

**People's Democratic Republic of Algeria**

**Ministry of Higher Education and Scientific Research**

**Hamma Lakhdar University of El-Oued**

**Faculty of Arts and Languages**

**Department of Arts and English Language**



**The Impact of the 1978 Scottish Act on the Creation of the Executive in  
Scotland: An Exploratory Study**

**Dissertation Submitted in Partial Fulfillment of the Requirements for**

**Master's degree in literature and Civilization**

**Submitted by:**

Ali BAH I

Amara BAHRI

**Supervised by**

Prof. Noua Mohammed

**Board of Examiners**

Dr. GHEDEIR BRAHIM Mohamed	President	University of Eloued
Prof. NAOUA Mohammed	Supervisor	University of Eloued
Dr. SAID Tarek	Examiner	University of Eloued

**Academic Year: 2024/2025**

## **Dedication**

To the memory of my beloved father,  
whose strength, wisdom, and encouragement continue to guide me, even in his  
absence.

To my family,  
for their constant love, support, and belief in me.

Ali Bahi

This dissertation is dedicated to my family, whose unwavering support,  
encouragement, and belief in me made this journey possible.

Bahri Amara

## **Acknowledgements**

First, all praise be to Allah for blessing us to complete this work.

We would like to express our sincere gratitude to **Prof. Mohammed Naoua** for his invaluable guidance, support, and encouragement throughout this research. His insights and patience were essential to the development of this dissertation.

Our gratitude is extended to the Board of Examiners: Dr. GHEDEIR BRAHIM and Dr. SAID Tarek for reading and evaluating this dissertation.

We would also like to thank the staff of the Department of English of the University of El Oued for the support they offered to us.

Finally, we would like to thank all the teachers for guiding us throughout our academic journey.

## **Abstract**

This study explores the impact of the 1978 Scottish Act on the establishment of a local executive in Scotland in 1998. The Act required that forty percent of the Scottish electorate had to support it. Despite the fact that this percentage had not been met in the referendum of 1979, which prevented the Act from coming into force, its initiators continued their political struggle until their ambition was attained in 1998 leading to the creation of a Scottish executive. This study aims to examine the legal and political context that led to the drafting of the Scotland Act 1978. It also seeks to analyze the institutional design proposed in the Act concerning an executive authority. Moreover, it aims to evaluate the legacy of the Act in relation to the development of the Scottish Executive and assess how the Act influenced subsequent devolution debates and legislation. This research implemented descriptive-analytic investigation in the analysis of the data, which were collected by means of documentary sources, such as parliamentary debates and archival documents. The findings revealed that despite its failure to pass, the 1978 Act generated a significant discourse, which ultimately enabled the Scotland Act of 1998 to come into force, leading to the creation of the Scottish Executive. This research emphasizes that the 1978 Scottish Act can be considered as the starting point for the creation of the Scottish Executive.

**Keywords:** First Minister, Scotland Act 1978, Scottish Executive, 1979 Referendum

### **List of abbreviations and acronyms**

<b>SNP</b>	Scottish National Party
<b>MP</b>	Member of Parliament
<b>MSP</b>	Member of the Scottish Parliament
<b>CFE</b>	Curriculum for Excellence
<b>NPF</b>	National Performance Framework
<b>PPE</b>	Personal Protective Equipment
<b>COP</b>	Conference of the Parties
<b>BBC</b>	British Broadcasting Corporation
<b>KIRK</b>	Church of Scotland
<b>NHS</b>	National Health Service
<b>NGO</b>	Non-Governmental Organization
<b>GDP</b>	Gross Domestic Product
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>HR</b>	Human Resources
<b>FCDO</b>	Foreign, commonwealth & Development Office (formerly foreign office)
<b>SPICe</b>	Scottish Parliament Information Centre
<b>HM</b>	Her Majesty's Treasury ( UK Treasury )

## Table of content

Dedication .....	I
Acknowledgements .....	II
Abstract .....	III
List of abbreviations and acronyms .....	IV
Table of content.....	V
General Introduction .....	1
<b>Chapter one: The Chronological Development of the Scottish Executive</b>	
Introduction .....	5
1.1.1 A Complex Integration: Subordination and Continuity .....	5
1.1.2 Preservation of Key Scottish Institutions .....	6
1.1.3 Surviving Administrative Frameworks and Legal Autonomy .....	6
1.1.4 Enduring Administrative Memory and Future Implications .....	7
1.1.5 National Identity and Institutional Resistance to Assimilation .....	8
1.2.1 The Founding of the Scottish Office in 1885 .....	8
1.2.2 Limited Beginnings and Gradual Expansion .....	9
1.2.3 Increasing Authority in the 20th Century .....	9
1.2.4 Local Government Reforms and Institutional Complementarity .....	10
1.2.5 Bureaucratic Growth and Pre-Devolution Executive Authority .....	10
1.2.6 The Constitutional ‘Halfway House’ .....	10
1.3.1 Economic Decline and Growing Discontent .....	11
1.3.2 The Re-Emergence of Scottish Nationalism .....	11
1.3.3 The Kilbrandon Commission and Constitutional Recognition .....	12
1.3.4 The 1978 Scotland Act and the Referendum of 1979 .....	12
1.3.5 Local Government Innovation and Civic Engagement .....	13
1.3.6 Resistance, Legitimacy, and the Conservative Era .....	13
1.4.1 Political Shifts and Rising Pressure for Reform.....	14
1.4.2 Labor’s Return and the Strategic Push for Devolution .....	14
1.4.3 Institutional Foundations: The Parliament and the Executive .....	15
1.4.4 Reserved vs. Devolved Competences .....	15
1.4.5 Governance Design: Accountability and Oversight.....	16
1.4.6 Coalition Politics and a Distinctive Executive Culture.....	16
1.4.7 Popular Reception and Civic Engagement.....	17

1.4.8 A Historic Restoration within the Union.....	17
1.5.1 Political Context and the 2007 Transition.....	18
1.5.2 Strategic Rebranding and Institutional Legitimacy.....	18
1.5.3 Governance Reform and the National Performance Framework .....	19
1.5.4 Integration, Efficiency, and Structural Change .....	19
1.5.5 Shaping Public Identity and Policy Distinctiveness.....	20
1.5.6 Legitimacy, Authority, and Constitutional Implications.....	20
1.6.2 Curriculum Reform and Educational Distinctiveness .....	22
1.6.3 Participatory Governance and Policy Innovation.....	22
1.6.4 Expanding International Engagement .....	23
1.6.5 Consolidating Executive Identity and Legitimacy .....	24
1.7 Recent Developments and the Pandemic Response.....	24
1.7.1 COVID-19 as a Constitutional and Operational Stress Test .....	25
1.7.2 Leadership, Public Communication, and Trust.....	25
1.7.3 Operational Challenges and Policy Controversies .....	26
1.7.4 Digital Governance and Institutional Adaptation.....	26
1.7.5 Fiscal Constraints and Intergovernmental Tensions .....	27
1.7.6 Long-term Significance and Institutional Legacy .....	27
1.8The Present Day: Institutional Maturity and Political Challenges .....	28
1.8.1 Administrative Maturity and Executive Competence .....	28
1.8.2 International Engagement and External Projection.....	29
1.8.3 Constitutional Uncertainty and Legal Constraints .....	30
1.8.4 Fiscal Pressures and Policy Limitations.....	30
1.8.5 Intergovernmental Frictions and Post-Brexit Realities .....	31
Conclusion.....	31

## Chapter two: An analysis of the Legal Framework and the Institutional Evolution of the Scottish Executive

Introduction .....	32
2.1 Early Legal Frameworks and the Limitations of Administrative Devolution.....	32
2.1.1 Historical Precedents and the Uneven Union.....	32
2.1.2 The Creation of the Scottish Office (1885): Symbolic and Practical Significance.....	33
2.1.3 Administrative Devolution Without Legislative Autonomy .....	33
2.2 The Scotland Act 1978: Legislative Intent and Structural Shortcomings .....	34
2.2.1 Legislative Ambition: Framing the Scotland Act 1978 .....	35

2.2.2 Structural Weaknesses and Political Resistance .....	36
2.2.3 The Referendum and the Collapse of the Act .....	37
2.2.4 Conclusion: A Missed Opportunity and a Learning Moment .....	38
2.3 The Scotland Act 1998: Legal Birth of the Scottish Executive .....	38
2.3.1 From Political Crisis to Legal Transformation .....	39
2.3.2 The Core Legal Provisions: Establishing a Scottish Executive .....	39
2.3.3 Reserved and Devolved Powers: Clarifying the Legal Boundaries .....	40
2.3.4 Internal Accountability and Ministerial Responsibility .....	41
2.3.5 Structural Innovation and National Identity .....	42
2.3.6 A Lasting Legal Framework .....	42
2.4 Subsequent Legal Enhancements, The Scotland Acts of 2012 and 2016 .....	43
2.4.1 From Calman to Fiscal Accountability .....	43
2.4.2 Persistent Limitations and Political Mobilization Post-2014 .....	44
2.4.3 Expanding Powers and Symbolic Permanence .....	44
2.4.4 Institutional Maturity and Executive Responsibility .....	45
2.5 Constraints and Challenges — Legal and Structural Limitations .....	45
2.5.1 The Legacy of Parliamentary Sovereignty and Its Impact on Devolved Authority ....	46
2.5.2 Judicial Interventions and Legal Interpretation of Devolved Powers .....	46
2.5.3 The UK Internal Market Act 2020 and the Post-Brexit Centralisation of Regulatory Power .....	47
2.5.4 Fiscal Constraints and the Politics of Asymmetric Risk .....	48
2.5.5 Intergovernmental Mechanisms and the Strain of Uncodified Power Sharing .....	49
2.6 Decrees and Administrative Practices .....	50
2.6.1 Executive Function Beyond Legislation .....	50
2.6.2 The National Performance Framework and Strategic Governance .....	50
2.6.3 Ministerial Directions and Policy Implementation .....	51
2.6.4 Circulars and Non-Statutory Guidance .....	51
2.6.5 Cabinet Deliberations and Internal Governance .....	52
2.6.6 Crisis Management and Emergency Decrees .....	52
2.6.7 Programmes for Government and Long-Term Planning .....	53
2.6.8 Administrative Practice as a Marker of Institutional Maturity .....	53
2.7 Archival Evidence — A Case-Based Approach .....	53
2.7.1 Archives as Windows into Executive Function .....	54
2.7.2 the Archival Record .....	57

Conclusion.....	57
References .....	59
ملخص.....	61

# **General Introduction**

## **Background of the Study**

Scotland has been impacted by centuries of negotiation between national identity, legal autonomy, and centralized authority within the United Kingdom. Even though the Scottish Parliament was dissolved by the 1707 Act of Union, Scotland was retained as a legal, religious, and educational institution, or a historical entity and unmistakable fixture. Essentially, Scots have exhibited social dynamics through a pattern, forming a distinct narrative in which they have maintained some level of independence, albeit distinctly under the British identity at several levels. The 19th and 20th centuries resulted in a unique form of administrative devolution, marked by the presence, restructuring, and expansion of the Scottish Office. The 1978 Scotland Act represented the first serious effort from the UK government in modern history to devolve political power, through the proposed Scottish Assembly with an Executive. As with other negotiations, the 1978 Act was not necessarily successful in securing the Assembly itself, largely due to the public failure from the 1979 Referendum. Nevertheless, the Act had lasting implications for the UK overall, and the legislative powers ultimately conveyed while laying the groundwork for future reforms. Understanding the consequences and legacy of the Act itself is vital to understanding the formation of the Scottish Executive in 1998, and future examination of the evolution of the UK's constitution. (fry, M .2006, McConnell, A.2004)

## **Statement of the Problem**

The Scotland Act 1978 had profound implications for the constitutional development of the United Kingdom. Existing literature often emphasizes the success of the 1998 Scotland Act but tends to underexplore the foundational role of its 1978 predecessor. This study addresses a gap in academic discourse by analyzing the extent to which the 1978 Act

contributed to shaping the institutional framework and political discourse that made the creation of the Scottish Executive possible. The central problem is to assess whether a failed legislative act can still influence constitutional transformation and executive institution-building.

### **Research Question**

This research addresses these questions:

How did the Scotland Act 1978 contribute to the creation and evolution of the Scottish Executive?

In what ways, had it led to the adoption of the 1998 Act?

To what extent have these acts reinforced the Scottish ambitions of home self-rule government?

Could the 1978 Act lead Scotland to full independence?

### **Research Hypothesis**

1. Although the Scotland Act 1978 was never enacted, it served as a critical legislative and conceptual precursor that significantly influenced the eventual formation of the Scottish Executive under the Scotland Act 1998.

2. The legal and political debates surrounding the 1978 Act directly influenced the content and structure of the 1998 Scotland Act, especially in shaping executive accountability and institutional legitimacy.

3. Both the 1978 and 1998 Acts strengthened the Scottish ambition for self-rule by reinforcing the legal recognition of distinct Scottish governance within the UK.

4. While the 1978 Act did not lead to full independence, it acted as a symbolic and strategic steppingstone in Scotland's broader constitutional journey, making future independence debates more credible.

### **Significance of the Study**

This study offers a fresh perspective on the history of Scottish governance and its place within the broader development of the UK's constitutional system. By examining a law that was never actually put into effect, it looks beyond what was formally enacted to explore how even unsuccessful legislation can leave a lasting mark on political thinking and institutional change. This approach is especially useful for those interested in devolution, comparative politics, and how governments are shaped over time. It also sheds light on the ongoing tensions between political ambition, legal structure, and the realities of governing in a state made up of multiple nations with distinct identities.

