

THE SHETLAND REPORT



A constitutional study prepared for the Shetland
Islands Council by The New

THE SHETLAND REPORT: A CONSTITUTIONAL STUDY

prepared for the Shetland Islands Council by the Nevis Institute
under the chairmanship of Lord Kilbrandon

NEVIS INSTITUTE EDINBURGH

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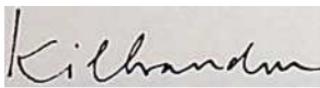
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CHAIRMAN'S PREFACE

This Report, commissioned by the Shetland Islands Council, is presented by the Nevis Institute at a critical time. The Scotland Bill is at present before Parliament. If it comes into force as an Act, the system of government in Scotland will be radically altered. If the Bill is rejected, it is possible that at some future time other radical changes will be demanded and effected. On the assumption that the Bill passes, the people of the Shetland Islands will find themselves facing the question, what is the form of government which they wish to have? The answer to that question must depend on an examination by the people of possibilities (called Models in the Report) so that they can decide for themselves, after estimating the advantages and disadvantages of this Model and of that.

The Nevis Institute has been instructed to engage the services of well-known experts in every field in which, it has been agreed with the Council, such an examination of possibilities must proceed. These experts, and the Institute, are completely unbiased. They have no case to make in any of the subjects dealt with. The background material has been kept to a minimum, since the purpose of the Report is not to describe the Islands as they are, but to forecast practicabilities and possible consequences. Above all, the Report is not intended to, and does not, give advice or opinions on the desirability of any of the Models set up. That would be to usurp the responsibilities of the people of Shetland. I hope the Report contains matter which will help them in coming to a right conclusion.

 March 1978

INTRODUCTION

It is first appropriate to describe the form of this Report.

There is a section describing Shetland As It Is. This is obviously a necessary preliminary to understanding the possible options. Then follows the examination of each constitutional Model on the basis indicated below. However, in an attempt to reduce verbiage and avoid unnecessary repetition, there is not in every Model a detailed exposition of those aspects which remain unchanged from preceding Models.

Certain papers which are necessary for an understanding of the background of these Models have been prepared for us and are published as appendices. These include a treatment of the Question of Sovereignty and an Examination of Norse and Scottish Law in Shetland by Professor Donaldson.

Other papers giving a comprehensive survey by experts of particular aspects — Fisheries, International Law, the EEC for example — are also published (either as appendices or as supporting papers) in Volume Two. This will enable those who are interested in particular topics and the probable effect of the Models on these topics to study them in convenient form.

There has been a consistent attempt to present the Report in clear and direct language. This means that very often detailed technical expositions are summarised as simply as possible.

The papers collected as appendices or published separately are frequently more technical in their language, but language which cannot be readily understood by a layman has been avoided, whenever possible.

It is hoped that the main body of the Report will be read consecutively. It should be stressed that it is a cumulative document. A certain degree of repetition has proved inescapable, if some sections were not to be stripped to a point where they appeared either perfunctory or obscure.

Finally, it is worth reiterating that expression of opinion has been avoided. Where assumptions are made, they are clearly identified as such. Statements presented as statements of fact are substantiated either in the main body of the Report or in an appropriate appendix or in a supporting paper in Volume Two.

Much of Volume One of the Report deals with administrative and economic matters. The bulk of this work was undertaken by Dr Kellas and Sir David Pitblado. Accordingly there are no separate papers from them in Volume Two.

The genesis of this Report is to be found in the uncertainty which is felt in Shetland in the light of possible changes in the constitutional

structure of the United Kingdom. This has been called in question in the last decade for the first time since the establishment of the Irish Free State in 1922. Evidence of this turbulence can be seen in the renewal of sectarian conflict in Ulster, in the growth of Nationalist parties in Scotland and Wales and the consequent demands for devolution, and in the entry of the United Kingdom to the European Community. It is clear that constitutional change, of a type which would have seemed improbable a generation ago, is already taking place and more is likely. This political turbulence has grown in years of economic difficulty, of stagnating industrial production and rapid inflation. At the same time, however, the discovery of oil reserves in the North Sea, substantially off Shetland, has offered possible strengthening to the United Kingdom's economic position. While this might in the event damp down political unrest, the prospective oil wealth is generally considered to have played a part in fuelling Scottish Nationalist feeling.

Both the impact of oil and these constitutional uncertainties have disturbed the equilibrium of the Shetland Islands, a highly traditional and well-integrated community, which had for some years been successfully coping with its own economic problems and had reverse'd a longterm decline in population.

Accordingly, in an attempt to clarify the picture and so provide a basis on which decisions affecting the Islands' future can best be taken, the Shetland Islands' Council commissioned the Nevis Institute to produce this Report. In agreement with the Council last summer, nine varying constitutional arrangements (which we describe as Models) were identified; these range over the whole spectrum from the present position to Shetland as an independent state. It is not the purpose of the Report to evaluate these Models; rather to provide the material on which such evaluation may be made. It is important to keep in mind in reading all parts of the Report that evaluation is not the task of the Nevis Institute; the right to judge where their interest lies belongs to the Shetland Islands' Council.

~~Since the publication of this Report, the Shetland Islands' Council has decided to commission a further report on the~~

how the choices, which might give the opportunity to prefer one Model over another, could come about, for some of the Models are only relevant on a hypothetical basis and against a projected time-scale.

The first constitutional Model is the Status Quo. It is assumed that there is no change in the basic constitutional structure of the United Kingdom (or, at any rate, no change which would affect Shetland). There are no new constitutional implications in this Model, as it is the one currently in being. But it is important to remember that future structural change within a UK framework is possible. Moreover for purposes of comparison it is necessary to examine how the economy may develop, since substantial economic change is going on and is likely on any Model.

Models 2 and 3 (The Rest of Scotland Devolved but not Shetland (2) and Shetland in a Devolved Scotland (3)) are the most immediately probable. Assuming that the Scotland Bill is carried and that Amendment 149 is not reversed, one or other of these will be the outcome of the Referendum. Model 2 could be the consequence of a 'No' vote and the subsequent deliberations of a Commission. Model 3 would result either from a 'Yes' vote or alternatively from the passage of the Bill without Amendment 149*.

It should be noted that the discussion of Models 2 and 3 refers specifically to the Scotland Bill as it stands after third reading February 1978 and not to any Bill that might be substituted for it at some point in the future. This is important because much of the argument turns on what is devolved to an Assembly in Edinburgh and what is reserved to Westminster.

Under Model 3 Shetland would be represented in the Scottish Assembly and subject to Assembly legislation in devolved matters. Possible implications for local government and rate support grant in particular are examined; but these would depend on political decisions which are difficult to predict.

Models 2, 5 (Shetland Devolved Separately from, but on the same basis as, Scotland) and 8 (Shetland in the UK but with Special Status) were defined for this study before Amendment 149 was put down. The Commission proposed in that Amendment would have the task of examining a whole variety of arrangements, probably extending from Model 3 with certain safeguards to some form of special status as in Model 8. The analyses which have been produced relate to these Models

* This is now Clause 80 (3) of the Scotland Bill but for the sake of convenience and easy recognition we have decided to refer to it consistently as Amendment 149. It is also known as the Grimond Amendment.

as originally defined, the main features of which are for Model 2 a continuance of direct relations with the UK in matters falling within the competence of the Scottish Assembly, and for Model 5 the application of the Scotland Bill separately to Shetland. Models 2 and 5 do not involve fiscal autonomy for Shetland or any control over oil revenues or oil development beyond that enjoyed at present. They would depend, as would developments under Model 3, not only on Shetland desires but on attitudes in Scotland, relations with Scottish Ministers in the Assembly, and the views of the UK government and Parliament. Model 8 examines the establishment of a special relationship of Shetland with the UK. Although this Model was defined as Shetland in the UK with Special Status, it has appeared right to indicate an acknowledgement of the possibility that Shetland might in fact obtain such special status rather from an independent Scotland. Special status might give Shetland varying degrees of local autonomy up to a position comparable to that of the Isle of Man or the Faroes.

If Amendment 149 is not reversed all these possibilities will need to be considered in Shetland over the next months in preparation for the Referendum and the possible setting up of a Commission. The Commission would need to take into account not only attitudes in Shetland but in Scotland and the rest of the UK, and decisions taken in due course by the UK government and Parliament would take into account the attitude of Scottish Ministers and the Assembly and might well need their cooperation in practical arrangements. Thus a period of discussion and negotiation would be involved.

The other Models and the different route to Model 8 are in a substantially longer time-scale and would come up for definite consideration only in the light of future developments. To emphasise the time-scale within which such political choices might arise, it is worth giving two examples. British entry to the EEC was the subject of negotiations during the talks that eventually led to the signing of the Treaty of Rome in 1957. On that occasion the UK eventually declined to participate. Mr Macmillan's government attempted to negotiate entry five years later; General de Gaulle imposed a veto. Throughout the 1960s intermittent approaches were made, but it was not until 1972 that the Conservative Government managed to agree on terms. Britain entered the Community in 1973, sixteen years after the first discussions. Even then the Labour Government of 1974 re-negotiated terms and it was not until the referendum of May 1975 that British membership could be considered certain.

Devolution for Scotland became an issue in the late 1960s. The Kilbrandon Commission on the Constitution was set up in 1969 (originally

under the Chairmanship of Lord Crowther). Its Report was issued in 1973. The White Paper *Our Changing Democracy* was published in November 1975. The Scotland and Wales Bill came before Parliament and was abandoned in 1977. The present Scotland Bill was substituted. It is proposed that there shall be a Referendum probably in the Autumn of this year. It should be clear therefore that it is unlikely that further constitutional changes of any magnitude can be made quickly. They are almost invariably the outcome of prolonged public discussion and detailed negotiation. It is in this light that we consider the circumstances in which the adoption of the later constitutional Models might come about.

Model 4 (Shetland as part of an Independent Scotland) assumes that Scotland has negotiated or somehow obtained Independence and that Shetland is included as an integral part of the new Scottish state. It is logical to suppose that it would follow from Model 3 (Shetland in a Devolved Scotland), though it could follow by direct change from Model 1 (The Status Quo).

This Model is inevitably speculative. Much could happen in the intervening years and the way in which such independence would be reached could vary widely. Nevertheless it is possible to consider the courses of action open to an independent Scotland in important areas — fisheries policy, oil revenues, relations with the EEC and security — and the consequences of such courses on Shetland.

Undoubtedly independence subsequent to devolution is the fear of anti-devolutionists in both Scotland and England, as it is the hope and declared intention of the SNP; and it is this possible progression which has aroused most uncertainty in Shetland. However, although the SNP have declared that they would regard a majority of Scottish MPs as a mandate to negotiate independence (and one must assume that this also applies to a majority in the Assembly), two facts are clear enough.

First, the Assembly will be given a try and any move from Devolution to Independence would require a considerable shift in Scottish public opinion (it is generally agreed that there is no immediate majority for independence). Second, any such transition would involve negotiations on the subject of oil revenues. So great is the importance of oil to the British economy as a whole that it is inconceivable that any UK (or English) government would just relinquish oil revenues. Any negotiated independence for Scotland (or for Shetland in later Models) would therefore have to provide for compensation for the London government. This could take the form of allocating a percentage of oil revenues over a given period of years to the UK (or English) government as compensation for investment and lost revenues. There is no reason to suppose that the percentage would be small or the period short. If a

Scottish (or Shetland) government proposed to take over the British National Oil Corporation (BNOC) the compensation payable could be very high indeed.

