal, let alone exceed, in importance that between central and local. The legal and financial supremacy of Whitehall/Westminster vis-à-vis all sub-national tiers in England remains unchanged. 'New' Labour often claimed the inspiration for changing the way in which local government operates – particularly the enhancement of the executive function – arose from EU comparisons. As far as structures are concerned, the EU offers a variety of different models. Since the time of the Redcliffe-Maude Royal Commission, debate on local government has rarely taken as starting point 'what is it for?' Given that the remit, organisation and financing of local government are being constantly changed by central government it may not be altogether surprising that, as the White Paper states, 'voters are not always clear at present what activities are carried out by which tier of local government'. The logic behind the claim that moving to a single tier 'should reduce this confusion' is in itself irrefutable. However, this is not the only possible remedy imaginable. There are also more convincing arguments in support of unitary authorities than the notion that, *ipso facto*, a third elected tier 'would be one [...] too many'.

There will be a disjuncture in the referendums in the three northern regions. All electors will be asked to vote for or against directly elected assemblies; only those in two-tier areas (counties) will also be asked to vote for one of the unitary options. The wording of the referendums indicates that electors will be 'helping to decide' not 'deciding'. Formally, this preserves parliamentary sovereignty; in practice it indicates the significant ongoing importance of the ODPM.

In all three northern regions a majority of electors are in areas with only one tier of local government. They have the potential weight to determine the outcome of the vote on assemblies. Electors in two-tier areas wishing to vote for the status quo in local government can only do so by voting against regional assemblies. Results will be accumulated on a county basis, but it seems that they will also be disaggregated to district level at least as far as choice of local government structure is concerned. Hypothetically, various anomalies in terms of choice and outcome are possible. The starkest are around the Lancashire/Cumbria border. In both Lancashire and Cumbria there is the option of a unitary county. All the other options link parts of Lancashire with parts of Cumbria. Suppose the vote in Cumbria is for a unitary county and that in Lancashire for a series of unitary districts including the link. Suppose both Cumbria and Lancashire vote for unitary counties, but the electorate in Barrow, Lancaster and South Lakeland show a strong preference for the link. As far as Lancashire and North Yorkshire are concerned there is a further complication. Some of the options bring about the enlargement of neighbouring unitary authorities, but residents of the latter will not be given the opportunity to vote for or against these proposals: they are only asked the first question. The unitary authority of Blackburn offers the starkest illustration. Its electors will be able to vote for or against the regional assembly but will apparently have no say on whether the boundaries of Blackburn remain as at present or will be substantially extended – under one option to produce an authority three times the size.

Self-evidently the referendums might not offer clear-cut answers in all cases to the issue of local government boundary change and this in turn justifies the 'helping to decide' formulation. Conspiracy theorists will probably speculate that the ODPM will welcome the possibility of 'keeping options open'. In practice this could well turn into a Pandora's box!

One concern in the run-up to the referendums has been that turnout could be very low. In practice there has been much less interest in devolution than was the case in Scotland or even in Wales. However, the decision to hold all-postal ballots will – on past experience – be a positive factor in inducing people to vote. Linking local government reform to the regional issue seems likely to boost the 'anti-devolution' vote; at this stage it is not really possible to predict the outcome. Curiously, though, a good many opinion leaders in the shire counties are expressing – at least in private – the view that regardless of the outcome of the votes on regional government, the genie of local government reform has re-emerged and is unlikely to be put back into the bottle!