### **Aims of the Study**

The study aims to:

1. Examine the legal and political context that led to the drafting of the Scotland Act 1978.
2. Analyze the institutional design proposed in the Act concerning an executive authority.
3. Evaluate the legacy of the Act in relation to the development of the Scottish Executive.
4. Assess how the Act influenced subsequent devolution debates and legislation.

### **Research Methodology**

This dissertation uses a qualitative approach to explore its topic. It relies heavily on primary materials, such as parliamentary debates, legislative documents, and archival records tied to the Scotland Act 1978. Alongside these, it incorporates a range of secondary sources

including academic books, journal articles, and historical analyses to build a well-rounded understanding of the period.

The research combines three main strategies:

- Careful examination of official legal texts and government records.
- A comparative look at the Scotland Acts of 1978 and 1998 to understand their similarities and differences.
- Analysis of the political context through speeches, media reports, and debates in Parliament at the time.

Together, these strategies help paint a fuller picture not just of the legal content of the Act, but also of the political intentions, pressures, and debates that shaped its development.

### **Structure of the Study**

The dissertation is organized into two chapters:

Chapter one explores the chronological development of the Scottish Executive, as it also traces the historical evolution of Scottish governance from the pre-Union period to the 21<sup>st</sup> century and it highlights key developments including the 1707 Union, the creation of the Scottish Office as well as the 1998 Scotland Act.

Chapter two delves into analyzing Legal Foundations and Institutional Design, it also examines the Scotland Act 1978 in detail. Furthermore, it assesses how legal documents, decrees, and administrative practices shaped the development of executive power.

## **Definition of terms**

Scottish Executive: The devolved executive authority of Scotland established by the Scotland Act 1998 to manage internal affairs such as education, health, and justice. It was officially rebranded as the Scottish Government in 2007.

Devolution: The legal transfer or delegation of powers from the central UK Parliament to a regional or subnational government, allowing that body to make decisions in specified areas.

Scotland Act 1978: A legislative attempt by the UK government to create a Scottish Assembly and Executive. Though passed by Parliament, it was never implemented due to the failure to meet the 40% threshold in the 1979 referendum.

Scotland Act 1998: The law that successfully established the Scottish Parliament and Scottish Executive. It formalized devolution and granted legislative and executive powers in various policy areas

Scotland Act 1998: The law that successfully established the Scottish Parliament and Scottish Executive. It formalized devolution and granted legislative and executive powers in various policy areas.

Referendum: A direct vote by the electorate on a specific political proposal. This dissertation refers primarily to the 1979 and 1997 referenda, both of which determined the future of devolution in Scotland.

Administrative Devolution: A system in which administrative powers (but not legislative authority) are delegated to local offices, such as the Scottish Office before 1999, without creating a fully autonomous government.

Legislative Autonomy: The power of a government or parliament to make laws independently in specific areas, without needing approval from a higher or external authority.

First Minister: The head of the Scottish Executive/Government, responsible for leading the devolved administration and representing Scotland within the UK and abroad.

Reserved Powers: Policy areas retained by the UK Parliament in Westminster (e.g. foreign affairs, defense, and immigration) that are not devolved to the Scottish Parliament.

National Identity: A collective sense of a people's distinct cultural, historical, and political identity, especially in relation to their desire for self-governance or autonomy within a larger state.

## **Chapter One**

### **The Chronological Development of the Scottish**

### **Executive**

**Chapter one: The Chronological Development of the Scottish Executive**

- Introduction ..... 5
- 1.1The Union of 1707 and the Absorption of Scottish Governance ..... 5
  - 1.1.1 A Complex Integration: Subordination and Continuity ..... 5
  - 1.1.2 Preservation of Key Scottish Institutions ..... 6
  - 1.1.3 Surviving Administrative Frameworks and Legal Autonomy ..... 6
  - 1.1.4 Enduring Administrative Memory and Future Implications ..... 7
  - 1.1.5 National Identity and Institutional Resistance to Assimilation ..... 8
- 1.2The Rise of the Scottish Office and Administrative Devolution (19th–20th Century)..... 8
  - 1.2.1 The Founding of the Scottish Office in 1885 ..... 8
  - 1.2.2 Limited Beginnings and Gradual Expansion ..... 9
  - 1.2.3 Increasing Authority in the 20th Century ..... 9
  - 1.2.4 Local Government Reforms and Institutional Complementarity ..... 10
  - 1.2.5 Bureaucratic Growth and Pre-Devolution Executive Authority ..... 10
  - 1.2.6 The Constitutional ‘Halfway House’ ..... 10
- 1.3Post-War Shifts and the Rise of Devolutionary Sentiment ..... 11
  - 1.3.1 Economic Decline and Growing Discontent ..... 11
  - 1.3.2 The Re-Emergence of Scottish Nationalism ..... 11
  - 1.3.3 The Kilbrandon Commission and Constitutional Recognition ..... 12
  - 1.3.4 The 1978 Scotland Act and the Referendum of 1979 ..... 12
  - 1.3.5 Local Government Innovation and Civic Engagement ..... 13
  - 1.3.6 Resistance, Legitimacy, and the Conservative Era ..... 13
- 1.4The 1990s and the Path to Devolution ..... 14
  - 1.4.1 Political Shifts and Rising Pressure for Reform..... 14
  - 1.4.2 Labor’s Return and the Strategic Push for Devolution ..... 14
  - 1.4.3 Institutional Foundations: The Parliament and the Executive ..... 15
  - 1.4.4 Reserved vs. Devolved Competences ..... 15
  - 1.4.5 Governance Design: Accountability and Oversight ..... 16
  - 1.4.6 Coalition Politics and a Distinctive Executive Culture ..... 16
  - 1.4.7 Popular Reception and Civic Engagement ..... 17
  - 1.4.8 A Historic Restoration within the Union..... 17
- 1.5Remaining Power: how Scottish Executive became Scottish Government ..... 17

1.5.1 Political Context and the 2007 Transition .....	18
1.5.2 Strategic Rebranding and Institutional Legitimacy.....	18
1.5.3 Governance Reform and the National Performance Framework .....	19
1.5.4 Integration, Efficiency, and Structural Change .....	19
1.5.5 Shaping Public Identity and Policy Distinctiveness.....	20
1.5.6 Legitimacy, Authority, and Constitutional Implications.....	20
1.6 Expanding Executive Function Post-2007 .....	21
1.6.2 Curriculum Reform and Educational Distinctiveness .....	22
1.6.3 Participatory Governance and Policy Innovation.....	22
1.6.4 Expanding International Engagement .....	23
1.6.5 Consolidating Executive Identity and Legitimacy .....	24
1.7 Recent Developments and the Pandemic Response .....	24
1.7.1 COVID-19 as a Constitutional and Operational Stress Test .....	25
1.7.2 Leadership, Public Communication, and Trust.....	25
1.7.3 Operational Challenges and Policy Controversies .....	26
1.7.4 Digital Governance and Institutional Adaptation.....	26
1.7.5 Fiscal Constraints and Intergovernmental Tensions .....	27
1.7.6 Long-term Significance and Institutional Legacy .....	27
1.8 The Present Day: Institutional Maturity and Political Challenges .....	28
1.8.1 Administrative Maturity and Executive Competence .....	28
1.8.2 International Engagement and External Projection.....	29
1.8.3 Constitutional Uncertainty and Legal Constraints .....	30
1.8.4 Fiscal Pressures and Policy Limitations .....	30
1.8.5 Intergovernmental Frictions and Post-Brexit Realities .....	31
Conclusion.....	31

## **Introduction**

The development of executive power in Scotland is not the result of a single moment, but a long process marked by persistence, resistance, and adaptation. This chapter looks at how these historical and institutional changes helped shape what would eventually become the Scottish Executive. By following Scotland's journey from early governance through stages of administrative devolution, the chapter explores how identity, institutional continuity, and constitutional change came together to make executive autonomy not only possible, but eventually inevitable. The latter demonstrates how the 1707 Union restructured Scottish governance, marking the beginning of centralized British control while still preserving core national institutions like Scots law and the Church of Scotland. As it delves deep in the transformation that came with the Scotland Act 1998, including the creation of the Scottish Parliament and Executive, marking a return to self-governance.

### **1.1 The Union of 1707 and the Absorption of Scottish Governance**

This section begins by examining *A Complex Integration: Subordination and Continuity*. *It* then turns to *Preservation of Key Scottish Institutions*. Next, *Surviving Administrative Frameworks and Legal Autonomy*. This is followed by *Enduring Administrative Memory and Future Implications*. Finally, *National Identity and Institutional Resistance to Assimilation* underscores the cultural and institutional resilience that preserved Scottish identity within the British state.

#### **1.1.1 A Complex Integration: Subordination and Continuity**

*The Union: England, Scotland, and the Treaty of 1707* by Michael Fry offers a thorough and insightful analysis of the Union as a period of both subordination and integration in Scottish political history. Fry presents the Union as a carefully negotiated agreement that both dissolved and preserved aspects of Scottish statehood inside a new, centralized British framework, rather than as an act of total assimilation.

The Scottish Parliament was abolished, and the two kingdoms were united under a single British Parliament seated at Westminster in 1707. The Act of Union thus signified a formal and permanent transfer of legislative and executive power from Edinburgh to London. However, Fry highlights that there was a substantial rearrangement of Scottish governance's political and administrative roles within the framework of a growing British state, rather than a simple or complete erasure of Scottish governance (Fry 2006, p. 101).

As Fry argues, "The Union was not a complete erasure of Scottish governance but a reshaping of its functions" (Fry 2006, p. 102).

### **1.1.2 Preservation of Key Scottish Institutions**

Devine explored how the institutional resilience of Scottish legal and religious frameworks supported a lasting sense of national identity. "Scotland remained a nation under the Union because its institutions remained distinct" (Devine, 2012, p. 45).

In an increasingly London-dominated political landscape, Scots law, the Church of Scotland, and the Scottish educational system retained their independence and continued to serve as institutional pillars supporting Scottish identity (Fry 2006,). According to Fry, this constitutional compromise created a dual identity: Scotland remained culturally Scottish particularly in law, religion, and education while becoming politically British.

### **1.1.3 Surviving Administrative Frameworks and Legal Autonomy**

Bowie, 2007 stated Even though Scotland's own parliament was shut down in 1707, some important parts of Scottish life like its legal system and national church kept working independently. These parts, although were officially under the control of the British government, but still handled Scottish matters in their own way. This helped keep a sense of Scottish control alive and laid the foundation for future efforts to regain more self-rule.

Although these institutions operated under the overarching jurisdiction of the British state, they retained autonomy in managing Scotland-specific domestic matters. For example, the Lord Advocate served as the principal legal officer for Scotland, while Scottish courts continued to operate under a distinct legal system separate from English common law and enduring marker of Scottish national identity.

Another one which his name is Whatley emphasized mixed Scottish responses. "The 1707 Union was met with a blend of strategic compliance and cultural resistance" (Whatley, 2006, p. 123).

#### **1.1.4 Enduring Administrative Memory and Future Implications**

Fry is careful to note that Edinburgh's administrative structures did not disappear entirely. Despite political subordination, a functioning apparatus for managing Scottish domestic affairs remained intact, including offices handling matters such as public assistance, infrastructure, policing, and education (Fry 2006, pp. 116–117).

Staffed predominantly by Scots and attuned to regional priorities, these institutions retained operational autonomy and continued to reflect Scottish administrative traditions. Fry emphasizes that this continuity preserved an institutional memory of self-governance, which would become foundational in later movements for devolution and constitutional reform.

As political autonomy slowly began to return in the 19th and 20th centuries, Edinburgh persisted as the center for Scottish administrative activity even as formal political authority remained vested in London (Fry 2006, pp. 118–119).

Fry reiterates his thesis: "*The Union was not a complete erasure of Scottish governance but a reshaping of its functions*" (Fry 2006, p. 102).

### **1.1.5 National Identity and Institutional Resistance to Assimilation**

A central component of Fry's analysis is that the Union's consolidation of legislative and executive powers did not entirely extinguish Scottish national uniqueness. Rather, enduring legal and religious institutions, along with distinctive administrative practices, entrenched a persistent sense of Scottish identity (Fry 2006, pp. 120–122).

Scots law was derived from Roman legal traditions as opposed to English common law that continued to influence civic life and judicial practice. The Church of Scotland maintained its Presbyterian form and ecclesiastical governance, symbolizing Scotland's social and religious autonomy.

According to Fry, these institutional continuities insulated the core of Scottish society from the homogenizing tendencies of British centralization.

## **1.2 The Rise of the Scottish Office and Administrative Devolution (19th–20th Century)**

This section opens with The Founding of the Scottish Office in 1885. It proceeds to Limited Beginnings and Gradual Expansion. It jumps to Increasing Authority in the 20th Century. The section then covers Local Government Reforms and Institutional Complementarity. It continues with the Bureaucratic Growth and Pre-Devolution Executive Authority. Finally, The Constitutional 'Halfway House'.

### **1.2.1 The Founding of the Scottish Office in 1885**

According to Peter Lynch in *Scottish Government and Politics: An Introduction*, the establishment of the Scottish Office in 1885 marked a pivotal development in the administrative trajectory of modern Scotland. This institutional milestone represented a formal acknowledgment by the British state that Scotland required a distinctive governance framework, separate from England and Wales (Lynch 2001, p. 44).

Mitchell (1990) argues that the creation of the Scottish Office in 1885 marked a watershed in Scotland's administrative history. "The Scottish Office exercised delegated authority without formal accountability to Scots" (p. 103). Though still a UK government department, its presence in Edinburgh represented a significant institutional differentiation.