Granted that any Assembly is unlikely to be in being before 1979 at the earliest; that it will be given a fair trial; and that any subsequent change will require not only negotiation but the passage of another bill in Westminster, it must be probable that Model 4 (and the subsequent Models with the exception of Model 8) could not come into being until the mid-1980s. It is therefore important to note that the peak of Shetland's oil flow (from known reserves) is expected to be reached about 1983-5. However, the duration of the Shetland Islands' Council's agreement with the oil companies and the clauses providing for the renewal of that agreement suggest that this may be a considerable underestimate.

Scottish independence (with or without Shetland) is no more than hypothetical. The commonest, because easiest, political error is to imagine that existing trends will continue. The devolved system may function to general satisfaction. The UK economy, boosted by oil revenues and with an easier balance of payments position, may recover sufficiently to appear more attractive to Scots.

As already said, Model 8 (Shetland with Special Status) could emerge in some form from the consequences of Amendment 149, a 'No' vote in the Referendum and the recommendation of the Commission. But if arrangements on the lines of Model 2 or 5 were introduced but proved unsatisfactory Shetland might seek a new special status; it might also do this after Model 3 if Scotland moved towards independence or indeed in association with a newly independent Scotland. In any of these cases negotiations involving Shetland, Westminster and probably Edinburgh would be necessary. Clearly Shetland's motive for wishing to move from some situation closely related to the UK or Scotland, i.e. one of the earlier Models, to Model 8 would be the wish to exercise control over future destiny and in particular to be able to manage important resources like fisheries. The political difficulties in advancing to this position should not be minimised. Those island dependencies whose special status has been recognised within the EEC have historically possessed such status in relation to the UK. Shetland has been an integral part of the kingdom, first of Scotland and then of Great Britain, since at least the first half of the seventeenth century.

Shetland has since stood in the same relation to Crown and Parliament as other parts of Scotland. Special status for Shetland would be creating something new; it would not be a recognition of the status quo as was the case with Man, Jersey and Guernsey. This does not mean it is impossible; merely that there is no reason to suppose it would be automatically — or even willingly — granted.

Models 6, 7 and 9 are also all hypothetical and remote in time.

Model 6 (Shetland as part of a Federal UK) assumes further constitutional changes under which the UK adopts a Federal structure and further assumes that Shetland has provincial status within it. The possible nature of such a Federation is examined in the treatment of this Model. Because of the difficulties of considering, in the abstract, how this Model might work, an exemplary model has been prepared in the form of an examination of Prince Edward Island, the smallest province in the Canadian Federation.

There are obvious difficulties to the creation of a Federal UK. First there is the question of disproportion. The population of England is more than eight times that of Scotland, almost twenty times that of Wales. There is at present practically no sign of any move to dismember England; and it must be remembered that English national feeling though quiescent, is as genuine and deep-rooted as Scottish or Welsh. Any Federal system that involves the creation of a number of different units within England must be remote.

Second, this disproportion remains even when all the other possible members of a Federal State — Scotland, Wales, N. Ireland, Shetland, Orkney, the Western Isles, The Isle of Man, Jersey, Guernsey — are aggregated.

Nevertheless, difficulties are not necessarily impossibilities. The lack of attraction that a Federal system has for the English could be overcome if it was strongly desired elsewhere and if it seemed the only way to counteract separatism.

In this context, Federalism, though not an immediate option could follow logically from any of the first 5 Models: even from number 4, improbable though it may seem that Scots nationalism should revert from Independence to Federalism.

Clearly Federalism is not something which could come about through a Shetland initiative; it would depend on a Shetland willingness to seize on desires expressed elsewhere. Difficult though the Federal solution is to conceive in action, it does command a fair body of support in Scotland, in certain sections of the Conservative party, among Liberals and in the Press.

Because a Federal system offers the combination of a strong central authority with the greatest degree of local autonomy, it will always have its supporters; it would however take time before the English were converted to the idea and, without this, it must be considered a nonstarter.

Model 7 (Shetland a Condominium of England and Scotland) would also be a distant possibility, if only because it implies the establishment of an independent Scotland. It assumes that Shetland, proceeding from one of the earlier Models, probably 2, 3 or 5, but conceivably 4, has negotiated special status. This gives Shetland internal self-government subject to a veto exercised on behalf of either the Scottish or English government. The existence of this

veto, as well as the shared sovereignty, differentiates this Model from Model 8 (Shetland with Special Status).

Although it is hard to envisage circumstances in which it would simultaneously commend itself to England, Scotland and Shetland, it might conceivably be adopted as a way out of an otherwise intractable situation.

Model 8 (Shetland with Special Status) has already been discussed.

Model 9 (Shetland Independent) assumes that Shetland is established as a sovereign state. This may seem a somewhat far-fetched Model, though there are sovereign states with very small populations. It seems unlikely that a population so closely integrated with the UK and Scotland would want to go as far as this but it is worthwhile examining the possible implications. A major point to be borne in mind is that, save in unstable international conditions, this could come about only with the goodwill or acquiescence of England and Scotland and probably of the EEC. Its security implications would be a major consideration.

Each Model is introduced by a general discussion, which deals with the possible ways in which the Model may be implemented, and with the effects its implementation may have on Shetland and on Shetland's relations with Scotland and the United Kingdom (or, in some cases, England and Wales). To facilitate comparison, we have then followed a scheme which enables consideration of the different implications of the Model, whether these be political, administrative, economic or cultural. However, in the later, more speculative Models, this pattern has proved less helpful; a greater weight is therefore thrown back on the general discussion. The scheme follows this pattern:

1. Political, administrative, and public finance implications
 - 1.1 International status
 - 1.2 The Crown Executive bodies and functions
 - 1.3 Parliament or Legislative bodies and functions
 - 1.4 Courts
 - 1.5 Central administration and finance
 - 1.6 Local Government and finance
2. Economic implications
3. International implications
 - 3.1 Security and defence
 - 3.2 Relations with the EEC
 - 3.3 Relations with other states and international organisations
4. Implications for Shetland as a community
 - 4.1 Preservation of distinct identity and culture

4.2 Articulation of Shetland's 'voice' on community interests, and access

to other bodies
General impact of the Model

SHETLAND AS IT IS

Shetland is different. This is no doubt a commonplace for Shetlanders. It is not, however, something which is necessarily recognised beyond the Islands. Such recognition is, however, an essential starting-point for an examination of Shetland as it is.

It should be said that this difference is first one of perception. Shetlanders see themselves as different, as a unique contained historic community. This perception is supported by geography and history. Shetland is remote. It is about 700 miles from London, 300 from Edinburgh, 200 from Bergen in Norway, 180 from Aberdeen and 55 from Orkney. Historically, the Shetland and Orkney Islands were the last part of the kingdom of Scotland to be incorporated. The nature and extent of this incorporation, when in 1468-9 the lands and rights of the Norwegian Crown in the Islands were pledged to the Scottish Crown, has been the subject of much argument (see Appendix I). What seems clear is that the original Norse stock of the Islands had already been diluted by Scottish incomers: the earldom and Bishopric of Orkney had been regularly in Scots hands since the fourteenth century, and the Archdeaconry of Shetland was in Scots hands as early as the 1380s, so that even Shetland though screened from Scottish influence in secular affairs, was exposed to that influence through the Church; that nevertheless the Norse Law continued to operate in the Islands side by side with Scots Law until the Privy Council Act of 1611, having been reaffirmed in its validity in 1504 and 1567; that the Udal system of land-holding and succession of title survived considerably longer, being upheld in law as late as 1893; but that whatever vestigial claims the Norwegian connection has, Shetland has been effectively an integral part of first the Scottish and then the United Kingdom State since at least the early seventeenth century.

This may appear to contradict the Shetlanders' sense of difference. It certainly makes it clear that the present Shetland constitutional position is not analogous to that of the Channel Islands or the Isle of Man. In fact, however, since the sense of difference does not rest on constitutional bases, it does no more than mitigate it.

Recently there have been effective expressions of this sense of difference. There was the struggle to overturn the Wheatley Commission's recommendation that Shetland be merged in the Highland region. The outcome of this was the grant of the special status of an Island Authority for Shetland (and also for Orkney and the Western Isles).

One might also note that Shetland was one of the two areas in Britain, the other being the Western Isles, to vote against membership of the EEC in the 1975 Referendum. Shetland voted 56% 'No', 43.7% 'Yes'. (By way of contrast, Orkney voted 61.8% 'Yes' and 38% 'No'. This serves to indicate a different degree of commitment between the two groups of islands.)

The population is large enough to be a viable economic unit, small enough to allow a sense of community to have been maintained. This sense is highly prized. It is the sort of reality that is unquantifiable, but which is nevertheless extremely important.

Social and Economic Background

It is not the purpose of this Report to make a detailed survey of Shetland society and the Shetland economy. Its function is primarily to examine the effects of the different constitutional Models. However some description of the society and economy is necessary if it is to be possible to estimate these effects.

We have decided to divide this treatment into three parts.

- (a) The Traditional Economy; before the oil era.
- (b) The Changing Economy; 1971-7.
- (c) The Future Economy.

Here we shall consider those aspects of a future economy which can be predicted irrespective of the possible constitutional change.

We would suggest that any consideration of the constitutional Models should ask certain questions.

1. How far does the Model enable Shetland to preserve those aspects of the traditional Shetland way of life which Shetlanders would like to preserve? In effect this involves the protection of fishing and fishprocessing, the crofting system and the knitwear industry. Such protection will at least in part be concerned with ensuring that any change will be as harmonious as possible.
2. How far does the Model enable Shetland to continue to exercise control over oil developments and to protect the legal and contractual safeguards which the Shetland Islands Council has obtained?
3. How far does the Model enable Shetland to balance the desired control over its future against a need to maintain a degree of support from Central Government?
4. Does the Model offer Shetland a reasonable chance to prepare for the post-oil era? Could Shetland live satisfactorily under these constitutional arrangements or would it need the ballast of a prosperity created by oil; it is important to bear in mind that the population of Shetland is likely to continue to increase during the oil era and this must be taken into account in considering what will happen when the oil stops flowing.

It is clear that Shetlanders are considering their political future in an uncertain atmosphere. Nothing can prevent changes from continuing. A prime aim of Shetlanders must be to render these changes acceptable.

The Traditional Economy

As an island economy Shetland was dependent on trade with other areas, both as suppliers of its requirements and as markets for its products. The historical subsistence economy has long ago vanished and Shetland has been integrated in a much wider economic framework. This traditional Shetland economy was based on natural resources. It depended on fisheries and agriculture and the further exploitation of these resources which took the form of fish-processing and knitting. It met the cost of imports by the export of fish, animals and woollen goods. The processing and knitwear industries added considerably to the value of the raw materials. The fish-processing industry in the 1960s approximately doubled the value of fish caught.

In preparing this study we have been able to make use of Dr Iain McNicoll's pioneer regional input-output analysis of Shetland for 1971, and the following paragraphs summarise some of the relevant points emerging from his research. It is of course impossible to establish with great accuracy either a balance of trade, or an overall balance of payments position of any region or area within a unified monetary and economic system such as the United Kingdom, since so much has to be estimated or deduced from sample material. The variety of estimates which have been made of the balance of payments of Scotland as a whole bear abundant witness to this.