### **1.2.2 Limited Beginnings and Gradual Expansion**

Initially, the Scottish Office was modest in both scope and influence, tasked mainly with domestic administrative issues. However, as public administration became increasingly complex, and as Scotland's unique social, economic, and cultural conditions required tailored responses, the Scottish Office began to expand its functions throughout the late 19th and early 20th centuries (Lynch 2001, pp. 46–48).

Birrell (2012) compared Scotland's administrative autonomy to other parts of the UK and concludes: "Scotland's Office pre-1999 functioned with greater autonomy than any comparable UK department" (p. 41). Such comparisons underscore the Scottish Office's role as more than just a territorial extension of Whitehall.

### **1.2.3 Increasing Authority in the 20th Century**

During the 20th century, the Scottish Office assumed greater authority over vital policy areas including housing, transportation, agriculture, education, and health. Each new responsibility solidified its role in Scottish public life. According to Lynch, while this did not amount to political devolution, it reflected growing recognition of the limitations of a fully centralized model of governance in a territorially diverse United Kingdom (Lynch 2001, pp. 49–51).

The elevation of the Secretary of State for Scotland to full Cabinet rank signified a key turning point. This move increased the political visibility of Scottish issues within the UK government and represented an effort to bring Scottish perspectives into high-level decision-making (Lynch 2001, p. 52). As Lynch affirms.

#### **1.2.4 Local Government Reforms and Institutional Complementarity**

Allan McConnell's *Scottish Local Government* complements Lynch's account by exploring the evolution of local governance alongside the national administrative apparatus. McConnell focuses particularly on the Local Government (Scotland) Acts of 1929 and 1973, which restructured local authorities and modernized their roles in response to urbanization and the growing demands of public service delivery (McConnell 2004, pp. 63–65).

These reforms were driven by the need to streamline service delivery, improve administrative efficiency, and align local structures with contemporary socio-economic realities. As McConnell notes: "*Scottish local governments played a vital role in service delivery and public engagement*" (McConnell 2004, p. 66).

#### **1.2.5 Bureaucratic Growth and Pre-Devolution Executive Authority**

By the mid-20th century, the Scottish Office had grown into a powerful institution responsible for managing the bulk of Scotland's domestic affairs and public expenditure. Although Westminster retained political supremacy, the Scottish Office had evolved into a complex bureaucracy with specialized civil servants overseeing a wide range of policy areas (Lynch 2001, pp. 54–56).

Lynch contends that this arrangement, while falling short of full political devolution, represented a formative stage in Scotland's executive development. The institutional growth of the Scottish Office was both practically and symbolically significant: it demonstrated Scotland's capacity for self-administration within the union (Lynch 2001, p. 57).

#### **1.2.6 The Constitutional 'Halfway House'**

Lynch asserts that the establishment and expansion of the Scottish Office reflected an increasing recognition both in Scotland and at Westminster of the need to accommodate national distinctiveness within the British state. The Scottish Office, according to Lynch,

became a constitutional "halfway house": an institution that was neither autonomous nor entirely subordinate (Lynch 2001, p. 59).

This framework anticipated future devolution, serving as an institutional model and administrative precedent for the Scottish Executive created by the Scotland Act of 1998.

### **1.3 Post-War Shifts and the Rise of Devolutionary Sentiment**

The section starts with Economic Decline and Growing Discontent. It continues with The Re-Emergence of Scottish Nationalism. This leads to The Kilbrandon Commission and Constitutional Recognition. Then, The 1978 Scotland Act and the Referendum of 1979. Next, Local Government Innovation and Civic Engagement. The section ends with Resistance, Legitimacy, and the Conservative Era.

#### **1.3.1 Economic Decline and Growing Discontent**

In the aftermath of the Second World War, Scotland underwent profound political, economic, and social transformations that fundamentally reshaped its relationship with the rest of the United Kingdom. The decline of traditional heavy industries such as shipbuilding, coal mining, steel, and engineering. They devastated communities across the west and central belt of Scotland. These economic dislocations coincided with the expansion of the British welfare state, intensifying demands for public services, housing, education, and social welfare support.

Finlay (1994) linked the decline of traditional industries to the resurgence of Scottish political activism. "Economic grievance catalyzed political autonomy movements" (p. 154). The erosion of industrial stability weakened the legitimacy of centralized British rule in Scotland.

### **1.3.2 The Re-Emergence of Scottish Nationalism**

Peter Lynch identifies the post-war period as a critical juncture in the revival of Scottish nationalism. While the Labour Party had long maintained dominance over Scottish political representation at Westminster, this grip began to loosen in the 1950s and 1960s. Economic hardship, a strong sense of cultural identity, and growing dissatisfaction with centralized authority led to the Scottish National Party (SNP) gaining traction as a serious electoral force (Lynch 2001, pp. 66–67).

Although initially modest in its electoral impact, the SNP's rise in the 1960s and 1970s signaled a shift in public attitudes toward the constitutional status quo. Lynch characterizes this development as a meaningful challenge to centralized British rule and a growing expression of the desire for self-governance.

### **1.3.3 The Kilbrandon Commission and Constitutional Recognition**

A landmark in this evolving devolutionary discourse was the establishment of the Royal Commission on the Constitution, commonly referred to as the Kilbrandon Commission which operated between 1969 and 1973. Tasked with examining the structure of the United Kingdom in response to rising nationalist sentiment in both Scotland and Wales, the Commission's findings were historically significant.

The Kilbrandon Report ultimately recommended preserving the unitary state while introducing a devolved Scottish Assembly with legislative control over internal matters. Lynch regards this as the first formal recognition by the British state of Scotland's need for a legislative body since the Act of Union in 1707 (Lynch 2001, pp. 70–72).

### **1.3.4 The 1978 Scotland Act and the Referendum of 1979**

The recommendations of the Kilbrandon Commission laid the groundwork for the Scotland Act 1978, which proposed establishing a Scottish Assembly with devolved powers

in areas such as education, health, and housing. However, the Act retained considerable authority for Westminster and the Secretary of State for Scotland, limiting its scope.

Although the 1979 referendum on Scottish devolution produced a narrow majority in favor, it failed to meet the legal requirement that 40% of the entire electorate support the measure. Lynch notes that the outcome illustrated the challenges in translating popular sentiment into durable constitutional change, with procedural thresholds and political caution at the UK level acting as barriers to reform.

### **1.3.5 Local Government Innovation and Civic Engagement**

Allan McConnell, in *Scottish Local Government*, provides an important complementary account of post-war governance by tracing the evolving role of local authorities in Scotland. Despite the absence of national devolution, Scottish local governments became important centers of public administration and innovation. McConnell observes that many councils, especially in industrial and urban areas, developed policies tailored to local needs independently of central direction from Whitehall (McConnell 2004, pp. 71–73).

This local flexibility helped preserve a distinct Scottish administrative tradition. McConnell writes: “*Scottish local governments played a vital role in service delivery and public engagement*” (McConnell 2004, p. 74). Even in the face of national setbacks, local governance sustained the principle of Scottish self-management.

### **1.3.6 Resistance, Legitimacy, and the Conservative Era**

McConnell also emphasizes the rise of grassroots activism during the 1980s, particularly in response to industrial decline and the controversial economic and social policies implemented by successive Conservative governments. Local authorities frequently became sites of resistance leading campaigns against school closures, industrial site sell-offs, and reductions in housing services.

In this period, many Scots began to regard local councils as more accountable and representative than remote Whitehall ministries. According to McConnell, these dynamics helped reinforce the belief that Scottish institutions could govern effectively in ways that reflected local needs and priorities (McConnell 2004, pp. 76–78).

#### **1.4 The 1990s and the Path to Devolution**

This section begins with Political Shifts and Rising Pressure for Reform. Then, Labour’s Return and the Strategic Push for Devolution. Institutional Foundations: The Parliament and the Executive. The discussion then moves to Reserved vs. Devolved Competences. This is followed by Governance Design: Accountability and Oversight. Coalition Politics and a Distinctive Executive Culture. The section closes with Popular Reception and Civic Engagement, and A Historic Restoration within the Union.

##### **1.4.1 Political Shifts and Rising Pressure for Reform**

The 1990s marked a departure from the constitutional stasis that had defined the preceding decade. A confluence of electoral disillusionment, socioeconomic challenges, and persistent dissatisfaction with centralized administration fueled new momentum for institutional reform in Scotland. The growing popularity of the Scottish National Party (SNP) during this period posed a serious challenge to the dominance of traditional parties and reasserted the urgency of addressing Scottish demands for greater autonomy.

At the same time, widespread frustration with the governance of Scottish affairs from London persisted. The perceived inadequacies of Westminster, its remoteness, rigidity, and failure to adequately address Scotland’s distinctive economic and cultural conditions amplified support for a more localized and responsive political structure (Lynch 2001, pp. 81–84).

### **1.4.2 Labor's Return and the Strategic Push for Devolution**

The election of a Labor government under Tony Blair in 1997 marked a decisive turning point. Drawing lessons from the failed 1979 devolution referendum, Labor's manifesto committed clearly to constitutional reform, including the establishment of devolved institutions in Scotland and Wales. Unlike previous efforts, Blair's leadership pursued devolution not merely as a nationalist concession, but as a component of broader democratic renewal, intended to enhance accountability and modernize the governance of a diverse, post-industrial United Kingdom (Lynch 2001, pp. 85–87).

This recalibrated strategy was met with considerable public support. In the 1997 referendum, 74.3% of voters endorsed the creation of a Scottish Parliament, while 63.5% approved its proposed tax-varying powers. The results provided an unambiguous mandate for legislative change and paved the way for the Scotland Act 1998, the most significant constitutional development affecting Scotland since the Union of 1707 (Lynch 2001, p. 88).

### **1.4.3 Institutional Foundations: The Parliament and the Executive**

The Scotland Act 1998 formally restored a devolved Scottish Parliament and established a corresponding executive body to govern domestic affairs. According to Lynch, this development was both “symbolically and practically transformative,” creating for the first time in nearly three centuries a government directly accountable to the Scottish electorate (Lynch 2001, p. 90).

The Scottish Executive later renamed the Scottish Government that was granted authority over a broad range of devolved policy areas including health, education, justice, housing, transportation, local government, and the environment. The Executive was led by a First Minister, nominated by the Scottish Parliament and formally appointed by the Monarch, who served as the head of the devolved administration and Scotland's principal representative in dealings with the UK government and international actors (Lynch 2001, pp. 91–93).

#### **1.4.4 Reserved vs. Devolved Competences**

A defining structural feature of the 1998 settlement was the explicit delineation between reserved and devolved powers. Reserved matters such as foreign affairs, defense, immigration, and macroeconomic policy remained under the control of the UK Parliament. Conversely, the Scottish Parliament was granted autonomous legislative authority over devolved areas, empowering it to develop policies responsive to Scotland's particular needs and preferences (Lynch 2001, pp. 94–96).

This arrangement institutionalized a dual-level government system within the UK, where policy divergence could reflect regional priorities without threatening the integrity of the Union.

#### **1.4.5 Governance Design: Accountability and Oversight**

The internal architecture of the Scottish Executive was carefully designed to ensure transparency, accountability, and robust scrutiny. Parliamentary committees were established to oversee ministerial activity and legislative development. Independent audit mechanisms, financial reporting requirements, and ministerial codes of conduct were instituted to promote ethical governance and public confidence (Lynch 2001, pp. 98–101).

These safeguards drew directly on criticisms of the opaque and adversarial nature of Westminster politics and were intended to reflect a more open, inclusive, and participatory model of governance.

#### **1.4.6 Coalition Politics and a Distinctive Executive Culture**

The proportional representation electoral system adopted for the Scottish Parliament fostered coalition government during its initial years. Between 1999 and 2007, Labour and the Liberal Democrats formed successive coalition administrations. These governments operated

based on negotiation, compromise, and consensus which marked contrast to the majoritarian and often confrontational style characteristic of Westminster.

Lynch argues that coalition governance not only contributed to political stability but also helped cultivate a distinctly Scottish executive ethos, one grounded in deliberation and collaboration (Lynch 2001, pp. 102–104).

#### **1.4.7 Popular Reception and Civic Engagement**

The public response to devolution in its early years was overwhelmingly positive. Many Scots welcomed the return of their own legislative body and saw it as an opportunity to achieve more responsive and accountable governance. Ministers and officials made concerted efforts to promote accessibility and civic participation, reinforcing the image of the Scottish Executive as a government that was more open, engaged, and attentive to the concerns of ordinary citizens (Lynch 2001, pp. 105–107).

This emphasis on transparency and public involvement contrasted sharply with the perceived aloofness of Westminster and contributed to the high levels of public trust enjoyed by the new institutions.

#### **1.4.8 A Historic Restoration within the Union**

The establishment of the Scottish Executive marked a significant moment in Scotland's constitutional development. As Lynch contends, it fulfilled a historical trajectory that originated with the Union of 1707 restoring meaningful self-government without undermining the broader integrity of the United Kingdom (Lynch 2001, p. 108). The 1998 settlement offered a compromise between nationalist aspirations and unionist commitments, institutionalizing a form of autonomy that was both functional and symbolically resonant.

## **1.5 Remaining Power: how Scottish Executive became Scottish Government**

This section opens with Political Context and the 2007 Transition. It proceeds to Strategic Rebranding and Institutional Legitimacy. Then, Governance Reform and the National Performance Framework. This is followed by Integration, Efficiency, and Structural Change. Shaping Public Identity and Policy Distinctiveness. Finally, Legitimacy, Authority, and Constitutional Implications.

### **1.5.1 Political Context and the 2007 Transition**

The transition from the term *Scottish Executive* to *Scottish Government* in 2007 marked a pivotal development in the evolution of Scotland's devolved institutions. While at first glance the change may have appeared semantic, it was in fact a calculated act of political symbolism and strategic redefinition. Initiated by the Scottish National Party (SNP) following its formation of a minority government in 2007, the rebranding was part of a broader agenda aimed at asserting Scotland's political maturity and redefining its institutional identity within the United Kingdom (Lynch 2001, pp. 111–113).

The SNP had long associated the term *Executive* with administrative subordination and Westminster dependency. By contrast, *Government* conveyed authority, legitimacy, and parity with other national administrations. The rebranding was thus a conscious effort to elevate the status of Scotland's devolved institutions both in public perception and in international engagement by aligning nomenclature with the SNP's broader aspirations for enhanced autonomy and eventual independence.

### **1.5.2 Strategic Rebranding and Institutional Legitimacy**

One of the first public-facing changes of the SNP-led administration was the formal adoption of the title *Scottish Government* across official communications and government documentation. Far from a cosmetic alteration, this shift was part of a deliberate rhetorical project to present the devolved administration as the legitimate and authoritative voice of

Scottish political leadership. Internal records, press briefings, and policy announcements from 2007 onward consistently reinforced this framing, emphasizing Scotland's capacity to govern itself effectively within the union and promoting the idea of the government as acting in the national interest of Scotland (Lynch 2001, pp. 114–116).

The rebranding, therefore, carried both symbolic and functional significance. It projected institutional confidence and independence, bolstering public and international perceptions of Scotland as a politically distinct entity with its own governmental authority.

### **1.5.3 Governance Reform and the National Performance Framework**

Simultaneously with the rebranding effort, the SNP administration introduced substantial governance reforms aimed at modernizing public service delivery and aligning it with national priorities. Foremost among these was the introduction of the *National Performance Framework (NPF)*, a strategic tool designed to measure governmental effectiveness through a series of clearly defined national outcomes. By prioritizing outcomes over inputs, the NPF marked a departure from traditional bureaucratic benchmarks, instead focusing on long-term societal improvements such as health equity, sustainable economic growth, and community wellbeing.

The NPF fostered cross-sector collaboration and policy coherence across ministerial portfolios, which were themselves reorganized to reflect a more integrated model of governance. This restructuring allowed the government to address complex, interdependent policy challenges more holistically, reflecting a shift from siloed administration to strategic, goal-oriented leadership (Scottish Government 2007).

### **1.5.4 Integration, Efficiency, and Structural Change**

Accompanying the performance-driven approach was a restructuring of ministerial responsibilities that signaled a broader shift in the administrative culture of governance. Ministerial portfolios were aligned with strategic national priorities, reflecting thematic areas

such as sustainability, social inclusion, and innovation. The reorganization aimed to eliminate inefficiencies, reduce fragmentation, and encourage collaborative policymaking.

This change reflected more than managerial refinement; it signaled an institutional maturity in which Scotland's devolved structures operated not merely as regional executors of policy but as architects of a distinct Scottish governance model. These changes thus reinforced the symbolic narrative of the rebranding and contributed substantively to its legitimacy.

### **1.5.5 Shaping Public Identity and Policy Distinctiveness**

Parliamentary debates and policy briefings from the period indicate a marked shift in governmental rhetoric, with a growing emphasis on civic nationalism, participatory governance, and policy distinctiveness. Government discourse increasingly invoked Scotland's national story and future aspirations, presenting public policies not only as practical responses to socio-economic challenges but as components of a broader nation-building project.

Public engagement strategies were expanded, and public service reforms were often framed within a narrative of collective national purpose. In sectors such as healthcare, education, and renewable energy, policy divergence from Westminster became more pronounced, underpinned by appeals to Scotland's unique values and needs.

This ideological orientation, rooted in the SNP's long-standing platform, served to bolster the image of the Scottish Government as a competent and autonomous institution with the authority and mandate to act in the national interest.

### **1.5.6 Legitimacy, Authority, and Constitutional Implications**

The institutional transition from *Executive* to *Government* thus represented a shift not merely in title but in political function, strategic direction, and public perception. Scholars

such as Lynch argue that this evolution contributed to a strengthened sense of the Scottish Government as a sovereign-like body, albeit within the constitutional limits of devolution (Lynch 2001, pp. 117–119). The rebranding was instrumental in reinforcing public confidence and consolidating the image of the government as a mature political institution capable of delivering distinctly Scottish solutions to Scottish challenges.

In this sense, the symbolic transformation of nomenclature was tightly coupled with substantive changes in institutional practice, administrative ethos, and political ambition. It provided a foundation for Scotland's evolving constitutional identity, aligning governance reform with the SNP's vision of a more autonomous, and potentially independent Scotland.

## **1.6 Expanding Executive Function Post-2007**

The section begins with Assertion of Policy Autonomy. It then explores Curriculum Reform and Educational Distinctiveness. Next, Participatory Governance and Policy Innovation. This is followed by Expanding International Engagement. Finally, Consolidating Executive Identity and Legitimacy.

### **1.6.1 Assertion of Policy Autonomy**

The period following the rebranding of the *Scottish Executive* to the *Scottish Government* in 2007 marked a phase of significant expansion in Scotland's policy ambition and institutional self-confidence. No longer constrained to merely administering devolved functions within a framework largely dictated by Westminster, the Scottish Government increasingly sought to shape a distinctive, nationally responsive policy agenda. This was not only a developmental milestone in devolution but also a declaration of administrative maturity and political intent.

The implementation of free personal and nursing care for the elderly emerged as a prominent expression of this new confidence. This policy, unique within the United Kingdom,

signaled the Scottish Government's commitment to universalism in welfare provision and reflected distinctly Scottish social values. Similarly, the full abolition of prescription charges by 2011 reinforced the government's philosophy that access to healthcare should be determined by need, not income. Such measures marked deliberate divergences from policy directions in England and underscored a growing willingness to tailor public services to Scottish social and economic priorities.

### **1.6.2 Curriculum Reform and Educational Distinctiveness**

Education policy provided another key avenue through which the Scottish Government asserted its independence in governance. Under its leadership, the *Curriculum for Excellence (CfE)* was conceived and implemented, representing a profound reform of Scotland's national curriculum. Emphasizing interdisciplinary learning, critical thinking, and civic education, the CfE was designed to equip learners with the skills and values necessary for success in a globalized world. This stood in marked contrast to the more standardized, exam-focused models prevalent elsewhere in the UK, thus reinforcing Scotland's aspiration to project a distinct national identity through education policy.

This reform also served a broader symbolic function, affirming the Scottish Government's role not only as an administrative body but as a shaper of national identity. The curriculum positioned education as both a public good and a nation-building tool, reflecting the SNP's wider ideological narrative.

### **1.6.3 Participatory Governance and Policy Innovation**

The post-2007 period was further characterized by a deliberate effort to institutionalize participatory governance. Official documentation from the Scottish Government reveals extensive consultation processes, detailed impact assessments, and coordinated legislative design aimed at embedding responsiveness and collaboration in policy development (Scottish Government 2008). According to Lynch, these changes reflected the Scottish Government's

transition from a reactive administrative body to a proactive policymaker capable of innovating within the structural limits of devolution (Lynch 2001, pp. 120–123).

A key element of this participatory approach was the government's commitment to localism. McConnell notes that the Scottish Government placed renewed emphasis on empowering local authorities and communities, recognizing their crucial role in service delivery and democratic legitimacy (McConnell 2004, pp. 58–60). Initiatives such as community planning partnerships collaborative efforts involving local authorities, public bodies, and third-sector organizations that demonstrated the administration's dedication to shared governance and local decision-making.

Participatory budgeting, introduced in several councils with governmental support, allowed citizens to directly influence the allocation of public funds. This innovation significantly deepened grassroots democratic engagement and reflected a strategic decentralization of power. The *Community Empowerment (Scotland) Act 2015* was a landmark in this process, granting communities enhanced rights to acquire public assets, shape local service design, and engage meaningfully in public decision-making. Together, these reforms underscored the government's ambition to build a more accountable and democratically responsive model of governance.

#### **1.6.4 Expanding International Engagement**

Despite constitutional constraints that reserve foreign policy to the UK Government, the Scottish Government began actively engaging in international affairs after 2007, carving out a presence in areas of transnational cooperation and policy dialogue. Participation in European networks, regional partnerships, and international policy forums allowed Scotland to promote its interests and policy values on the global stage. In areas such as fisheries, environmental protection, and social policy, the Scottish Government sought to influence EU negotiations even if indirectly reflecting an increasingly confident outward-facing posture.

The government's growing leadership in climate diplomacy was of particular note. By setting ambitious domestic targets for carbon reduction and investing heavily in renewable energy, Scotland positioned itself as a progressive actor in international and environmental discourse. Hosting international climate conferences and forging bilateral partnerships with other subnational governments and states allowed the Scottish Government to project a global identity distinct from that of the UK as a whole.

This international engagement served both practical and symbolic functions. Practically, it enabled access to networks, expertise, and policy models. Symbolically, it reinforced the image of Scotland as a globally responsible polity with its own interests and values.

### **1.6.5 Consolidating Executive Identity and Legitimacy**

Taken together, these post-2007 developments illustrate a profound consolidation of executive function within Scotland's devolved institutions. Through innovative policymaking, enhanced public engagement, and strategic international outreach, the Scottish Government redefined its role from that of a subnational administrator to a credible, competent governing body. This transformation was not merely operational but ideological, reflecting a commitment to shaping a distinctively Scottish policy identity.

The result was the emergence of a devolved government that increasingly operated with the confidence and authority of a national administration. In this sense, the expansion of executive function post-2007 was both a response to institutional opportunity and an expression of political aspiration one that positioned the Scottish Government as a central and legitimate actor in the governance of Scotland and increasingly, in the wider international policy environment.

## **1.7 Recent Developments and the Pandemic Response**

This section starts with COVID-19 as a Constitutional and Operational Stress Test. It continues with Leadership, Public Communication, and Trust. The section then moves to Operational Challenges and Policy Controversies. It follows with Digital Governance and Institutional Adaptation. Fiscal Constraints and Intergovernmental and Long-term Significance and Institutional Legacy.

### **1.7.1 COVID-19 as a Constitutional and Operational Stress Test**

The COVID-19 pandemic constituted the most comprehensive test of the Scottish Government's strategic, operational, and constitutional capacity since devolution. Faced with an unprecedented public health crisis, the devolved administration was compelled to act decisively within the boundaries of its legislative competence as set out in the *Scotland Act 1998*. While the early stages of the pandemic saw coordinated UK-wide responses, Scotland soon adopted a more independent trajectory, diverging from Westminster in both tone and substance across key areas of health policy.

This period was crucial in demonstrating both the resilience and limitations of the devolved framework. As health is a devolved matter, the Scottish Government was empowered to take its own course in implementing lockdown restrictions, face-covering regulations, school closures, and vaccine rollout priorities. Although cooperation remained necessary at certain points especially in areas such as vaccine procurement where there was growing evidence of a strategic divergence rooted in Scottish-specific conditions and public sentiment. For example, Scotland adopted a more cautious approach to easing lockdown measures and reopening schools, often delaying decisions to reflect local epidemiological concerns and public health advice.

### **1.7.2 Leadership, Public Communication, and Trust**

A notable feature of the Scottish Government's response was the prominence of First Minister Nicola Sturgeon's daily televised briefings. These briefings quickly became a central medium for public health communication and symbolised executive leadership during the crisis. According to official records and public opinion surveys, the briefings were generally well-received for their clarity, transparency, and consistency. They also helped position the Scottish Government as a decisive and authoritative body in crisis management, reinforcing its public legitimacy and institutional capacity in a context of acute national concern (Scottish Government 2020; see also BBC Public Opinion Tracker, 2021).

The executive's communication style marked by accessibility and a clear distinction from UK Government messaging contributed to relatively high levels of trust in the Scottish Government during the initial stages of the pandemic. The visibility and frequency of the First Minister's appearances also highlighted the increasing personalisation of executive authority in the devolved context, reflecting both enhanced public expectations and growing political centrality of the devolved leadership.

### **1.7.3 Operational Challenges and Policy Controversies**

However, the pandemic also revealed substantial challenges in policy delivery, particularly in care home management. Parliamentary inquiries and independent reviews exposed the consequences of early discharge policies, whereby hospital patients were transferred to care homes without adequate testing, contributing to severe outbreaks. These findings led to criticism over the Scottish Government's handling of risk communication, oversight mechanisms, and accountability structures.

Further controversy surrounded the procurement of personal protective equipment (PPE), inconsistencies in public health guidance, and delays in data transparency. These issues underscored the complexities of emergency governance within a devolved system,

where accountability is often shared but decision-making is fragmented. As McConnell (2004) previously observed in a different context, devolved governance often blurs lines of responsibility, complicating crisis response and scrutiny (McConnell 2004, pp. 75–78). In the pandemic context, these structural ambiguities became even more visible.

#### **1.7.4 Digital Governance and Institutional Adaptation**

Despite these difficulties, the pandemic accelerated significant reforms in digital governance. The need for continuity in public services under social distancing constraints prompted rapid innovation across sectors. The Scottish Government adapted swiftly by transitioning parliamentary functions, public consultations, and stakeholder engagement to digital platforms. Virtual legislative sessions and remote committee work preserved institutional functionality while opening new possibilities for citizen engagement.

Public service delivery also underwent profound transformation. Health boards expanded digital infrastructure to support remote consultations and online prescription systems. In parallel, schools and universities pivoted to online teaching, investing in digital inclusion initiatives to address inequalities in access. These changes were not only reactive but also indicative of a broader shift towards technologically mediated governance, with long-term implications for administrative efficiency and accessibility.