Iain McNicoll's findings, however, brought out the broad picture of an area still receiving large net financial inflows from the rest of the UK, despite the recent strengthening of the main export industries on which its external income was based. He showed that in 1971 industries imported 30% of their inputs and exported 23%. Comparable figures for the United Kingdom economy were 8% and 7% respectively. Three Shetland industries exported more than 50% of their Gross Outputs: Fish Processing (82%), Textiles (99%) and other manufactures (63%). The construction industry imported almost 60% of its input and, even more significantly, households imported 37.4% of theirs. Total exports from Shetland were computed at £8,911,400 and total imports at £9,936,100. There was thus a 1971 deficit of £1,014,700. This was balanced by Central Government expenditure. The importance to Shetland of direct and indirect Government expenditure there is shown by McNicoll's estimate that the Total Central Expenditure Grant amounted to £5,840,000. Direct payments to households were larger than those of any industry and taking into account indirect effects central government generated almost as much household income as exports.

It never appeared likely that the traditional industries could be sufficiently expanded to achieve a favourable regional Balance of Trade. Climate and geography make agriculture difficult. The crofting system, which has been of such importance to the social structure and so much part of the traditional way of life, would always make any capitalisation of agriculture unlikely, even if climatic and soil conditions on the one hand and the high cost of transport to the Scottish mainland on the other did not combine to render such capitalisation unattractive. Accordingly crofting income, as in other hill farming areas, has for long been heavily dependent on subsidies. The significance of the crofting system and Shetland agriculture can never be measured in exclusively economic terms. Although these considerations did not apply to the fishing and fish-processing industries, the profits to be made from them have never been sufficient to free Shetland from its position of economic dependence. Fishing and fish-processing have, together with knitwear, made the major contribution to the Shetland balance of payments and were traditionally the biggest employers of labour and contributors to household incomes. They could not make Shetland self-sufficient.

Accordingly, until recently Shetland had for over a century the declining and ageing population common to most remote and nonindustrial areas, with emigration to other parts of the country and overseas. From a peak population of 31,670 in 1861, numbers had declined to 17,245 in 1966. Soon after the population began to increase. This upturn started in the late 1960s with prosperity in the fishing and knitwear industries. It has been more powerfully affected however by the oil developments to be considered in Part 2 of this Chapter.

The Traditional Industries

I. Agriculture

As is made clear in the supporting paper on Agriculture in Volume Two it is misleading to try to evaluate the importance of crofting in purely economic terms. Indeed it may be said that as an economic activity crofting has been incapable of survival without aid from beyond Shetland. Historically crofting could only be carried on in combination with other activities; by itself it could not supply the crofter with an acceptable standard of living. However, a croft is a home as well as an occupation; for most crofters crofting is a part-time activity which contributes to their income in ways which are hidden in most statistics, so, for example, the Highlands and Islands Development Board Survey of Agriculture in Caithness, Orkney and Shetland, undertaken by W.H. Senior and W.B. Swan, (pub. 1969) noted that “a proportion of the male Shetland lambs are kept for several years as hoggets before being slaughtered, usually for consumption on the holdings”.

There are two types of agricultural land in Shetland: holdings which are owned, tenanted or leased, and common grazing land (scattalds). In 1969 there were 2,554 holdings. Probably fewer than 50% of these were being used as a completely separate agricultural unit; a crofter is often the tenant of two or more crofts and works them together. Many of these holdings are very small. 1969 figures show that 59% of the holding comprised less than twenty-five acres of land. Very few holdings (only 17% in 1969) occupy over twenty acres of crops and grass. There were only fifty-five full-time holdings in Shetland and there was no parish where full-time holdings accounted for more than 10% of all holdings. In 1969 part-time holdings accounted for 82% of the industry's standard labour requirements.

The part-time nature of Shetland agriculture is such that statistical information is frequently incomplete and unreliable. Units with a labour requirement of less than 40 man-days a year are required to make agricultural returns only once every three years and many such returns are incomplete.

Almost 95% of the land is described as rough grazing, three-fifths of this being scattald. 4% is grassland and only 1% tillage (1969 figures). Inevitably therefore the principal agricultural activity has been the rearing of cattle and sheep. Throughout the 1960s the number of beef cattle increased; there were 160% more beef cattle on the holdings in 1969 than in 1954. Nevertheless the beef herds were generally very small; some 92% of the beef herds recorded in 1969 contained fewer than ten cows each. Conversely the number of dairy cows declined in this period by more than half. Here too herds were very small; half the dairy cow population were in herds of fewer than six cows. Commercial dairy farming (for the Lerwick market) was largely confined to the Tingwall valley and the south of the mainland.

Sheep production is on a scale much above the national average, though flocks are also small. In 1969 there were some 113,000 breeding ewes in Shetland, most of them in flocks of fewer than fifty sheep. Sheep are kept both for meat and wool (in this case mostly the native Shetland sheep). About half the lambs were required for flock replacements or were slaughtered for consumption by producers. In 1969 an estimated 40,000 lambs were sold either as stores or fat; the wool clip totalled an estimated 400,000 lbs. The numerical predominance of sheep in Shetland can be accounted for by the poor quality of the land and by the suitability of sheep to a system of part-time farming.

Other agricultural activities are of much less importance. Poultry have been kept almost entirely for the production of eggs for house and local consumption. 99% of the flocks consisted of fewer than fifty laying hens. There was no large-scale egg-production in 1969. Apart from the production of potatoes and some vegetables for local consumption, cropping was entirely devoted to the production of stock feed.

The estimated gross agricultural revenue for 1969 was £754,000. The value of products consumed at home might have been another £100,000. Production grants and subsidies came to £261,000, 35% of the estimated revenue.

This extremely brief and necessarily cursory picture of traditional Shetland agriculture makes two points.

1. It has been dependent on outside support for one-third of visible income.
2. It has been a system which, though incapable of any great increase in productivity without re-organisation on a scale which would be socially disruptive and even then of marginal economic viability, nevertheless suited the structure of Shetland society. In the concluding words of the 1969 survey, "The fact that part- and spare-time croft production continues on the scale it does rests largely on the high real values placed on croft homes by individual families, on the basic security that some crofting assets and rights are felt to provide, on the additional income, and occasional change of occupation, that they provide for those mainly engaged elsewhere, on the labour of wives and young families who remain on crofts when the main breadwinner is away, on the work of older folk, and on tradition. And these, along with other employment opportunities, and along with a rational approach to making part- and spare-time work easier and as much more productive as modern science and markets permit, are not perhaps an inadequate base for rural welfare in Shetland in the future".

2. Fishing

Fishing in Shetland has traditionally been one of the islands' basic activities and remains an important part of the islands' economy, employing people both at sea and on land in the associated processing factories. Shetland's geographical position, lying as it does close to prolific fishing grounds, and the nature of the islands' coastlines, with their many natural harbours, account for this tradition and also for the attractiveness of the Shetland harbours to non-Shetland vessels. A large proportion of the fish landed in Shetland is from vessels belonging to other UK ports, while landings by foreign vessels vary between 5-15% of the annual catch.

The fishing is dependent on the resource itself and this falls into three broad groups:

1. Migratory pelagic fish. Of these herring was traditionally the most important catch.
2. Non-migratory demersal fish (e.g. haddock, cod).
3. Shellfish.

These fish stocks are a biological resource and can be considered to be conditionally renewable given careful management. While fishing is only one of the factors which influence the size of the fish stocks, overfishing is extremely destructive. Fish stocks do not respect international boundaries; therefore effective management depends on international cooperation. Unfortunately Shetland has been able to play only a tiny role in this sphere, even in relation to the Shetland fishery.

Before the arrival of oil in Shetland, fishing and the knitwear industry were the mainstays of the economy. In 1971 fishing and fish processing were responsible for about 30% of the employment and provided nearly 20% of the total household income (McNicoll: *The Shetland Economy*). The prosperity in the industry followed a period of consolidation during the late 1960s, at which time there was a change from small boats to larger vessels with some loss of employment. The fleet became concentrated at the main harbours of Symbister (Whalsay), Hamnavoe (Burra), Lerwick (Mainland), Scalloway (Mainland) and Cullivoe and Mid Yell (Yell),

An often neglected point in the fisheries discussion is the fishermen themselves. The qualities of skill and leadership have played no small part in the continuing viability of the industry and the seamanship of the Shetland fisherman is a resource of as great value as the fish stocks themselves.

3. *Knitwear*

The Shetland Knitwear Industry has been similar to many other aspects of Shetland life in that its greatest value is not easily quantified. It has never been the largest employer in the islands nor the major income earner. However the industry has spread to every corner of Shetland, has been easily integrated with other activities in Shetland and has produced a product which is as distinctive for Shetland as whisky is for Scotland. Nevertheless the Shetland sweater is not composed of 100% home-grown wool. Crofters have found it more profitable to produce a breed of sheep which guarantees a heavy carcase rather than a quality wool clip. Shetland wool is blended with other wool on the mainland and the yarn that returns may contain only 20% of Shetland wool.

The majority of the knitwear industry's workforce comprise women, most of whom work from their homes. They work on hand machines producing fully hand knitted garments and finishing off garments which have been started by machine knitting. The range of garments produced is wide, including gloves, mitts, scarves and shawls as well as pullovers and cardigans. Some enterprises also employ machine knitters and the higher wages to be earned in this sector have increased its attraction as a source of full-time employment. Knitting was traditionally the occupation of the female members of the family, however many men entered the industry during the boom in 1969, and a further source

of employment lies in the transport and distribution of materials to the home workers in the outlying areas.

The Changing Economy 1971-77

The years since 1971 have seen great changes in the Shetland economy which may be said to have altered its balance fundamentally. The agent of change has been oil, and any examination of the changing economy must centre on oil developments and oil-induced changes. It should be remembered however that the traditional Shetland economy was functioning satisfactorily in the late 1960s, even though its prosperity depended to a great extent on favourable market conditions for fishing, fish-processing and knitwear. Continued prosperity therefore depended on circumstances which Shetland could not control. Indeed there were bad years in the fishing industry in 1974 and 1975, while knitwear also had difficulties in the early seventies when demand fell off. Despite this, unemployment in 1974 was 2.2%, which may be termed within the zone of full employment, and this may be taken to indicate the existence of a more flexible economy.

There are numerous indicators of prosperity. First the population has continued to increase. The 1971 census recorded a population of 17,327 and estimates of 19,526 in December 1976 and 20,128 in September 1977 have been made from health returns. National Health registration figures for 1974 show an inward migration balance of 320; this reverses the pre-1970 trend. The geographical location of population increases show the influence of oil developments. There have been controlled increases in the areas servicing Sullom Voe. There have also been increases in the southern area around Sumburgh airport and in Lerwick itself and its periphery. Fishing communities like Whalsay and Burra have also seen increases.

Other indicators of prosperity may be briefly noted. The number of domestic consumers of electricity increased from 6,160 in December 1972 to 7,338 in December 1976. Telephone connections 1970 to 1976 increased from 3,209 to 5,224, while television licences increased from 4,574 to 5,463. General cargo imports into Lerwick Harbour (that is excluding oil-related imports) increased from 109,000 tonnes in 1974 to 148,000 in 1976. A relatively heavy housing programme gave completions of 106 in 1974, 296 in 1975 and 471 in 1976. It was reported that information from the industries showed a rapid rise in wage rates in knitwear and processing, while very large sums were earned in the fishing industry until the relatively bad years of 1974 and 1975. The age structure of the population, which showed a relatively high proportion of the aged in 1971 is now likely to contain a greater proportion of those classed as economically active in census returns, although there are some 5,000 children of school age.