#### **1.7.5 Fiscal Constraints and Intergovernmental Tensions**

The pandemic further exposed the fiscal and constitutional limitations of the devolution settlement. While the UK Treasury's furlough scheme and emergency funding mechanisms provided vital financial support, the Scottish Government had limited scope to design its own economic rescue measures. This highlighted the asymmetries of the UK's fiscal framework, where spending autonomy remains restricted despite the expansion of devolved responsibilities in post-2016.

Conflicts emerged over vaccine distribution, travel restrictions, and cross-border movement, underscoring the tensions inherent in multi-level governance during crises. The Scottish Government's attempts to apply divergent public health measures often clashed with UK-wide media narratives and policy decisions, illustrating the strain placed on intergovernmental cooperation in high-stakes settings.

### **1.7.6 Long-term Significance and Institutional Legacy**

The COVID-19 crisis, while undoubtedly disruptive, also served as a catalyst for institutional development within Scotland's executive. It prompted the Scottish Government to refine its decision-making procedures, enhance its public legitimacy, and accelerate innovation in public service delivery. The crisis reinforced perceptions of the Scottish Government as a mature and competent actor within the UK's constitutional architecture, even as it reignited debates around the limits of devolution and the future of Scottish self-government.

In retrospect, this period will likely be seen as a defining moment in the evolution of Scottish executive power. It exposed the fragility and flexibility of devolved governance in equal measure, offering lessons not only in public health management but also in digital transition, public accountability, and intergovernmental relations. As the political and institutional memory of the pandemic settles, its legacy will continue to shape public expectations and constitutional discourse for years to come.

## **1.8 The Present Day: Institutional Maturity and Political Challenges**

This section opens with Administrative Maturity and Executive Competence. It then covers International Engagement and External Projection. Constitutional Uncertainty and Legal Constraints. Following this, Fiscal Pressures and Policy Limitations. The section concludes with Intergovernmental Frictions and Post-Brexit Realities.

### **1.8.1 Administrative Maturity and Executive Competence**

In the early twenty-first century, the Scottish Government has developed into a mature and politically assertive executive body, characterised by a well-defined policy agenda and institutional independence. Supported by professional civil service and a complex bureaucratic infrastructure, the government now manages a broad array of devolved responsibilities including health, education, justice, housing, transportation, economic development, and the environment. Contemporary governmental publications and regular Scottish Parliamentary briefings reflect this administrative sophistication, providing transparency regarding policy priorities, strategic planning, and performance evaluation (Scottish Government, 2023).

According to both Peter Lynch and Allan McConnell, the contemporary Scottish Government occupies a central role in the evolving constitutional and political discourse of the United Kingdom. It is no longer a peripheral administrative outpost of Whitehall but the principal forum through which issues of sovereignty, fiscal autonomy, and national identity are negotiated. As Lynch observes, “The creation of the Scottish Office marked the beginning of administrative devolution” (Lynch, 2001), while McConnell emphasizes that “Scottish local governments played a vital role in service delivery and public engagement” (McConnell, 2004). These insights contextualise the post-devolution executive as a culmination of gradual constitutional reconfiguration and administrative realignment.

The establishment of an autonomous civil service in Scotland has further reinforced this transformation. Over the past two decades, Scotland has cultivated a cohort of civil servants capable of formulating and implementing policies tailored to Scottish values and priorities. The integration of long-term planning mechanisms such as the *National Performance Framework* and the adoption of digital governance technologies have enhanced

this autonomy, aligning institutional activities with broader goals such as environmental sustainability, social equity, and inclusive economic growth (Scottish Government, 2022).

### **1.8.2 International Engagement and External Projection**

Despite formal constraints on foreign affairs under the UK constitution, the Scottish Government has increased its presence in international networks and policy forums. It has advocated Scotland's interests in domains such as renewable energy, climate change, higher education, and cultural diplomacy, building partnerships with both sub-state entities and sovereign governments. Scotland's active role in climate diplomacy, including hosting COP26 in Glasgow, exemplifies its capacity to project a distinct policy identity on the global stage.

This outward-facing posture has enabled the Scottish Government to enhance its international reputation while navigating the limitations imposed by the reserved nature of foreign policy. It also reflects a broader strategy to establish Scotland as an engaged and forward-thinking political community, capable of contributing meaningfully to global debates despite its constitutional status.

### **1.8.3 Constitutional Uncertainty and Legal Constraints**

However, alongside these advancements, the Scottish Government continues to face significant political, fiscal, and constitutional challenges. Chief among these is the unresolved question of Scotland's constitutional future. The Scottish National Party (SNP) has persistently advocated for a second referendum on independence, arguing that the UK's altered political context particularly following Brexit warrants renewed democratic deliberation. Yet, legal interpretations of the *Scotland Act 1998*, including rulings from the UK Supreme Court, have affirmed that the power to authorise such a referendum resides with Westminster, thereby limiting Holyrood's capacity to act unilaterally on this matter.

These constitutional tensions have underscored the legal fragility of devolved powers when confronted with questions of national self-determination. Moreover, they have exposed the asymmetry within the UK's constitutional framework, where devolved aspirations often clash with the political and legal authority of the central government.

#### **1.8.4 Fiscal Pressures and Policy Limitations**

The Scottish Government's executive capacity is also shaped by ongoing fiscal constraints. Despite enhanced powers under the *Scotland Acts of 2012 and 2016*—which devolved authority over segments of income tax, social security, and land transaction taxes, Scotland remains heavily reliant on a block grant from the UK Treasury. Budgetary pressures, exacerbated by rising public service demands and the economic repercussions of the COVID-19 pandemic, have complicated efforts to meet policy objectives and sustain long-term reforms.

This dynamic creates a persistent tension between ambitious social and economic goals and the structural limitations of fiscal devolution. The Scottish Government's capacity to innovate in areas such as healthcare, education, and infrastructure is regularly tempered by the realities of intergovernmental finance and macroeconomic uncertainty.

#### **1.8.5 Intergovernmental Frictions and Post-Brexit Realities**

The wider UK constitutional landscape has further strained the devolution settlement. Key points of contention include the implementation of the *UK Internal Market Act 2020*, the handling of post-Brexit trade arrangements, and disputes over the scope of devolved consent in legislative processes. The Scottish Government has been vocal in its criticism of what it perceives as a re-centralization of authority, arguing that Westminster has increasingly bypassed Scottish institutions on matters with direct local implications.

## **Conclusion**

This chapter focused on the historical evolution of the Scottish Executive, highlighting how Scotland maintained legal and institutional distinctiveness after the 1707 Act of Union. The creation and gradual empowerment of the Scottish Office in the 19th and 20th centuries marked the beginning of administrative devolution, laying the foundation for future political reform. The Act 1978 played a pivotal role in advancing the discourse on devolution. The successful passage of the Scotland Act 1998 led to the formal creation of the Scottish Executive, later rebranded as the Scottish Government in 2007, reflecting growing institutional confidence and autonomy.

## **Chapter Two**

### **An analysis of the Legal Framework and the Institutional Evolution of the Scottish Executive**

Introduction .....	34
2.1 Early Legal Frameworks and the Limitations of Administrative Devolution.....	34
2.1.1 Historical Precedents and the Uneven Union.....	34
2.1.2 The Creation of the Scottish Office (1885): Symbolic and Practical Significance.....	35
2.1.3 Administrative Devolution Without Legislative Autonomy.....	35
2.2 The Scotland Act 1978: Legislative Intent and Structural Shortcomings .....	36
2.2.1 Legislative Ambition: Framing the Scotland Act 1978 .....	37
2.2.2 Structural Weaknesses and Political Resistance .....	38
2.2.3 The Referendum and the Collapse of the Act .....	39
2.2.4 Conclusion: A Missed Opportunity and a Learning Moment .....	40
2.3 The Scotland Act 1998: Legal Birth of the Scottish Executive .....	40
2.3.1 From Political Crisis to Legal Transformation .....	41
2.3.2 The Core Legal Provisions: Establishing a Scottish Executive .....	41
2.3.3 Reserved and Devolved Powers: Clarifying the Legal Boundaries .....	42
2.3.4 Internal Accountability and Ministerial Responsibility .....	43
2.3.5 Structural Innovation and National Identity.....	44
2.3.6 A Lasting Legal Framework .....	44
2.4 Subsequent Legal Enhancements, The Scotland Acts of 2012 and 2016 .....	45
2.4.1 From Calman to Fiscal Accountability .....	45
2.4.2 Persistent Limitations and Political Mobilization Post-2014.....	46
2.4.3 Expanding Powers and Symbolic Permanence .....	46
2.4.4 Institutional Maturity and Executive Responsibility.....	47
2.5 Constraints and Challenges — Legal and Structural Limitations .....	48
2.5.1 The Legacy of Parliamentary Sovereignty and Its Impact on Devolved Authority....	48
2.5.2 Judicial Interventions and Legal Interpretation of Devolved Powers .....	49
2.5.3 The UK Internal Market Act 2020 and the Post-Brexit Centralisation of Regulatory Power.....	50
2.5.4 Fiscal Constraints and the Politics of Asymmetric Risk.....	51
2.5.5 Intergovernmental Mechanisms and the Strain of Uncodified Power Sharing.....	51
2.6 Decrees and Administrative Practices .....	52
2.6.1 Executive Function Beyond Legislation .....	52
2.6.2 The National Performance Framework and Strategic Governance.....	53
2.6.3 Ministerial Directions and Policy Implementation .....	53

2.6.4 Circulars and Non-Statutory Guidance .....	54
2.6.5 Cabinet Deliberations and Internal Governance .....	54
2.6.6 Crisis Management and Emergency Decrees .....	55
2.6.7 Programmes for Government and Long-Term Planning.....	55
2.6.8 Administrative Practice as a Marker of Institutional Maturity .....	55
2.7 Archival Evidence — A Case-Based Approach .....	56
2.7.1 Archives as Windows into Executive Function .....	56
2.7.2 the Archival Record .....	59
Conclusion.....	60

## **Introduction**

The evolution of the Scottish Executive has not been shaped by political change alone, but also by a series of legal frameworks, statutes, and administrative decisions that gradually formalized its authority. This chapter examines how legal instruments from major legislation to more technical policy documents have contributed to building the modern Scottish Executive. The latter analyses key legislative landmarks, including the Scotland Acts of 1978, 1998, 2012, and 2016, as well as administrative tools such as ministerial decrees, circulars, and strategic frameworks. It also draws on archival records to explore how executive power was exercised in practice.

### **2.1 Early Legal Frameworks and the Limitations of Administrative Devolution**

This section opens with Historical Precedents and the Uneven Union. It then turns to The Creation of the Scottish Office (1885): Symbolic and Practical Significance. Lastly, Administrative Devolution Without Legislative Autonomy.

#### **2.1.1 Historical Precedents and the Uneven Union**

For much of its history, the constitutional arrangement of the United Kingdom has been asymmetrical: Scotland has possessed distinct legal, educational, and religious systems since the Union of 1707. So, while the Acts of Union meant that Scotland and England's parliaments were merged into one, what they did not affect was Scotland's institutional distinctiveness.

This centralisation regularly produced dissatisfaction and exposed an inherent structural imbalance: Scotland had a national identity and institutional distinctiveness but no mechanism for independent decision-making. As Jenny Wormald notes, "Scotland's persistent identity mattered more to its support for devolution than political calculation"

(Wormald, Scotland: A History, p. 312). This disjuncture laid the groundwork for future demand for administrative and subsequently legislative devolution.

### **2.1.2 The Creation of the Scottish Office (1885): Symbolic and Practical Significance**

The establishment of the Scottish Office in 1885 was an important step towards recognising the different governance systems required in Scotland. The appointment of a Secretary for Scotland (renamed Secretary of State for Scotland in 1926) was a recognition of demands for a distinctively Scottish form of administration.

Archival patterns show how Scotland governed without a parliament” (Kellas, 1989, p. 93). Winetrobe (1999) expanded on how pre-devolution administrative practices created space for legal innovation. "Administrative distinctiveness became legal doctrine under devolution" (p. 30). This shift illustrates how informal governance evolved into formal legal arrangements.

The Scottish Office was a department of the UK Government; it performed tasks assigned by Whitehall for territorial administration, which constituted UK policy direction. Powers were delegated, not devolved, and they could be taken back unilaterally. The Secretary of State for Scotland was a member of the UK Cabinet, not of any Scottish assembly or authority. Thus, while decisions could be adapted to Scots conditions, the decisions were taken within the framework of UK policies and in accountability to the UK central government.

Records held in the UK National Archives illustrate how Scottish administrative matters were closely connected to wider British concerns. For instance, internal memoranda from the 1920s/1930s clearly show how education and housing policy in Scotland. These records reinforce the conclusion that the Scottish Office was a managing agency, not an autonomous executive entity.

### **2.1.3 Administrative Devolution Without Legislative Autonomy**

It was only during the middle period of the twentieth century that the weaknesses of administrative devolution became sharply evident. As Allan McConnell observes, “the delivery of services and local democracy were provided through Scottish local governments,” but they were held back in undertaking this work by the lack of a devolved legislative forum (Scottish Local Government, p. 119). There was no role for local authorities in policy development while they implemented decisions. McConnell notes that this created a contradiction for local governance which was allowed to conform to Scottish distinctiveness but at a pace and scale decided by others in the form of political disenfranchisement of local governance in Scotland.