Not surprisingly, this changing economy has had little direct influence on the traditional industries. It may, as indicated below, have contributed marginally to a shift from cattle to sheep in the agricultural section, and to wage-rises in the fish-processing and knitwear industries; but, since these industries are geared to exporting, the only immediate influence that might have been expected from oil developments would have been in competition for labour. It is possible that the knitwear industry has been finding it more difficult either to recapture workers lost through the decline in demand of world markets (1973-4) or to retain part-time workers, but for major effects from oil developments on the Shetland economy we must look elsewhere.

Principally these have arisen from the direct and multiplier effects on local incomes and employment which are created by Shetland's role as a service base for offshore oil and gas fields, and by the construction of the oil terminal at Sullom Voe.

The estimated effects in 1976 are based on input-output techniques. The model is derived from McNicoll's Shetland transactions table constructed for 1971. It is assumed that the intermediate structure of the Shetland economy remains similar to 1971. The description of the traditional economy has made it clear that opportunities for technological change or the development of new markets are limited. It is also assumed that oil has had no significant negative effects. Any that may exist of the type mentioned above are likely to be balanced by unassessed positive effects, such as induced employment created at one remove as a result of demand created by the oil industry.

Two main types of onshore activity in 1976 are identified. These are oil supply bases and oil-related construction work at Sullom Voe and elsewhere. Their effects on the Shetland economy may be summarised as:

1. *Direct effects.* These arise from payments to local employers and from the purchase of goods and services from indigenous industries.
2. *Indirect effects.* There is a net increase in demand caused by purchases of local intermediate products. This encourages the local supplying industries to increase their output, which in turn stimulates employment and creates more income in these industries. By a process of interaction this stimulus is then felt by the suppliers of the indigenous industries. The total increase in activity generated by this linkage process is the indirect effect.
3. *Induced effects.* These stem from the proportion of oil industry wages and salaries spent on local goods and services. These payments boost local output and income. This in turn increases local activity.

Apart from the input-output model, the evidence for the direct effects of oil comes from direct survey data, specialist reports and the general literature on

oil. The results from these different sources are collected in Table 1, which gives the estimates of changes in local industries' gross outputs in 1976. For this year, Sullom Voe Terminal was not of course in operation, so that it has no impact on output, despite the related social changes. Construction work on the terminal of course has an impact. It has been taken that 16 supply berths were operational and that 1,100 people were employed in construction.

Table 1: Changes in Local Industry's Gross Outputs resulting from Oil Activities in 1976 (in £000 1971 prices).

	Supply Bases	Oil Construction
Primary Food	11.9	42.9
Quarrying	1.6	457.1
Manufacturing	18.8	180.9
Construction	14.4	413.4
T ransport	116.1	621.0
Local Authority	14.4	93.7
Other Services	143.9	949.1
Households	416.4	943.1
	737.5	3701.2

It is estimated that oil activities added about £414m in 1971 prices to the Shetland economy in 1976. This figure includes payments to households*. In fact the increase in local activity created nearly £1.4m for households, excluding the wages paid to transient construction workers. This increased household income by 13% compared with 1971**.

Table 1 illustrates the point already made. Those industries which were fundamental to the Shetland pre-oil economy — fishing, fishprocessing and agriculture — are not benefiting from oil developments, at least in the terms under discussion. The service sector on the other hand is experiencing substantial increases in output. The oil-generated output of £737,000 (1971 prices) in transport was 60% of all transport output in 1971. This switch over from a resource-based economy to an economy where there has been a rapid expansion of service industries has been the most important immediate effect of the oil developments.

This is illustrated in Table 2, which shows the estimated employment effect of oil in 1976. It uses 1971 adjusted employment output coefficients and measures employment in Full-Time Employment equivalents. (This adjustment is necessary because indigenous firms may use their existing labour force more intensively in response to sudden increase in demand; for instance a taxi-driver may take twenty fares a

* The retail price index has approximately doubled between 1971 and 1976. ** Note 1976 Income does not equal 1971 income + 13% because other factors have affected the economy in the meantime, e.g. world market conditions. The comparison is made in terms of 1971 prices. day instead of fifteen. This allows employment output coefficients established in 1971 to be reduced.)

Table 2: Oil-generated employment in 1976

	FTE's
Primary Food	20
Quarrying	106
Manufacture	36
Construction	84
Transport	161
Local Government	23
Other Services	368
Oil Industry	1,273
	2,071
Total in Local Industries	798

It is estimated, therefore, that over 2,000 jobs were created in Shetland in 1976 by local oil activities. Many of these were in the temporary- resident construction force, but almost 800 were in indigenous, primarily service, firms. It should be remembered that these cannot simply be added to 1971 employment to obtain 1976 employment, nor can observed changes in any sector's employment be simply compared with predicted employment changes from Table 3, since the latter *only incorporates oil created changes*. It is interesting to note, however, that observed changes in employment in Lerwick Harbour and Sumburgh Airport alone between 1971/76 were +154 (*Shetland's Oil Era*). This suggests that the total transport jobs of +161 estimated to be generated by oil in 1976 may not be unrealistic.

To emphasise the extent of the new importance of service industries to the Shetland economy, it is worth pointing out that in 1976 there were 494 full-time fishermen and 721 engaged full-time in fishprocessing and other onshore activities related to the industry. This may be set against the figures of oil-generated jobs in the transport and other service industries.

Agriculture

In view of the structure of Shetland agriculture it is not surprising that it is hard to distinguish changing trends since 1971. The industry has remained heavily dependent on support from beyond Shetland. In 1971 this support totalled £458,200 on a total output of just over £1 million. Improvement grants from the Crofters Commission came to £876,478 between 1971 and 1976. It is of course the case that the pricing policies of the UK government and the EEC have involved support in one form or another for most agriculture, but Shetland's

dependence is considerably above the norm, while agricultural incomes are substantially below it. This is, as already indicated, inherent in the structure.

Various forces beyond Shetland have operated on agriculture in the period under discussion, and it would be a mistake necessarily to ascribe changes in production levels to new employment opportunities offered in Shetland by oil development. The Shetland system is not equipped, for a variety of reasons, to respond quickly to new market opportunities, has little capacity for capitalisation and is fixed in traditional postures; it may therefore continue to persist in lines of production when a more responsive and return-conscious industry would adapt them to new conditions. There has been a drop in the total of cattle from 8,459 in 1974 to 6,504 in 1977 and of poultry from 7,495 in 1974 (10,000 in 1969) to 6,749 in 1977. There has been a marginal increase in the number of sheep since 1974, but the sheep population is subject to fluctuations which depend on the incidence of lambing and the increase is statistically insignificant.

It is extremely difficult to decide whether these changes represent a response to profitability or are the result of non-agricultural stimuli. A continuing drop in the oats crop which is about 70% of its 1974 figure would seem to suggest a preference for directing agricultural activity to those aspects of farming which make fewer demands on time.

Fisheries

The years since 1971 have not been easy for the Shetland fishing industry. The industry was already in a period of consolidation before having to cope with the massive upheavals of oil developments, the radical changes in international fishing patterns and a severe slump in fish prices in 1973-4.

However in 1977 the total value of fish landed in Shetland by UK boats was over £5,500,000; even allowing for the drop in the value of money caused by inflation, this represented a considerable rise in real prices over previous years.

The catch was divided as follows:

1977	1976			
	Tonnes	£	Tonnes	£
White fish	13,297.96	3,771,458	13,456.77	2,587,548
Herring	2,417.22	375,032	4,009.79	461,243
Industrial landings				
Norway Pout	4,104.63	152,899	11,282.88	349,424
Sand Eels	21,760.20	814,722	18,548.24	515,398

The current position of tire fishing industry remains healthy. Although the long term decline in numbers of fishermen has not been halted - there were 494 full-time fishermen in 1976 (671 in 1972) — there is some evidence that the number is stabilising. The decline is in fact partly the result of the trend towards larger boats. Employment in processing and related onshore activities has been

stable since 1971. The 1976 figure was 1,058 jobs (721 full-time, 337 part-time).

The pressures which have faced the industry are the result of extreme changes both inside and outside Shetland. The changes in international fishing patterns must be considered a prime example of the latter. There are two threads to this problem:

1. the UK entry to the Common Market
2. the declaration by coastal states of 200-mile Exclusive Economic Zones.

Since there is still some confusion as to how the recent changes have affected the situation this merits some discussion. Let us take fishing limits first. Prior to membership of the EEC the UK operated a twelve mile limit, within which only domestic boats could fish, with the exception of foreign vessels for which special arrangements had been made because of historic fishing practices, etc. Within the twelve mile limit there was also a three mile limit for boats over a certain size, and a few other restrictions. Such restrictions on foreign vessels from other EEC countries are contrary to the EEC Treaty (Treaty of Rome) and therefore when the UK joined the EEC a transitional period (up to the end of 1982) was allowed for the phasing out of any 'illegal' barriers. Until the 31st December 1982 a twelve mile limit was to continue to apply around Shetland and other parts of the UK, again with some agreed exceptions (both for EEC and non-EEC vessels), the main ones in Shetland waters being the Soviet bloc countries, Denmark, France and West Germany.

In the last year or two there has been a strong international move towards exclusive economic zones. Although the recent UN Conference on the Law of the Sea (UNCLOS) meetings have not reached agreement on this issue, tacit agreement has been reached on the imposition by coastal states of 200 mile limits for fishing. In reality, such agreement was precipitated by the imposition of these limits by Iceland, Canada and various other countries. Consequently in 1976 the EEC agreed to impose similar limits and the appropriate legislation for the UK applies from the 1st January 1977. Thus there now exists a 200 mile limit around the UK within which EEC boats may fish up to the 12-mile limit.

These moves have increased pressure on Shetland fish stocks since fleets which previously fished off Iceland, Faroe and Norway have moved into the Shetland grounds. These fleets include boats of much larger capacity than the Shetland fleet.

While the EEC Commission appear to have offered a continuation of the 12-mile limit beyond 1982, there is some doubt of their right to do so. However even a 12-mile limit would be unsatisfactory for Shetland as the bulk of the Shetland catch comes from the zone between 12-50 miles. The Shetland fishing

interests would be best suited by a regional approach to fisheries management which would give Shetland fishermen preferential treatment within a 50-mile zone. The Shetland Islands Council have estimated¹ that less than 10% of the catch from Shetland Waters is taken by the Shetland fleet so this could even allow some strengthening of the fleet. Since Shetland relies heavily on the fishing industry it would have a strong case for preferential treatment if such measures were introduced. But it must be remembered that the general interest of the UK and EEC remains in middle and distant water fleets, and the loss of distant water grounds due to the declaration of 200-mile zones has created greater pressures for the allocation of quotas within EEC 200-mile limits. A special concession for Shetland might well be at the expense of UK interests in other sectors of the EEC, such as the shipbuilding and steel industries.