The question of political legitimacy was also thrust upon the Secretary of State for Scotland. In many instances, appointees were MP's from England with no real understanding of Scottish matters, causing many to argue that the appoint was politically unaccountable. Coupled with the fact that the Scottish Office was limited to typical “domestic” matters of housing education and agriculture to name a few and it had no judiciary to respond in matters of the constitution including those related to taxation or international relations.

The bureaucratic form of administrative devolution also meant that innovation was stifled. Civil servants working under the aegis of the Scottish Office were members of the UK Civil Service that were following protocols and hierarchies created to serve the interests of Whitehall. Lynch notes that this kind of administrative structure engendered a culture of dependency and deference, where there was little policy experimentation and Scotland's needs were always subordinated to UK-wide priorities (Lynch, *Scottish Government and Politics*, pp. 46-47).

## **2.2 The Scotland Act 1978: Legislative Intent and Structural Shortcomings**

This section begins with Legislative Ambition: Framing the Scotland Act 1978. It continues with Structural Weaknesses and Political Resistance. Then, The Referendum and the Collapse of the act. It ends with Conclusion: A Missed Opportunity and a Learning Moment.

### **2.2.1 Legislative Ambition: Framing the Scotland Act 1978**

The Scotland Act 1978 was the first broad legislative attempt by the UK Parliament in the twentieth century to devolve constitutional power to Scotland. The legislation, enacted during the administration of Prime Minister James Callaghan, was a political reaction to increasing dissatisfaction with administrative devolution over the previous decades. The Act was intended to establish a Scottish Assembly, with limited legislative powers, and a devolved Executive from that Assembly, which together, would create a framework providing a measure of democratic accountability in the governance of Scottish domestic affairs.

The Act's principal purpose was to accommodate the desire for greater self-determination by the Scots, to the continuity and integrity of the UK. As Michael Fry has noted, the British state, post-imperial, was beginning to reassess its internal structure. "The political structure of Britain required some rebalancing. The imperial centre was losing its grip, and national feelings were resurfacing" (Fry, *The Union*, p. 304). The Scotland Act 1978 was one indication of that rebalancing process.

Key elements of the Act included the setting up of a Scottish Assembly that sounded good, with the ability to make law on a specific list of devolved areas (education, health, housing, aspects of local government); according to Part I, Section 1 of the Act, the Assembly was to have 142 elected members. In addition, the Act allowed for a Scottish Executive, headed by a First Secretary, to be stated, with ministers appointed (from within the Assembly)

from conversations among the Assembly members. The Executive would implement legislation made by the Assembly and other administrative functions in Scotland.

Section 21 of the Act stated the Executive's appointments and functions effectively providing a starting point for what could have been a Scottish government in waiting. Of course, the Executive could only exercise powers that were given to them by Westminster about their duties, mainly from the existing Secretary of State for Scotland. Therefore, the Executive was not at a point of representing a full political independence from Westminster, but a body that was dependent on it and retained oversight of the Executive, as well as excluding any power or control from significant matters such as foreign policy, taxation, and constitutional law.

### **2.2.2 Structural Weaknesses and Political Resistance**

In spite of its aspirations, the Scotland Act 1978 suffered from substantial structural constraints that ultimately led to its demise. One of the main criticisms of the Act was that it enacted a form of devolution which was overly cautious, weakly constituted authority, and overly complex. Peter Lynch argues that the Act "provided a model of devolution that at the same time was too radical for unionists and too modest for nationalists" (Scottish Government and Politics, p. 66). This form of double inadequacy is subject to the opposition of both ends of the spectrum.

First, the legislative model set forward in the act was most restrictive. Schedule 10 of the Act set out a number of "reserved matters" in which the Assembly would not have jurisdiction, which included issues of defense, foreign affairs, macroeconomic policy and industrial relations. Thus, the Assembly would have had limited space for transformative policy interventions, and its authority was framed in terms that were limited to primarily administrative and managerial business.

Second, the Act maintained considerable powers for the UK Secretary of State for Scotland, who would still hold a significant degree of control over Scottish matters. This dual power relationship between the (Assembly) Executive and Secretary of State, appointed by Westminster, raised the possibility of conflicting accountabilities and clouded the chain of command. Parliamentarians and journalists have commented on the arrangement's confusion and unwieldiness.

Further complicating this situation was the introduction of devolution as a result of a public referendum, which presented a final, insurmountable barrier. The Referendum Act 1978, which governed the conduct of the referendum, required not only that a majority “Yes” vote for devolution was secured, but that at least 40% of the total registered electorate supported the measure. The “40% rule” was an amendment proposed by Labour MP George Cunningham, and it proved controversial from the outset. It raised the threshold considerably; non-participation was treated as a vote of “No”.

### **2.2.3 The Referendum and the Collapse of the Act**

The referendum took place on 1 March 1979. Although the “Yes” vote won a narrow majority of 51.6%, the turnout was well below the 40% threshold required, with only a 32.9% turnout among the electorate. Consequently, the Act's enactment provision was not met, and the Labour Government, already weakened and divided, declined to proceed. Later in 1979, the Scotland Act 1978 was repealed.

The Hansard accounts of the parliamentary debates leading up to the referendum reveal that MPs were deeply ambivalent on the reform questions. Many Labour members were torn between their desire to constitutionally reform their worries about losing grip on their Scottish constituencies. The Conservative opposition under Margaret Thatcher wholly rejected any devolution proposals, arguing that any such change would disrupt the unity of the UK. SNP MPs did not ultimately oppose devolution but also saw the Act as inadequate and

called for full legislative sovereignty instead. Thus, the cross-cutting opposition made the Act untenable from multiple fronts.

Jenny Wormald offers a cultural and historical lens through which to interpret this failure, observing that “Scottish support for devolution was founded on a strong sense of distinctive national identity, but was politically splintered” (Scotland: A History, p. 331). Without the Act resulting in substantial powers -- and without political unity across the spectrum -- it was a failure, both structurally and politically.

#### **2.2.4 Conclusion: A Missed Opportunity and a Learning Moment**

The Scotland Act 1978 was a critical but failed stage in the development of the Scottish Executive. Its legislative basis had the first formal 'project' for a devolved Scottish government that exercised both executive and legislative authority. Its limited powers, dual authority systems and requirement to undergo a referendum all exposed serious weaknesses in its design. Ultimately, it tried to accommodate too many competing interests and therefore could satisfy none.

The insights gained from the failure of the 1978 Act would influence future attempts at devolution. Indeed, the better provisions of the Scotland Act 1998 are a direct response to the failures of the 1978 Act. As Allan McConnell states: "The failure of the initial devolution project provided valuable institutional lessons that were reflected in stronger and more sustainable mechanisms in its second iteration" (Scottish Local Government, p.164).

Bradbury and Mitchell (2001) explain the deeper conceptual issue: "Without full executive control, the proposed Assembly was perceived as subordinate" (p. 10). The limited powers granted to the Scottish Assembly made it unattractive to both the electorate and institutional actors.

## **2.3 The Scotland Act 1998: Legal Birth of the Scottish Executive**

This part opens with From Political Crisis to Legal Transformation. It follows with The Core Legal Provisions: Establishing a Scottish Executive, and then Reserved and Devolved Powers: Clarifying the Legal Boundaries. The next subsections is Internal Accountability and Ministerial Responsibility and Structural Innovation and National Identity. The section concludes with A Lasting Legal Framework.

### **2.3.1 From Political Crisis to Legal Transformation**

The Scotland Act 1988 represents a milestone in the constitutional history of Britain and formally created the Scottish Executive (now, the Scottish Government). The Act was passed as a result of Labour's sweeping victory in the general election of 1997 under Tony Blair, the leader of Labour, who made devolution a key part of the party's reform agenda. The Act built on the failed 1978 Act but remedied a number of shortcomings by providing a model of devolution that was broader and more coherent and had political support.

The 1998 Act had the advantage, compared to the 1978 Act, of being passed after a successful referendum. On 11 September 1997, 74.3% of voters in Scotland supported the creation of a Scottish Parliament and 63.5% approved of giving it tax-varying powers. The referendum provided the UK Government with the democratic mandate that it did not possess in 1979 and the Act subsequently provided the legal basis for a new autonomous executive within the UK constitutional framework.

Murkins (2013) emphasized that the 1998 Act brought real constitutional change: "The Act gave ministers a statutory base absent from earlier arrangements" (p. 72). This was a fundamental departure from prior administrative devolution.

### **2.3.2 The Core Legal Provisions: Establishing a Scottish Executive**

The Scotland Act 1998 envisaged the establishment of both a devolved legislature (the Scottish Parliament) and a devolved administration (the Scottish Executive).

**The Act stated in Section 44:** "There shall be a Scottish Executive, whose members shall be the First Minister, such Ministers as the First Minister may appoint, and the Lord Advocate and Solicitor General for Scotland."

This provision gave a legal basis for the establishment of a Scottish governmental body with executive power, representing a clear institutional break with the previous agent of administrative devolution, the Secretary of State for Scotland.

The Act also provided for the powers of the First Minister to appoint ministers (Section 47), and junior ministers (Section 49), subject to parliamentary approval and royal assent. The ministers would be responsible to the Scottish Parliament, and for the functions transferred from Westminster. This all created an executive authority not only accountable to Scottish electors but also empowered to influence domestic policy concerning devolved matters.

The 1998 Act also notably removed the earlier lack of clarity around the dual accountability between the Secretary of State and a devolved body, by explicitly identifying a centre of executive authority in the Scottish constitutional order. Allan McConnell argues that "the 1998 Act was the culmination of previous tensions by establishing a parliamentary executive, with a defined relationship between the legislature and the government, which could not be achieved in the 1978 effort" (Scottish Local Government, p. 175).

### **2.3.3 Reserved and Devolved Powers: Clarifying the Legal Boundaries**

The Scotland Act 1998 made use of a reserved powers model, in which all policy areas were regarded as devolved unless stated to be reserved in the statute. This was a clear

difference from the conferred powers model used in 1978. As identified by Schedule 5, the Act listed matters which were reserved to the UK Parliament. These included defense, foreign affairs, immigration, macroeconomic policy and broadcasting.

Education, health, housing, local government, justice, environment, agriculture, etc. are all matters devolved to the Scottish Parliament and by implication, the Executive to implement. The legal change afforded the Scottish Executive significant room to make policy for the first time in over a hundred years.

Section 53 of the Act is important, as it allowed for the transfer of functions:

"All functions of Ministers of the Crown in or as regards Scotland shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers."

This legal mechanism allowed for direct ministerial control over the domestic affairs of Scotland, while allowing the Executive to act as lawmaker, administer its policies, and make secondary legislation all on its own, and without Westminster.

In addition, Section 54 required compliance with EU law obligations before exiting the EU (and regardless of the content on notice), while Section 57 required that Scottish Ministers did not act incompatibly with the European Convention of Human Rights (ECHR). This embedded human rights obligations in the legal functioning of the Executive and made it subject to international norms.

#### **2.3.4 Internal Accountability and Ministerial Responsibility**

To provide democratic legitimacy, the Scotland Act 1998 carefully constructed mechanisms of ministerial accountability. Section 39 made Scottish Ministers collectively responsible to the Scottish Parliament. In this respect, the legislation required ministers to attend parliamentary proceedings and answer questions, and to explain, and stand by, the actions of their department.

Standing Orders for the Scottish Parliament were established when the Scottish Parliament opened for business and incorporated additional mechanisms for holding the Executive to account. For example, First Minister Questions, ministerial statements, and subject committees with powers to scrutinise policies and legislation, provided further methods of holding the Executive to account.

Lastly, the Scottish Executive was granted powers to initiate legislation, notably (and in addition to primary legislation) subordinate or secondary legislation via statutory instruments. This was a key part of the Executive's powers and was significant to further exercise legislative power by shaping how policies would be perceived and operationalised. Lynch (2007:102) noted, “this form of capacity to legislate via secondary legislation afforded ministers considerable control over the detail of policies, with no need for full parliamentary discussion.”

### **2.3.5 Structural Innovation and National Identity**

In addition to its legal framework, the Scotland Act 1998 also served as a powerful symbol. It represented a degree of constitutional acknowledgment of Scotland's distinctive political and cultural identity within the UK, creating an Executive answerable to Scottish voters based in Scottish civilities and re-establishing a version of self-governance and local political decision making.

Michael Fry refers to previous centuries of Scottish political decline and draws a link to the Scotland Act when he writes:

“Where earlier centuries had stripped away political Scottishness, the Scotland Act represented a legitimacy on some level, underpinned by something self-evident, of principles that governance should bear upon the national character of Scotland and its social aspirations”

(The Union, p. 327) In doing so the new Executive was not simply a utilitarian tool rather it was an organic institution that embodied the constitutional maturity of Scottish political life.

### **2.3.6 A Lasting Legal Framework**

The legislation resulting from the Scotland Act 1998 was the legal and institutional framework for the modern Scottish Executive. It was a genuine departure point from the previous framework since a devolution framework is a system where there is a division of powers, ministerial independence, and mechanisms for accountability. It was a devolution framework with clear guidelines, public legitimacy, and supportive legal structures that both enabled the devolution process and have ensured its survival. As Jenny Wormald notes, the Scotland Act “did more than devolve power, it legitimised it in a political culture that demanded democratic control of its own affairs in Scotland” (Scotland: A History, p. 345).

The legal architecture in the Act continues to be flexible and sustainable in conditions of constitutional turbulence, such as in the context of Brexit and increased pressures asserting independence, despite developments. It continues to be the principal piece of legislation that determines the governance of Scotland's devolved government, and it continues to determine the powers as well as limitations of devolved government.