There have been a number of other international measures which have been felt in Shetland. The ban on Herring Fishing has caused severe difficulties for the processing industries but more important is the ban on industrial fishing in the Norway Pout Box. The Pout Box extends to the Southern tip of Shetland and its imposition has displaced many industrial vessels North into Shetland waters. Although these are supposed to concentrate on non-edible species, the fish themselves make no such distinction and it is inevitable that many valuable species are lost in this way. In addition the large scale removal of any species must cause some disturbance to the ecology of the area.

The other major disturbances to the fishing industry in recent years have arisen from changes associated with the oil industry in Shetland. These disturbances were not, however, as great as might have been expected and this is due to a wide variety of factors. Firstly the loss of fishermen to the oil industry was small. This may be due to the fact that most fishermen share in the ownership of their boats or it may be associated with the loyalty of tight-knit fishing communities. Despite modernisation, fishing remains an arduous and often dangerous occupation; however it is not unrewarding. It is quite possible for a deckhand to gross £7,000-£8,000 per annum which is comparable with the pay for unskilled labour in oil related activities.

The picture for the fish-processing sector is slightly different. There has been loss of employees to the oil industry. However there was a slump in fish processing in 1973-4 which was partly responsible for the transfer of labour. Male workers have been attracted by the higher wages in the oil industry but their vacancies have been filled by female employees who accounted for 30% of the full-time and 50% of the part-time workforce in onshore activities in

1976. The employment in the fish-processing sector has not dropped significantly and in addition to the factors already mentioned might be added the way in which fishprocessing can be integrated with other activities in Shetland, such as crofting and knitwear, and the active role played by the employers in maintaining capacity by providing temporary accommodation for transient labour and promoting pension schemes for long serving labour. The oil industry has caused wages to rise and it is now possible for a good filleter to earn more than £100 a week.

Since most of the fishing harbours are remote from oil activity there has been little problem with congestion in the harbours although this was temporarily a difficulty in Lerwick before capacity was increased. Of more concern has been the damage to trawl gear from oil-related debris. The fear of pollution is great; this will continue throughout the production phase. Fishing grounds will be further disturbed by drilling and pipe-laying activities.

Finally it is necessary to show the way in which Shetland has received assistance from UK authorities. Financial assistance for the purchase and improvement of boats is available in grant and loan form by way of the Highland and Islands Development Board (HIDB), the White Fish Authority (WFA) and Development Board (HIB). Shetland, and islands like Whalsay and Burra in particular, have gained a good reputation for making use of this assistance. However, the Shetland fleet must continue to have access to these, or similar, sources if it is to remain competitive. The price of remaining modern and flexible is high: a new boat may cost £1.5m.

Shetland fishermen have also received support recently from the EEC through the European Agricultural Guidance and Guarantee Fund (FEOGA). Grants so far have totalled £145,917. The normal arrangement for financing new vessels is that the owners put up a deposit of 25%, the UK grant is a further 25% and the balance of 50% is lent by the WFA over the years. The FEOGA grant seems to be used to repay the WFA loan.

Shetland may also benefit from EEC proposals designed to help areas adversely affected by EEC policies. This is only of indirect relevance to the Shetland fishing industry but it may have significant implications for other sectors of the local economy. The present proposal is for a special £65m relief fund to help fishermen and others to find new employment or, more importantly for Shetland, to adapt themselves to different types of fishing.

The latter option is one where Shetland has considerable opportunities. These concern species which are plentiful in Shetland waters but have not hitherto been popular in the UK market for human consumption. The main opportunities concern mackerel, sprats, blue whiting, sand eels, basking shark and porbeagle shark. It has not been generally recognised that some of these species were caught in large quantities in Shetland waters by countries such as Norway and Russia who have now been excluded by the 200-mile limit. There may also be opportunities for exploiting shell fisheries and fish-farming.

In summary, the fishing industry remains the backbone of the traditional Shetland economy. The fishing communities would be considered wealthy by any standards. Indeed it is reported that when one of the outlying islands was finally connected to the electricity grid the shops of Lerwick were emptied of electrical goods overnight. There is, however, a great dependence in these communities on the continuing stocks of fish in the Shetland waters. Any collapse of these stocks would cause hardship and decay of a much wider community than the fishing community alone, for there is a wide range of onshore activities dependent upon the prosperity of the primary industry.

The recent pressures on the Shetland grounds have been the result of changes in the international fishing scene. Fisheries policy will continue to be formulated at an international level and it is extremely difficult for Shetland to influence this formulation, particularly as the Shetland interest conflicts with that of the major EEC fleets. The Shetland waters are an important EEC resource and preferential treatment for Shetland will only be won at the expense of concessions by the UK to EEC partners in other areas.

Kittling
The fortunes of the woollen industry have fluctuated

the last decade. The upturn in the industry in the late sixties contributed significantly to the healthy pre-oil economy in Shetland. Statistical information for the industry is, at best, approximate and the figures in the 1970 H1DB report may be a low estimate. These showed employment figures for 1969 of 350 full-time workers, 2,000 home knitters and another 1,000 women working part-time. Total value of knitwear and tweed sales was estimated at ,£1.5m. The industry remained strong until 1973/4 when a severe recession in the World Knitwear Trade caused a sharp reduction in demand.

The effect of the recession on the knitwear workers was ameliorated by the new prosperity associated with the oil industry. Workers who were laid off found well paid jobs elsewhere and many were attracted from existing employment by the higher wages in the oil industry. When markets began to improve in 1976, the damage had already been done. Many firms found they had insufficient capacity to meet demands and intense competition developed for labour. Despite substantial wage rises these still did not match those in oil-related employment and it proved difficult to recruit former or new workers. Furthermore, rising household incomes lessened the need for part-time knitting jobs reducing another important source of labour.

A number of other factors have contributed to the industry's poor performance in recent years. Wages in the knitwear industry have been restricted by the Government's pay policy while changes in the tax laws for self-employed persons have caused further concern. In addition there is a change in work attitudes and more women enjoy being involved in a job which takes them out of the home and allows them to meet new people.

At present there are 28 separate business ventures in the knitwear industry in Shetland comprising a few large businesses and numerous smaller operators. It is estimated that these provide employment for about 200 persons in addition to some 900 home workers. Although production may have fallen to 50% of the 1972 peak, output in 1977 is estimated at 400,000 garments with a value of about £2m. Export markets are particularly good at present with Fair Isle patterned garments being much in demand.

Public Finance and Balance of Payments 1976

As a basis for examining the possible effect of the various constitutional Models on the financial position of Shetland, Mr Draper undertook the detailed study of the Shetland economy, printed in Volume Two, and constructed the estimates for 1976/1977 given in the following tables. His paper gives full details of the way the figures are arrived at, by comparing different bases of computation since many of the figures are not directly available in a Shetland breakdown, e.g. income tax receipts.

Table 3: Central Government Budget for Shetland 1976/77 (1976 prices)

Revenue	Em	Expenditure	Em
Income Tax	4.764	Local Authority Grant	5,374
National Insurance	2.543	NHS	1,806
Corporation Tax	0.768	Transfer Payments	4.440
Indirect Tax	3,758	Employment	1.055
Capital Taxes	0.257	Agriculture	0.637
	12.090	Other Current	0.340
		Capital	0.296
		Unallocated Current	4.849
Petroleum		Unallocated Capital	0.759
Royalties and Taxes	1.689	EEC	0.110
TOTAL	13,779		19.666

Summary table includes both Current and Capital revenues and expenditures as well as unallocated expenditures not directly associated with spending in Shetland.

Table 4: Government Expenditure in Shetland 1976/77

EXPENDITURE ESTIMATES 1976/77

Current Account	Em	
Local Authority Grant	5.374	
NHS	1.806	
Government Transfers	4.440	
Employment & Overheads	1.055	
Agriculture	0.637	
Other	0.340	
		13.652
Capital Account		
Health	0.158	
Other	0.138	
		0.296
TOTAL (excluding unallocated expenditure)		13.948

Table 5: Unallocated Government Expenditure
UNALLOCATED CURRENT EXPENDITURE

	Em	
Defence	2.131	
External Relations	0.096	
Research	0.095	
Subsidies	0.742	
Debt Interest	1.273	
Overseas Contribution	0.276	
Universities and Colleges	0.236	4.849
UNALLOCATED CAPITAL EXPENDITURE		
Gross Domestic Fixed Capital Formation	0.322	
Capital Transfers	0.437	0.759
TOTAL Unallocated Expenditure		5.608
Net expenditure arising from EEC membership	0.110	
Total unallocated and EEC expenditure		5.718
Total all expenditure		19.666

The estimates show that the rest of the UK has continued to provide a substantial subsidy to Shetland, taking into account that a considerable proportion of tax receipts from citizens in Shetland, as in any other part of the UK, are needed to meet expenditures in the interest of the country as a whole, and has provided a still significant though smaller subsidy even if revenue raised is compared only with direct expenditures in Shetland. The unallocated current expenditures of Government, included in the Table at £4,849,000 (on the basis of the relation of the population of Shetland to that of the UK as a whole) includes such necessary general expenditures as defence £2,131,000, debt interest £1,273,000, external relations £96,000, overseas contributions £276,000, as well as on services in other parts of the UK of direct interest to the Shetlands such as the financing of universities and colleges £236,000;

The expenditures directly related to Shetland of £13,652,000 also exceeded the estimated current revenues raised there by some £1,700,000. In 1976/77 Rate Support Grant and other specific grants to local authorities, for purposes such as police, housing improvement and sewerage, and contributions towards electricity and transport amounted to £5,374,000. For a general discussion of the system of rate support grants, see Appendix 4.

The next most important class of expenditures were the payments to people in Shetland of pensions, social security, unemployment etc., estimated to £4,440,000. The current costs of the NHS within Shetland were £1,806,000.

Agricultural support at £637,000, an important element in crofters' income, is probably underestimated.

In the course of this work, an endeavour was made to establish a balance of payments for Shetland in 1976, by up-dating the figures in Mr McNicoll's study in the light of other evidence. But it became clear that without a major new survey, which was impracticable in the time, anything like an accurate picture would be impossible, and even with such a survey, the picture at any one time would give little guide, since it is now rapidly changing. It seems, however, clear that imports, including those related to the oil developments in Shetland, and those related to the increased demand of the larger population, have substantially increased. Much of the oil-related development is of course financed by inflows of funds provided by the Companies. But overall it would appear that Shetland was in deficit in 1976/1977.

The Future Economy

The constitutional status quo of course no more implies a static relationship between Shetland and the rest of the UK or a static economy in the future than it has in the past. There have always been changes and fluctuations. The prosperity of Shetland's exporting industries largely depends on conditions outside Shetland, as well as on UK or EEC policies where constitutional change might make differences as we indicate later. Flows of Government funds and systems of Government assistance may change. These papers are not intended as a full economic or planning survey, for which the Institute has not been asked: the Shetland Islands Council has been examining all the options through the Structure Plan and other investigations and there is lively and informed further debate. Our purpose is to suggest whether the changes in train and the options for the future might be affected by the different constitutional Models.

The Impact of Oil in 1985 (Edinburgh: Shetland Islands Council, 1985) p. 10

Model.

We have examined the further impact of oil by using the methods indicated above. We have done so by taking a 1985 projection where the following levels of oil activity are forecast based on the Shetland Islands Council's consultants' reports and work done by Mackay and Trimble.

(a) The Sullom Voe Terminal is assumed fully-operational at 60-100 million tonnes a year.