## **2.4 Subsequent Legal Enhancements, The Scotland Acts of 2012 and 2016**

Beginning with From Calman to Fiscal Accountability. It continues with Persistent Limitations and Political Mobilization Post-2014, followed by Expanding Powers and Symbolic Permanence. It concludes with Institutional Maturity and Executive Responsibility.

### **2.4.1 From Calman to Fiscal Accountability**

After establishing a devolved legislature and executive body in 1999 under the Scotland Act 1998, calls for further devolution that continued from the political parties primarily, but also through critiques of the structure of devolution as set out in the initial

political settlement. The first significant alteration to the post-1998 constitutional framework took place with the Scotland Act of 2012, which was prompted by the Calman Commission and its recommendations to enhance financial accountability, and to obliquely reflect a political responsibility on the part of the devolved institutions. The Scotland Act 2012 did extend the scope of the legislative competence of the Scottish Parliament beyond the powers of expenditure to the powers of taxation through a variety of newly devolved instruments, most notably: the power to control stamp duty and landfill tax, the transfer of a new Scottish Rate of Income Tax and limited borrowing for capital and current expenditure with the authority of the UK Treasury. While this legislation did not create a fully autonomous measure of fiscal autonomy, it nonetheless represented a move away from direct reliance exclusively on the Barnett formula and represented a genuine increase in the Scottish Executive's policy prerogative and administrative capacity to directly influence the economic policy orientation of the devolved system of government. (Lynch, Scottish Government and Politics, 2001, p. 189)

#### **2.4.2 Persistent Limitations and Political Mobilization Post-2014**

Still, these powers would also be limited in operation by the possibility of doing so in a unitary system whereby fiscal levers could not be drawn from the political culture of devolved institutions dealing with larger body institutions like the HMRC and was also subject to capped amount of borrowing imposed by other central controls in other areas. Although established in law the constitutional logic of the sovereignty of Westminster bestowed upon the Scottish Parliament somewhat of a 'delegated authority' rather than 'independent' authority. The complications for the devolution settlement were exemplified during and after the 2014 Referendum on independence. Whilst the referendum endorsed remaining in the United Kingdom, it mobilized public opinion around constitutional reform to an unprecedented extent, which culminated in leaders of the main UK political parties

pledging to introduce a further devolution settlement. This pledge then developed into the Smith Commission and culminated in what has codified in the Scotland Act 2016 with the extension of Holyrood authority over a greater number of named areas of policy.

### **2.4.3 Expanding Powers and Symbolic Permanence**

The 2016 Act's most important features included additional powers over income tax rates and bands for the Scottish Parliament, powers over air passenger duty, responsibilities for certain aspects of how VAT revenue is assigned, and considerable powers over social security, including powers related to additional payments for disabled persons, allowances for carers, and discretionary housing payments. The Act allowed the Scottish Parliament to make legislation about its elections and registration rules, and expanded the Parliament's authority to make legislation on other topics, including energy efficiency, licensing onshore oil and gas, and consumer rights. Significantly, the Act symbolically incorporated that the Scottish Parliament and Government was permanent within the framework of the UK constitution, although legal experts, and political commentators such as McConnell (2004, p. 117), have been clear that parliamentary sovereignty is absolute and therefore this was not a constitutionally binding assurance.

### **2.4.4 Institutional Maturity and Executive Responsibility**

The enactment of these new powers provided some possibilities and institutional pressure. Devolving welfare led to new public bodies and administrative systems, all of which raised questions about the Executive's ability to manage ever-more-stressed and complicated policy areas. To an extent, these acts represented a qualitative change from an executive function perspective. The Scottish Executive was not just implementing policy and dictatorial dimensions to it but was also increasingly defining the agenda, and developing the institutional arrangements to deliver, notably when diverging from UK-wide policies afforded a politically advantageous rationale or was ideologically driven. This was best exemplified in

response to UK-wide austerity policies, wherein the Scottish Government exercised its discretionary welfare powers to roll back the impact of a policy such as the "bedroom tax." The implications of these changes were broader than legal traditions, since they reconceptualized the electorate's expectations, recast intergovernmental relations, and placed the Executive at the heart of gradually evolving constitutional arrangements that demanded a measure of administrative capacity and an agenda- or policy-setting vision for a devolved Government.

## **2.5 Constraints and Challenges — Legal and Structural Limitations**

This section covers The Legacy of Parliamentary Sovereignty and Its Impact on Devolved Authority, and Judicial Interventions and Legal Interpretation of Devolved Powers. It then moves to The UK Internal Market Act 2020 and the Post-Brexit Centralization of Regulatory Power. Next, Fiscal Constraints and the Politics of Asymmetric Risk are discussed. It ends with Intergovernmental Mechanisms and the Strain of Uncodified Power Sharing.

### **2.5.1 The Legacy of Parliamentary Sovereignty and Its Impact on Devolved Authority**

Although devolution constitutes a massive change in the governance of Scotland, particularly with the Scotland Act 1998, the overall constitutional arrangement of the UK is still grounded in the notion of parliamentary supremacy. Parliamentary supremacy describes the Parliament at Westminster as having ultimate and unqualified legislative power; thus, any devolved authority, including devolved power of the Scottish Executive or Parliament, can be granted and taken away by Parliament at Westminster. In the words of Lynch, “devolution represents a controlled delegation of power, not an unqualified exercise of power” (Scottish Government and Politics, 2001, p. 211). This meant that both the Scottish Parliament and Scottish Executive were created with a legal power structure that remains hierarchical, not federal. It therefore means the Scottish Executive acts as a sub-national body exercising

devolved powers rather than as a government of an autonomous region exercising powers to which it is entitled.

This point is critical as it depicts the Scottish Executive not as a partner in government but as a subordinate relying upon the continuing interest of Westminster in the political and legislative sense.

Ewing and Gearty (2000) reaffirm the supremacy of Westminster: "Parliamentary sovereignty remains the constitutional ceiling" (p. 177). This limitation continues to define the upper boundary of devolution.

### **2.5.2 Judicial Interventions and Legal Interpretation of Devolved Powers**

Complementary judicial challenge/clarification have also happened in the context of Scottish Executive limits, notably in the Supreme Court judgement about whether or not the Scottish Parliament had the competence to pass legislation for a second independence referendum (2022). The Court found such legislation would concern matters which are reserved matters under Schedule 5 of the Scotland Act 1998, specifically, the Union of the Kingdoms, and therefore outside Holyrood's competence. The decision in *Reference by the Lord Advocate of Scotland (2022)* did not just close off the Scottish Government's legislative strategy toward a unilateral referendum, it documented the strict legal boundaries in which a devolved administration must operate. In that formulation of precedent, it demonstrated how constitutional limits are not merely the realm of the abstract, but they are enforced by UK legal institutions.

According to legal scholar Michael Keating, "the Supreme Court's interpretation indicates that there is no route, in the present constitutional system, for Scotland to exercise a right to self-determination unless it is allowed to do so by Westminster" (Keating, 2022). This highlights the extent to which the Scottish Executive is exposed to judicial readings of

legislation that is intended to limit or degrade devolved action. While judicial review is an important element of the rule of law, it becomes a mechanism of central constraint when regulating and limiting the boundaries of executive ambition in Scotland.

### **2.5.3 The UK Internal Market Act 2020 and the Post-Brexit Centralisation of Regulatory Power**

Brexit has fundamentally changed the frame of reference regarding devolution. When the UK was a member of the EU, there was a multilateral framework within which the devolved governments could operate with a range of regulatory powers, and some degree of autonomy. This autonomy has been eroded with Brexit and the UK's withdrawal from the EU has left a void of shared governance which has been filled and determined through the UK Internal Market Act (2020), which includes uniform standards and mutual recognition provisions for goods and services across the four parts of the UK.

The UK Internal Market Act (2020) requires that products and services which are lawfully produced, or sold on the market in one part of the UK must be permitted in all other parts of the UK (including where the devolved Administrations have backed a different legislative approach). This fundamentally undermines the ability of the Parliament and Executive of Scotland to pursue different public policy approaches to specific policy areas (most notably public policy areas including environmental regulation, health policy and food standards). For instance, if Westminster was to deregulate a 'product' (or service), Scotland may be forced to accept the 'product' or 'service' within Scotland based on the Internal Market requirements set out in the Act, and will have to comply with Westminster's decisions regardless of Scotland's policy preferences, or previous legislation in areas of devolved competence.

Formal government correspondence and debate records published at the Scottish Parliament reflect deep opposition to this development. In a session in 2020, the then-First

Minister, Nicola Sturgeon, described this legislation as: “the most serious, the biggest threat to the powers of the Scottish Parliament since devolution began” (Scottish Parliament Official Report, 2020). The Internal Market Act has provided a legal way for Westminster to undermine or reverse devolved modalities of policy making or transfer power, centralising post-Brexit power at the centre.

#### **2.5.4 Fiscal Constraints and the Politics of Asymmetric Risk**

Another structural limitation is the limited financial autonomy of the Scottish Executive. While the 2012 and 2016 Scotland Acts provided for some limited tax-varying powers, and limited control over aspects of welfare policy, they did not extend full fiscal autonomy. The Scottish Government draws the majority of its budget from the block, the Barnett formula assigns this block grant based on proportional increases to the English allocation. In many respects, the Barnett formula has been historically obsolete, and does not demonstrate responsiveness to regional needs or changing demographics.

Furthermore, the Scottish Executive is constrained in borrowing by strict limitations put in place by the UK Treasury, hampering it from long-term expenditure or responding to emergencies. For example, during the COVID-19 pandemic, Scotland's ability to initiate and plan appropriate intervention from an economic perspective was heavily dependent on what London decided to do so. As Allan McConnell describes, "while responsibility has been devolved, the levers of macroeconomic power remain at the centre" (Scottish Local Government, 2004, p. 149). These restrictions mean the Scotland Executive may be held politically accountable for outcomes over which it has limited economic control, creating disconnection between responsibility and authority that could undermine political stability.

#### **2.5.5 Intergovernmental Mechanisms and the Strain of Uncodified Power Sharing**

The Scottish Executive also faces severe constraints owing to weak and typically ad hoc mechanisms for intergovernmental coordination. The Joint Ministerial Committee (JMC),

designed to facilitate contact between the UK and devolved governments, has been less than helpful in this regard. It only meets periodically, cannot make binding decisions, and there is an asymmetry in power when it meets. This has led scholars and practitioners to suggest greater formalisation and transparency, perhaps supported by some form of a legal compact or constitutional manoeuvre.

Jenny Wormald's historical reflection on Scotland's constitutional complexity "caught between integration and distinctiveness" (Scotland: A History, 2005, p. 332) represents an apt current commentary on the malaise in intergovernmentalism. In the absence of a codified UK constitution, power-sharing with Scotland is ever subject to political will and mutual recognition, particularly in moments of mutual recognition that are often put to the test. In post-Brexit politics, the number of such moments has increased, and devolution has begun to be perceived in Scotland as being hollowed out rather than nurtured.

## **2.6 Decrees and Administrative Practices**

The section begins with Executive Function Beyond Legislation, followed by The National Performance Framework and Strategic Governance. It continues with Ministerial Directions and Policy Implementation, Circulars and Non-Statutory Guidance, and Cabinet Deliberations and Internal Governance. It then covers Crisis Management and Emergency Decrees, and Programmes for Government and Long-Term Planning, concluding with Administrative Practice as a Marker of Institutional Maturity.

### **2.6.1 Executive Function Beyond Legislation**

The formation of the Scottish Executive has not only been based on statutory powers. Simple administrative devices, such as orders, statements of policy, circulars, and directives from ministers, have exerted considerable influence on the modes of governance since the days of establishment. While they may have been provided informally (and perhaps non-bindingly under the law), they have undoubtedly held considerable political power and

practical authority. This underscores that the functioning of the Scottish Government on a daily basis depends on determining internal procedure and the interpretation of political executive authority at least as much as it does on culture or law.

Cairney (2016) analyses how evidence-based governance is practiced in Scotland: "Ministerial decisions in Scotland often draw from bespoke analytical frameworks" (p. 101). This reflects a localized and methodical approach to policymaking.

### **2.6.2 The National Performance Framework and Strategic Governance**

Adaptation of the National Performance Framework (NPF) in 2007 is likely the most paradigm-altering bureaucratic practice. Introduced to ensure that public policy was formulated about our national long-term priorities, the NPF was a fundamentally comprehensive framework about what 'success' for national policy actually looked like. The NPF is to measure government 'success' - is not only in economic terms, but also dimensions outside of the economic - sustainability, health, education, and equality. The NPF has been regularly updated and incorporated since then into the Programme for Government. The NPF guides cross-departmental actions and justifies performance-based allocation of taxpayers money; although it is not legally binding as a framework for decision making, it serves in practice as a common, accessible, reference point for civil servants that report to and ministers who serve the public.

### **2.6.3 Ministerial Directions and Policy Implementation**

Scottish Ministers often issue ministerial directions to provide civil servants with instructions on how to implement significant policies or spending decisions. Many of these directions are published on gov. Scot and referenced in the reports produced by the Scottish Parliament's Public Audit Committee, and they unravel the operational logic behind where budgetary allocations or public spending goes, how procurement activity takes place, and how a service is delivered. In the case of health funding and public infrastructure, these types of

directives are, in essence, executive orders, even if they operate within the context of primary legislation.

Greer (2009) highlights implementation as a key strength: "Policy implementation became a key function of devolved executives, particularly in health" (p. 60). Devolved institutions increasingly assert their identity through operational performance.