(b) The level of construction is assumed to be 20% of peak, representing the mean of two separate forecasts which estimate the 1985 level of construction at 16% and 25% of peak.

(c) Supply Bases are assumed to be operative at 90% of peak of 22 to 28 berths, again compromising between different forecasts.

Based on the above, Table 6 presents the forecast changes in indigenous Gross Outputs.

Table 6: Oil Impact in 1985 on Local Gross Outputs

	Supply Bases	Sullom Voe £000 (1971 prices)	Construction	Total
Primary Food	18.5	68.1	9.3	95.9
Quarrying	2.3	14.5	99.4	116.2
Manufacture	28.4	99.5	99.3	167.2
Construction	23.5	502.2	89.9	615.6
Transport	164.4	388.4	124.0	676.8
Local Government	21.2	1,448.0	20.4	1,489.6
Other Services	215.4	1,585.8	206.3	2,007.5
Households	650.0	2,194.8	205.0	3,049.8
TOTAL	1,123.7	6,301.3	793.6	

The estimated oil impact in 1985 is dominated by the Sullom Voe Terminal whose activity more than offsets an expected decline in construction. The aggregate impact of local services is substantially greater than it is in 1976, and is largely explained by the rates revenues generated for the Local Authority by the Terminal, and the Authority's subsequent re-spending of these receipts on other (primarily professional) services. Rate receipts accruing to the Islands Council are estimated at approximately £1.5m (1971 prices) which is almost equal to all rate receipts and grants actually received

in 1971. Income payments to households are just over £3m, i.e. over twice the 1976 impact.

The 1985 impact of oil on employment can be forecast by the same method. Bearing in mind the changes in employment coefficients as used above, the following assumptions were made:

- (i) employment coefficients in primary, quarrying, and manufacturing all 10% less than in 1976;
- (ii) all others 15% less than in 1976.

Using these revised coefficients in conjunction with the Gross Output totals from Table 6, forecast employment impact in Table 7.

Table 7: Oil-generated Employment

	Forecast for 1985 FTE
Primary Food	32
Quarrying	24
Manufacture	27
Construction	103
Transport	125
Local Government	274
Other Services	574
Oil Industry	895
TOTAL	2,054
Total in Local Industries	1,159

The total employment forecast for 1985 is remarkably similar to that estimated above for 1976. (It should be remembered that this is for oil-generated employment.) Employment in the oil industry itself is lower. The construction work, which is labour intensive, will have declined, and most oil activity will be concentrated in the terminal, which, though capital intensive, employs a smaller labour force. There will however be an increase in indigenous employment, particularly in professional services and local government. There is an estimated decline in employment in transport, since the end of the construction period will mean that there will be fewer transient workers. This also explains the initially paradoxical increase in the number employed in oil-generated construction. Most of the oil-terminal construction workers were transients not included in Table 2. The estimated 1985 figure reflects a probable rise in construction work as an indirect effect of oil. The figures for manufacturing and primary food producing set against the figures for service

employment emphasise the extent to which the oil industry has changed the balance of the Shetland economy from one based on natural resources to one with a very strong service element. It is inevitable that any consideration of the long-term implications of possible constitutional arrangements should examine the problem of how this new balance can be supported in the post-oil era. As long as the oil industry exists to pay for services, service industries will flourish and local government will be able to be a big employer and will have the capacity to finance and manage a wide range of activities; but, in the absence of further developments which are at present unforeseeable, the departure of the industry will again throw Shetland back on greater dependence on outside support.

Agriculture

It is hard to believe that any constitutional Model adopted will make much difference to Shetland agriculture. It is true that any Model which involved breaking Shetland's connection with Scotland might make it difficult for the Crofters' Commission and the Highlands and Islands Development Board to continue to function in Shetland. It is probable that their financial assistance could be supplied, without too much inconvenience, from some other source. Shetland might experience the loss of their accumulated experience and expertise as a more serious deprivation, but it is probable that this could be supplied within Shetland itself.

The prospects for agriculture in Shetland depend far more on developments in EEC and Government policy. Crofting is not an agricultural system which commends itself to the EEC which is in general committed to the phasing-out of uneconomic agricultural units. However even within the Community this conflicts with the declared regional policy. So far the EEC has largely turned a blind eye to any contradiction between these two policies. The fact that British agriculture is structurally more efficient than most French, German and Italian agriculture has made it easy to overlook the small anomaly of the Crofting Counties.

Nevertheless there are problems which will have to be considered whatever happens.

The remoteness of Shetland means that transport costs are high. This not only cuts the profit of stock- or meat-exporters, but makes it more expensive to import food-stuffs and fertilizers; in turn this can cut the profit margin on each animal. It is therefore difficult to attempt any more intensified farming. Unless the Shetland Islands Council has some success in persuading Central Government that transport between Shetland and Scotland should receive a subsidy, this deterrent to any attempt to increase production will remain.

The small size of most agricultural holdings makes it difficult to justify capital investment at commercial rates. A croft can offer inadequate security for a Bank Loan.

The inability to respond to Government or EEC incentives to switch from the production of one commodity to another, or to respond to market forces which urge in the same direction, will persist. When a farm is a single productive unit, occupying a full-time farmer and hired labour, such a response will usually be forthcoming. This is not the case in Shetland; indeed the incentive or directive may not even be recognised as such where agriculture is an ancillary occupation. Moreover, it is useless to attempt to increase sheep production by subsidies or guaranteed prices if each crofter has a fixed allocation of sheep he may graze on the scattalds.

In these circumstances it seems likely that any agricultural changes will be slow and minor. The Shetland Islands Council has proposed in its Survey Plan to look into the possibility of encouraging dairying and market gardening on Bressay; there are possibilities of horticultural development using cheap gas, but this advantage would disappear with the end of the oil era. While there is probably some scope for diversification of this kind and for stimulating more efficient and enterprising farming in some areas, there is little scope for any radical transformation. Indeed it would seem that Shetland is faced with a choice between maintaining an agricultural structure which is socially satisfactory but economically dependent on a large degree of outside assistance or attempting to create an economically more efficient structure which would certainly involve a socially unacceptable disruption of traditional patterns of landholding. Put baldly, this is not really a choice at all.

Accordingly the only real influence different constitutional arrangements would have on agriculture are:

- (a) where Shetland is detached from the EEC
- (b) where Shetland finds itself committed to supporting agriculture from its own income.

Fisheries

The fishing industry will remain of great importance to Shetland. It will continue to be the principal resource-based industry, the principal exporter, and perhaps the largest single employer of labour. It is possible however that the Council itself, which in 1977 was employing 1,056 full-time and 592 part-time workers, will have supplanted the fishing industry in this last role. Nevertheless it is clear that the fishing industry will continue to make the most important contribution to Shetland's regional balance.

It is also vital if Shetlanders wish to safeguard as much of their traditional society as possible. There can be no doubt that any rundown of the fishing industry would have social effects. Put bluntly, without a prosperous fishing industry the whole character of Shetland society would change.

Thirdly, the fishing industry will be the main source of Shetland wealth after the oil has stopped. There seems no reason to believe that it will ever be possible to create manufacturing industries on a comparable scale which would be able to compete beyond Shetland.

The Shetland Islands Council has shown itself well aware of this. Both in the structure plans and in the representations made to central government it has spelled out the importance of fishing to Shetland.

Basically it seems that the requirements of the fishing industry demand that any desirable constitutional arrangements should offer Shetland three things:

1. Conservation of the resource itself.
2. Favourable treatment, which may in effect be defined as privileged access to the fishing-grounds for Shetland fishermen.
3. Continued access to financial aid in the form of loans and grants on such a scale as will allow Shetland to maintain a modern and efficient fishing fleet. Principally, this means permitting the regular replacement of boats.

Since it is likely that many of the important decisions will be taken outside Shetland, suitable constitutional arrangements should also ensure that Shetland fishing interests have reasonable access to the decisionmakers.

It is not our purpose to spell out the different means by which these aims may be achieved, but rather to indicate how far each of the constitutional Models under review might aid or hinder their achievement.

Knitwear

The Shetland knitwear industry must anticipate severe pressures which will not be altered by constitutional change. Fluctuating exchange rates, production of cheap, high-quality garments by Asian countries and EEC textile import or quota policies will continue to affect performance of Shetland products in export markets. Within Shetland the competition from the oil industry will remain. The high wages offered by the oil industry cannot be matched in the knitwear industry and rising household incomes will move against part-time knitters.

One of the continuing and more obviously soluble problems of the industry concerns the marketing of the product. Although Shetland knitwear is known to

be of high quality, there is no distinctive trademark which could serve as the basis for an advertising campaign. The term 'Shetland' covers a wider variety of goods than just those produced in Shetland while most individual firms in Shetland operate their own house trade mark. An HIDB report recommended the establishment of a distinctive new trademark, however this would require all the Shetland manufacturers to cooperate in the scheme and the problems of maintaining quality would be high. It is generally recognised that the industry would benefit greatly from a radical restructuring involving closer links between wool-growers, manufacturers and marketing agents.

However, Shetland Islands Council has recognised the acute problems facing the industry and is taking active measures on the advice of the Knitwear Liaison Group. Knitwear could receive financial assistance from Reserve Fund monies and since the major problem will continue to be the lack of skilled labour an intensification of recruitment and training must be the main policy.

Public Finance and the Balance of Payments

Quite apart from the general difficulties of establishing a regional balance of payments and forecasting the future of the whole UK economy of which Shetland is a part, the ways that Shetland is changing as a result of oil developments make it impossible to make quantitative forecasts of future Shetland balances of payments, or of the future balance between central government receipts and expenditures.

The Shetland balance of payments must be expected to improve, since the expenditures of the oil companies in Shetland are financed from the outside, provided that the traditional industries are able to keep up their major contribution to Shetland's earnings. A good proportion of the moneys injected into Shetland by oil is of course likely to be spent in increased imports, directly or indirectly through the purchases of those earning in the expanded service industries or governmental services, given the small extent to which the primary industries can meet new needs and the difficulty of meeting most of consumer needs from Shetland sources. But nevertheless the improvement in the balance of payments position should be considerable.

On the balance of Governmental receipts and expenditure, it is possible to discuss the direction in which the main components in the 1976/1977 Table may move. With growing prosperity, local authority grants from central government are likely to be reduced as a proportion of Shetland expenditures. This process has already to a considerable extent taken place. For 1978/1979, the recently published estimates show a reduction in Rate Support Grants. With the large increase in rateable values, the resources element of some £1,500,000 in 1977/ 1978 disappears. But the needs element increased from £3,580,000 to £4,481,000, and for the reasons indicated in Appendix 4, it is unlikely that the

needs element will show substantial reductions in future as long as the present principles of apportionment apply. NHS expenditures in Shetland will doubtless tend to increase with the growth in population, despite the extent to which services are provided in the Scottish mainland. Agricultural support will depend on the development of agricultural policies. Social service payments may be less important, despite increases in population, if unemployment remains low and average earnings increase. Government tax revenue should also increase with growing prosperity of many Shetlanders and Shetland companies.

It thus seems likely that the net dependence of Shetland on Government transfers is likely to decrease during the high period of oil activities. But in considering constitutional options it is desirable to have in mind the longer distance future when oil activity slackens and ultimately disappears. While the rate of change should be sufficiently slow to give time for adaptation, and good use should have been made of the intervening prosperity, nevertheless Shetland would have developed a more expensive infrastructure and larger service sector than might then be needed. In the Faroes the connection with Denmark and the substantial financial help from Denmark appears to continue to be essential to the maintenance of a high standard of living, despite the strength of the fishing industry in its wide fishing limits. Shetland's other natural resources are limited, and the small size of its local market and distance from other markets does not make it an easy base for new industries. The qualities of the well-educated Shetland people should enable them to adapt to the new situation, in European and World

conditions which it is in any case impossible now to visualise. But it might then be felt that Shetland and individual Shetlanders would be better off as part of a larger community where social services in the wider sense were maintained on a basis which did not take into account the relative resources of particular regions.

Duration of Shetland's 'oil era'

The duration of Shetland's oil era is of interest both when considering the prospects for Shetland's economy and as a background to possible constitutional developments. Estimates of the likely scale and duration of the 'oil era' in Shetland are subject to a wide range of variation and uncertainty.

There are certain fields which do not at present warrant commercial exploitation. This position could change in the near future if the petroleum tax were reduced or in the more distant future if oil prices rise. This could make other marginal fields profitable. On the basis of the estimated size of, and production schedules for, currently proven fields alone, the peak of Shetland's oil period may be past within ten years; it seems that known reserves will be fully exploited by 1985 and that any attempt to vary the depletion rate now

would incur technical costs for no economic advantage. Once investment has been made lower rates of depletion and a longer life for the field are less attractive than its rapid exploitation. In most extraction ventures — oil, gas or other minerals — returns are generally maximised by the fastest possible rate of extraction or depletion. On a Discounted Cash Flow basis (the most widely used tool for investment appraisal) and using a 10% discount factor, it is only worth halving the rate of depletion on a field with a life expectancy of 25 years if it is assumed that the real price of oil would multiply by ten times in the interim. Otherwise, Net Present Values are lower.

It seems probable that the largest fields have been discovered already, a conclusion suggested by the falling trend in expected yields on the more recent commercial discoveries. If the largest fields by area have been discovered the fields remaining to be discovered may be more difficult and of smaller area. There is no reason *at present* to expect the oil companies to declare the discovery of major commercial oil fields in the West Shetland Basin. Finds on the Western Continental Shelf off the West coast of Ireland have been located in deep holes where discovery is expensive. They cannot be recovered with current technology. Similarly the published prospects for the ‘Celtic’ Sea do not suggest successful exploitation. Continued technical change and operating experience may make it possible to continue to work the reduced stock in existing fields, though it must be expected that the yield will fall.

At the time of writing the oil industry does not appear to rate the commercial prospects of the West Shetland Basin very highly. Texaco recently made a find close to Shetland in Block 207/1 but they have not released any details. Before the Texaco find 17 holes had been drilled yielding two non-commercial fields of oil in Blocks 206/8 and /12 and one gas find in 206/11. A large heavy oil find with associated gas could prove worthwhile, although the oil discovered so far is heavier than the premium oil from the Eastern Basin. The drilling licences are due for renewal in April 1979. In the East Shetland Basin, the addition of funds which will probably be commercially developed, and an allowance for new discoveries, will of course stretch out the duration of sizeable oil production.

The Tables and comments below are included to exemplify the future scale of oil output and income arising from the East Shetlands area. They are intended only to illustrate fairly general orders of magnitude. Estimates of offshore oil output and prices etc. are necessarily subject to fairly wide margins of error.

The figures in the tables are drawn from a variety of sources, but lean fairly heavily on brokers’ analyses.

Table 8: Summary of Oil Reserves in East Shetland Basin (Million barrels)

(a) Proven fields

(

Beryl	400	Hutton	300
Brent	2,000	Alwyn	300
Cormorant	150	Magnus	400
Dunlin	550	Tern	250
Heather	150	Lyell	250
Murchison	300	N W Hutton	250
Ninian	1,100	N Cormorant	250
Statfjord (UK)	450		
Thistle	500		
Total	5,600	Total	2,000

Gross Value @313 per barrel: \$98,000.

Findings: These are the 7 fields suggest a gross value of a hundred \$100

(i) The fields included are only these which are either proven* or look very likely to be developed. There are a significant number of as yet unproven or untested finds in Shetland waters, and further exploration will of course continue.

(ii) The price, at \$13 per barrel, is a low 'rounding' adapted for convenience. Current prices are in fact between \$13 and \$14 per barrel. Increases in the world-traded price of oil, which appear inevitable in the long run, especially given the life of the fields, would multiply gross value further.

Table 9: Gross Value of Production from East Shetland Basin

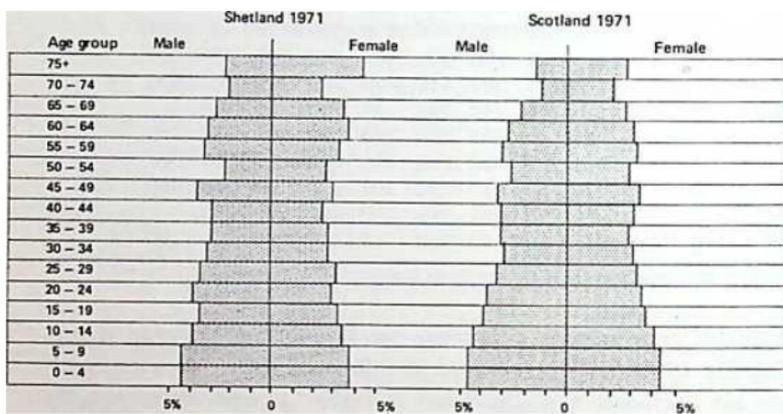
Proven Fields	1976	77	78	79	80	81	82	83	84	85	:	
Beryl	47	332	380	380	380	380	380	380	360	300	200	—
Brent	14	237	700	1050	1900	2400	2600	2300	2100	1800	1000	—
Cormorant	—	—	—	100	200	300	300	250	200	200	100	—
Dunlin	—	—	—	280	380	550	700	700	720	650	400	—
Heather	—	—	120	240	240	240	240	200	200	150	—	—
Murchison	—	—	—	—	80	300	380	450	400	350	150	—
Ninian	—	—	240	700	1350	1530	1600	1450	1250	1050	500	—
Statfjord	—	—	5	50	70	150	200	220	270	350	400	100
Thistle	—	—	520	850	950	950	750	600	500	450	—	—
Total	61	569	1965	3650	5550	6800	7150	6550	6000	<u>5300</u>	<u>2750</u>	<u>100</u>

Note: For convenience figures have been rounded.

Table 9 concentrates on proven fields only and suggests returns during the 1980s may well exceed \$5 billion annually. When 'probable' fields are included and allowance is made for new discoveries the prospect appears to be for a period of 25 years when oil production in Shetland waters could be yielding annual gross returns at a minimum of several hundred dollars. In many of the years the figures will be in billions.

However it is possible to state a more optimistic view of the 'oil era'. Present extraction methods only account for some 40% of the reserves in the ground. Secondary and tertiary extraction could double this amount with consequent extension of the oil era. New technology and rising prices should also be taken into account as factors which will cause more fields to be developed. It is significant that the agreement between Shetland Islands Council and the oil companies over Sullom Voe runs until the year 2000 but with a renewal clause that permits extension to the year 2025 and subsequently to 2050.

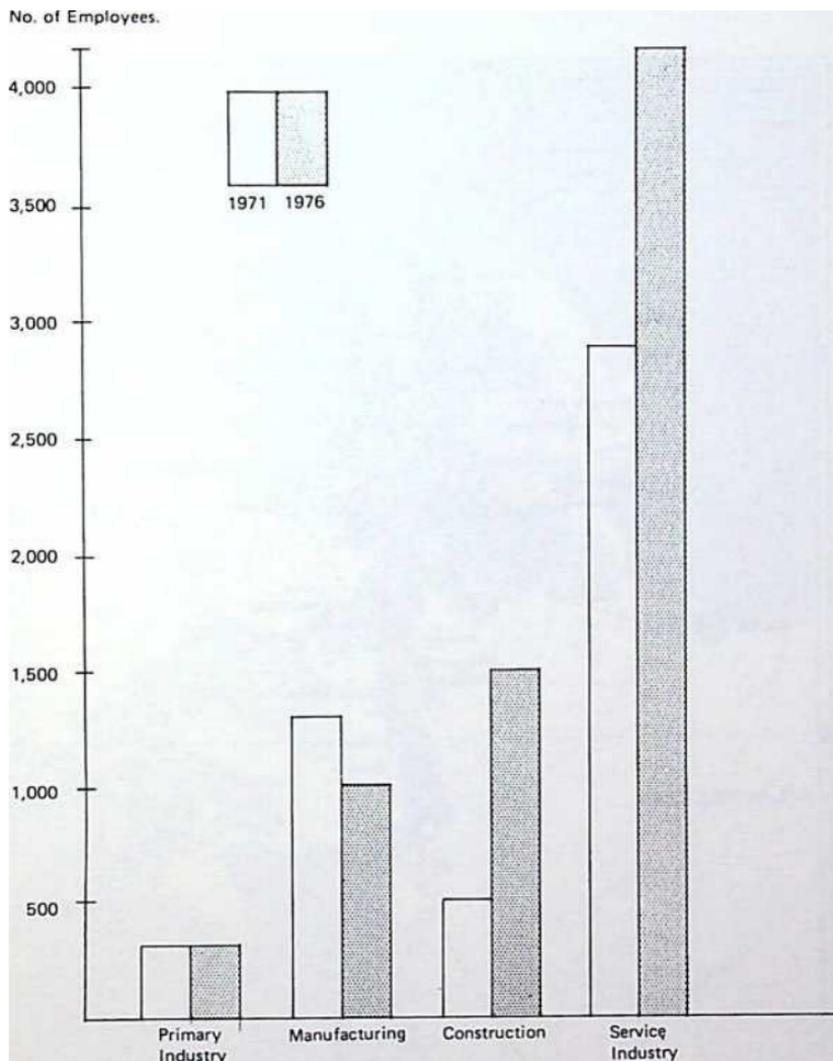
* Fields are only included as proven if a platform has been commissioned for their development.



COMPARATIVE AGE STRUCTURE : SHETLAND AND SCOTLAND

Shetland : Employees in Employment, 1971 and 1976.