#### **2.6.4 Circulars and Non-Statutory Guidance**

In areas such as education and housing, government circulars provide guidance and instruction to local authorities and service providers. While they do not have the same binding authority as statutory regulation, they nevertheless contain authoritative expectations. Scottish Government circulars consideration of the aims of the Curriculum for Excellence do not just include academic outcomes but also expectation about pedagogical and assessment approaches and school improvement. Housing instruction or guidance will often provide a particular interpretation of legislation such as the Housing (Scotland) Act 2010 which will shape how the council and housing associations undertake their functions.

#### **2.6.5 Cabinet Deliberations and Internal Governance**

The Scottish Government exercises most of its executive authority in practical terms through meetings of the Cabinet. Individual Cabinet decisions are usually protected for up to 15 years under the Public Records (Scotland) Act 2011, although summary notes and post-meeting communiqués can provide glimpses into decision-making processes. These records demonstrate how ministers can coordinate complex whole-of-government policies - such as climate change adaptation or the transport strategy - through consensus-building and negotiation amongst departments. They also demonstrate a political culture of deliberative governance which advocates a commitment to evidence-based policy planning and supports aligning business across the government.

### **2.6.6 Crisis Management and Emergency Decrees**

The COVID-19 pandemic provided a clear demonstration of how the Scottish Government could perform its governing function by administrative means. With the emergency powers given to them through the Coronavirus (Scotland) Acts of 2020, ministers issued regulations on lockdowns, school operations, and public health advice. However, all of the actual governing occurred through non-legislative means - letters sent to health boards, rapid response protocols (like the "The Highland Pathway"), and executive instructions regarding procurement or data sharing. The COVID-19 pandemic illustrated the efficacy and potential of administrative forms of transmission, at a moment when legislative process was too slow to be useful or responsive to urgent needs.

### **2.6.7 Programmes for Government and Long-Term Planning**

Every year, the Programme for Government outlines the ministerial priorities and legislative intentions for the parliamentary session. These programmes are presented to Parliament, but they are essentially executive documents; they represent the First Minister's vision for the policy agenda, in the same way that the executive agenda, a work plan or a government manifesto would. These most recent programmes of government have dealt with issues as wide-ranging as net-zero transition, gender equality and recovering from the pandemic. The Programme for Government functions similarly to documents like the Climate Change Plan; it is indicative of the plans and priorities of the executive, and similar to other forward-looking documents, its role shapes the context, direction and limits of the executive power— even when that comes before or may never come to be new legislation.

### **2.6.8 Administrative Practice as a Marker of Institutional Maturity**

All these practices performance frameworks, ministerial directions, guidance policies and plans shows the increase in operational maturity of the Scottish Executive. They provide greater flexibility in action, allow for a rapid response to social and economic developments,

and allow for mechanisms to be established for intergovernmental coordination. Crucially, they also demonstrate the tensions between the ideal of devolved autonomy and its fiscal and legal constraints. Although there are many similar initiatives on complex reforms of welfare, government is moving towards an increasingly self-directed government, while retaining its common law tether to the UK constitutional framework, both in relation to complex welfare reform efforts or new sustainability targets.

## **2.7 Archival Evidence — A Case-Based Approach**

This final section includes Archives as Windows into Executive Function and concludes with The Archival Record.

### **2.7.1 Archives as Windows into Executive Function**

To meaningfully evaluate the operational transformation of the Scottish Executive, one should look past the design of laws and investigate the actual record of governance. Archival materials, including cabinet papers, interdepartmental correspondence, reports of implementation, and ministerial correspondence, presents a concrete and textured representation of how executive power is exercised. These materials provide insights into how legal authority is translated into political action, and how the Scottish Executives carries out its devolved responsibilities in the framework of the UK.

Using archival materials available in the public domain, government archives (e.g. National Records of Scotland, gov.scot), and useful secondary sources, this section analysed three different examples of executive governance: managing the COVID-19 response, budgetary planning and austerity, and hosting COP26 on climate change. Each example exposes different aspects of executive governance from crisis response to longer-term strategic planning.

Case 1: Executive Command During the COVID-19 Pandemic

A particularly notable case of how the Scottish Executive has acted on a self-governing basis occurred during the COVID-19 pandemic. While the Scottish Parliament enacted initial emergency legislation (Coronavirus Acts 2020) much of the ultimately enacted governance was made through ministerial decisions, correspondence, and real-time advisement.

Cabinet minutes and papers relating to the COVID-19 response published in 2020 and 2021 exist within the Scottish Government's pandemic archive which demonstrate its self-governing degree of autonomy in important policy focus areas such as health policy, education, and public messaging. First Minister Nicola Sturgeon's daily media appearances represented a significant mark of differentiated leadership relative to Westminster; it was also the manner in which the Scottish Government produced over 80 types of formal guidance, during the first lockdown stage, and many of those were brought into effect without any further legislative backing, in respect of the devolved administration powers granted to Ministers.

This is an interesting example not only of the nature of devolved powers to the Scottish Government, but it also provides clarity about how the Executive can act with authority and certainty within extraordinary circumstances of heightened uncertainty. It demonstrates how the authority of currently elected Ministers, combined with government administrative capacity and policy units, can oversee national responses to circumstances affecting public health, policing, and education, simultaneously while regulations specific to the country work to apply in a partnership with the broader UK.

#### Case 2: Fiscal Governance under Austerity (2010–2015)

The second case examines how Scotland's approach to the austerity plans initiated by the UK Government, when the Conservatives were in coalition with the Liberal Democrats, is evidenced in the records, archival budget documents and ministerial correspondence.

Although the Scottish Government had very limited taxation powers prior to the Scotland Act 2012, examples of fiscal policy delivery under severe constraints can be gleaned from an examination of archival material. Scottish Government Budget Statements and internal memoranda, some of which were included in the reports of the Finance Committee of the Scottish Parliament (2010–2015), indicate that the Scottish Executive was able to proceed with strategies based on the prioritisation of preventative spending and capital investment infrastructure - mostly related to housing, health and early years education. For example, the former Finance Secretary John Swinney reinforced this emphasis in several examples, emphasising the extra-ordinary fiscal powers and responsibilities provoked during briefings he gave to Cabinet, and both as a response to austerity and as a preventative measure in the longer term, prioritising capital investment as a political and economic alternative to austerity required by Westminster. While the Executive was not permitted to borrow in its own right at that time, the archival material provides examples of the degree to which strategic redeployment and soft power were leveraged to maintain a unique policy identity. Most importantly, the records reveal the limits of administrative devolution when central funding is constrained - it highlights the Executive's dependence on the block grant formula of the UK Government, and by extension, the Treasury's fiscal rules, and shows that even when the political demand for additional financial autonomy in Scotland was growing, the bureaucratic level circumscribed with funding representation from the One UK Treasury was evident.

### Case 3: Strategic Leadership and Climate Diplomacy COP26

The hosting of COP26 in Glasgow in November 2021 was a significant moment in Scotland's international profile and strategic influence. Despite foreign affairs remaining a reserved matter in Schedule 5 to the Scotland Act 1998, internal government papers and published briefing notes indicate how the Scottish Government is able to use an event like COP26 to assert a distinct policy identity and to shape some influence in global forums.

Documents released under the Freedom of Information (FOI) Act and published on gov.scot highlight how the Scottish Government prepared well in advance of the summit, which included aligning net-zero targets, energy transition plans, and international partnerships, to the thematic agenda of the summit. Key administration bodies to include the Just Transition Commission and Net Zero Delivery Board prior to COP26, had very deliberate responsibilities in shaping and communicating policy narratives and engaging civil society actors to shape a collective narrative of change.

From records archived between 2020-2022, it is clear that the Scottish Executive was involved in organizing parallel events, engaging the climate leaders independently and irrespective of the UK Government's agenda, and imagining Scotland as a global thought leader in decarbonisation. This is an interesting example of how the Executive is able to carve out an international presence via environmental diplomacy, in spite of the wider restrictions on foreign policy.

### **2.7.2 the Archival Record**

Taken together, these findings indicate that the Scottish Executive's ability to act is defined as much by practice as by legislation. Archival records show not only how ministers and departments work with legal and institutional constraints but how they often found ways to establish "administrative capacity" and utilize "political capital" to advance their own distinctive governing agendas on issues of public health, climate change, and budgetary planning. In each of these areas, the Executive displays a level of functional autonomy that frequently eclipses any legal authority.

The archival evidence also highlights an important dualism: the Executive clearly acts within legal contours, but it also exercises considerable discretion in how those contours are interpreted and "fantasy" asserted. Materials like these provide an important critical viewpoint

for interpreting not just what law allows, but how executive power is acted out, negotiated, and sometimes pushed in the name of public policy.

## **Conclusion**

The legal development of the Scottish Executive has unfolded through a gradual layering of statutes, administrative practices, and institutional reforms that collectively shaped its authority and responsibilities. It illustrated the legal and institutional progression that underpinned the formation of the Scottish Executive. The latter explored the limitations of early administrative devolution, showing how incremental legal shifts gradually led to greater autonomy. This chapter emphasized the significance of legal texts, parliamentary debates, and government decrees in shaping the structure and scope of executive governance in Scotland. It also highlighted how the Scotland Act 1998 marked a turning point by legally establishing the Scottish Executive, while later acts refined and extended its powers. Finally, the chapter showed that legal continuity and reform were central to transforming a historically centralized governance model into a devolved executive system with substantive authority.

## **General conclusion**

This dissertation has examined the historical, political, and legal dimensions that contributed to the formation of the Scottish Executive, with a particular focus on the legacy and implications of the Scotland Act 1978. It sought to answer the contribution of the Scotland act to the creation and evolution of the Scottish Executive, it also delved into whether the act enlarged the Scottish self-government and to what extent, as well as the possibility of full independence.

The Act played an important role as an early legal and political step that strongly influenced the later creation of the Scottish Executive under the Scotland Act 1998.

The study aimed to examine the legal and political context that led to the drafting of the Scotland Act 1978, It also sought to analyze the institutional design proposed in the act concerning executive authority. Moreover, It aimed to evaluate the legacy of the act in relation to the development of the Scottish Executive. The latter assessed how the Act influenced subsequent devolution debates and legislation.

A review of relevant literature was conducted to synthesize key studies related to the research topic. The first chapter was concerned on how the Scottish Executive developed over time. It followed the history of Scottish governance from before the Union of 1707 up to the 21st century, It highlighted important events like the 1707 Union, the creation of the Scottish Office, and the passing of the Scotland Act 1998. Chapter Two focused on the legal background and structure of the Scottish Executive. It took a closer look at the Scotland Act 1978 and explored how laws, government decisions, and administrative actions helped shape the growth of executive power.

The study highlighted the importance of the 1978 Act, and all the Acts that came into existence due to the latter.

## References

- Birrell, D. (2012). *The impact of devolution on social policy*. Policy Press.
- Bowie, K. (2007). *Scottish independence and the idea of the union: From historical myth to political practice*. *Scottish Affairs*, 61(1), 1–25.
- Devine, T. M. (2012). *The Scottish nation: A modern history*. Penguin UK.
- Finlay, R. J. (1994). *Modern Scotland: 1914–2000*. Profile Books.
- Fry, M. (2006). *The Union: England, Scotland and the Treaty of 1707*. Birlinn.
- Kellas, J. G. (1989). *The Scottish political system*. Cambridge University Press.
- Lynch, P. (2001). *Scottish government and politics: An introduction*. Edinburgh University Press.
- McConnell, A. (2004). *Scottish local government*. Edinburgh University Press.
- Mitchell, J. (1990). *Strategies for self-government: The campaigns for a Scottish Parliament*. Polygon.
- Scottish Government. (2007). *The National Performance Framework*. Retrieved from <https://www.gov.scot>

- Scottish Government. (2008). *Scottish budget documents and policy briefings*. Retrieved from <https://www.gov.scot>
- Scottish Government. (2020). *COVID-19 daily briefings and public health updates*. Retrieved from <https://www.gov.scot>
- Scottish Government. (2022). *Public service reform progress report*. Retrieved from <https://www.gov.scot>
- Scottish Government. (2023). *Strategic priorities and legislative programme overview*. Retrieved from <https://www.gov.scot>
- Whatley, C. A. (2006). *The Scots and the Union*. Edinburgh University Press.
- Winetrobe, B. K. (1999). *Devolution: A constitutional and legal analysis*. Constitution Unit.
- Wormald, J. (2005). *Scotland: A history*. Oxford University Press.

## ملخص

تستكشف هذه الدراسة تأثير قانون اسكتلندا لعام 1978 على إنشاء سلطة تنفيذية محلية في اسكتلندا في عام 1998. اشترط القانون أن يساند أربعين في المائة من الناخبين الاسكتلنديين هذا التشريع. وعلى الرغم من أن هذه النسبة لم تتحقق في الاستفتاء الذي جرى عام 1979، مما حال دون دخول القانون حيز التنفيذ، إلا أن المبادرين به واصلوا نضالهم السياسي حتى تحقق طموحهم في عام 1998؛ مما أدى إلى إنشاء السلطة التنفيذية الاسكتلندية. استعانت هذه الدراسة بأسلوب التحقيق الوصفي التحليلي لاستكشاف البيانات التي جُمعت من مصادر وثائقية متعددة مثل المناقشات البرلمانية والوثائق الأرشيفية. أظهرت النتائج أنه على الرغم من إخفاقه في تحقيق الهدف، إلا أن قانون 1978 أنشأ خطابًا ذا هدف مهم. مما مكن في نهاية الأمر قانون اسكتلندا لعام 1998 من الدخول حيز التنفيذ، مما أدى إلى إنشاء السلطة التنفيذية الاسكتلندية. تؤكد هذه الدراسة أن قانون اسكتلندا لعام 1978 يمكن اعتباره نقطة البداية لإنشاء السلطة التنفيذية الاسكتلندية.