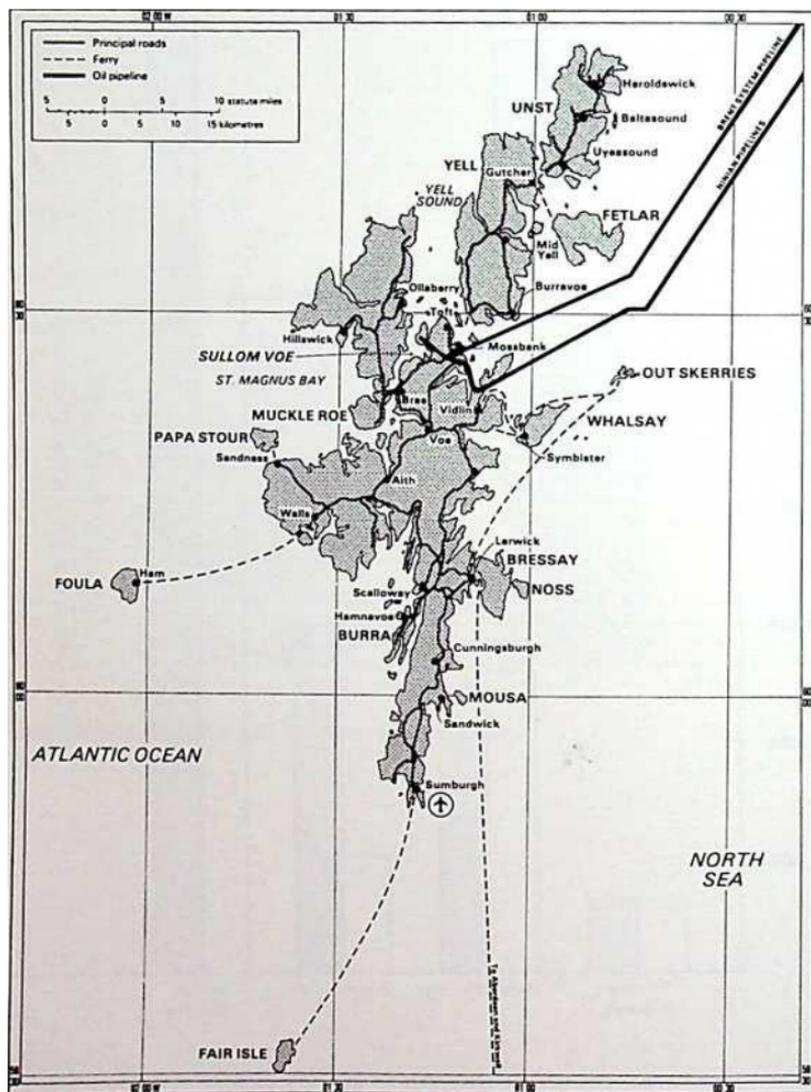
Source : Manpower Services Commission



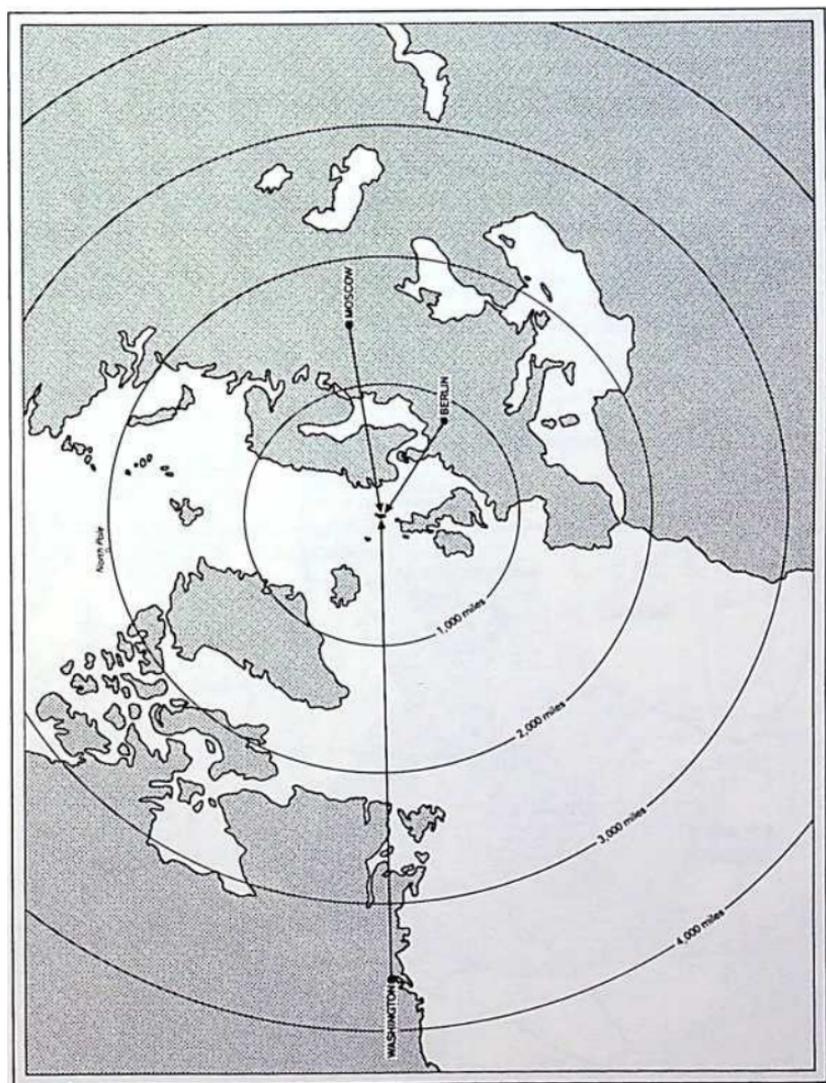
Note: These figures do not include the workers in the Sullom Voe construction camps.

Employment in Primary Industry is underrepresented due to the high proportion of self-employed.

MAP. SHETLAND



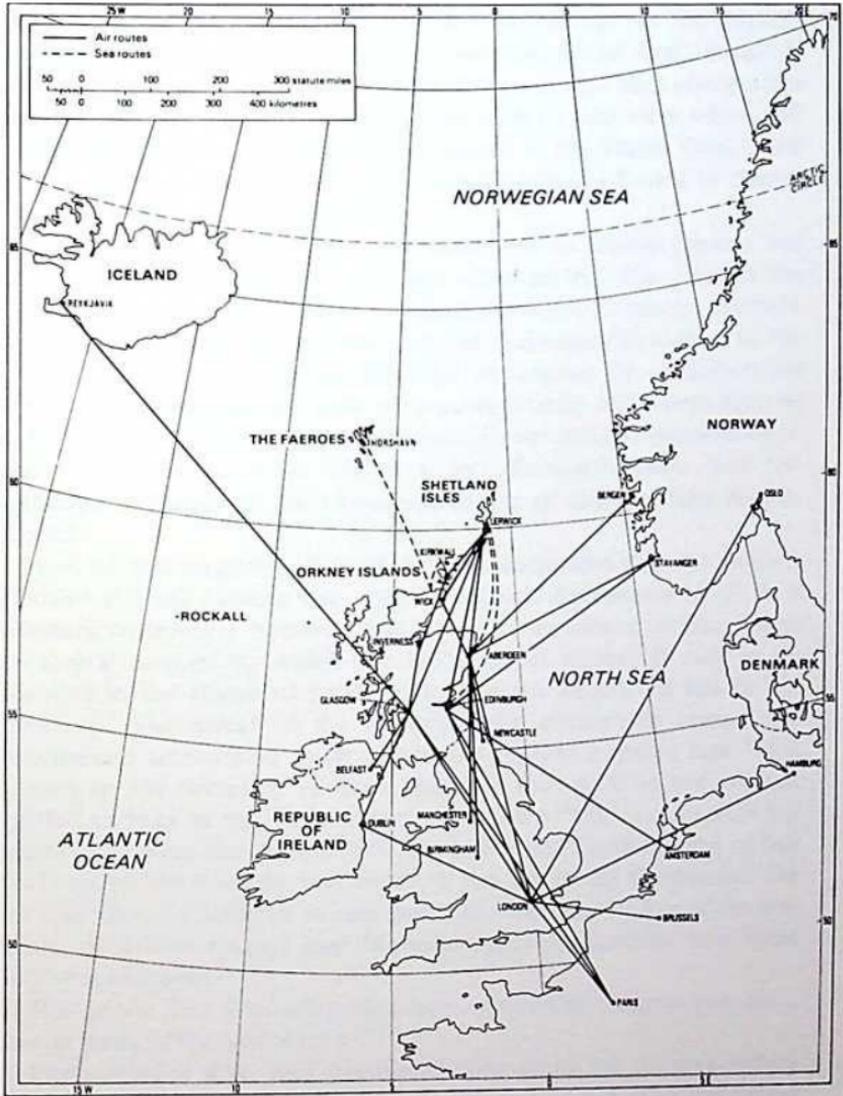
MAP 2. SHETLAND'S STRATEGIC LOCATION



MAP 3. AN INDEPENDENT SHETLAND'S FISHING ZONE



MAP 6. AIR AND SEA ROUTES



The Status Quo Model represents the system of government as it is today. Many people would like to see ‘no change’ in the present arrangements for governing Shetland, and are afraid that change is being imposed on them from outside. Others accept that changes are likely to take place outside Shetland, yet wish to take steps which will enable Shetland to safeguard what is valued in the Status Quo. Their outlook may be summarised in the formula: things will have to change if we want them to remain the same.

Acceptance of change makes the likelihood of change greater, but not inevitable. Although it was made clear in the first part of the Report, “Shetland As It Is”, that constitutional stability cannot preclude social and economic change, the political turbulence described in the Introduction will not necessarily find expression in constitutional reform, and Shetland may seek such powers under the Status Quo as might suffice to exert a degree of control over matters considered of vital importance, such as Fisheries and Transport costs and the continued existence of the all-purpose status of the Shetland Islands Council.

Most of this Report is framed on the assumption that the present Scotland Bill will become law, with or without Amendment 149. It is necessary to indicate however that this is by no means certain. There are several courses by which the Bill may yet expire. It may be so amended in the House of Lords as to lose the support it has in the Commons. The defeat of the Government’s attempt to reverse the Cunningham amendment (now Clause 80 (2) which states that “if it appears to the Secretary of State that less than 40% of the persons entitled to vote in the Referendum have voted ‘Yes’ ... he shall lay before Parliament the draft of an Order in Council for the repeal of this Act”) shows the hostility that exists to the Bill in the Commons. The Bill may then be defeated on the guillotine vote on the Lords’ amendments, or it may simply, like its predecessor, the Scotland and Wales Bill, be abandoned.

This is the first possibility that may ensure the continuance, for a time at least, of the Status Quo. In the event of a Go to the country

quent General Election it is likely that the Bill, which the Conservatives have consistently opposed, would be abandoned. Depending on how the SNP had fared in the Election, the Conservatives might drop all devolutionary measures or set up a Constitutional Commission or even Conference.

In this way also the Status Quo would remain in being.

Finally, the possibility also exists that the proposed Referendum would not result in a 40% affirmative vote. In this case also the Bill would presumably not be enacted and at the very least delay would result.

With these possibilities in mind Shetland may think it -advisable to seek ways of promoting and preserving its interests within the existing system.

It might be thought desirable to continue to press for a Commission to consider the government of the Islands. Its purpose would be to establish safeguards which would pre-empt any future measures of constitutional change. It might be considered worthwhile to press for the acquisition of Special Powers rather than Special Status. Shetland might seek powers giving the same sort of control over Fisheries and Transport as the Zetland County Council Act gave over oil developments.

The Fisheries powers might, as described above, take the form of the establishment of an exclusive Shetland Zone within which fishing would be controlled by licence. These licences would be issued by a Licensing authority set up in Shetland.

Over Transport the Council might continue to press for Central Government subsidy for air and sea routes to the Islands on the grounds that these should be treated as an extension of the Trunk Roads system which is 100% financed from central funds. Alternatively they might prefer a system whereby the Shetland Islands Council was permitted to operate a system of rebates to transport users from a special grant provided for that purpose.

They could also press for guarantees for the continued existence of the Shetland Islands Council in its present form. Any re-organisation of local government in Shetland might be made conditional on approval in a referendum.

It should be stressed however that these powers, though reassuring, would have no permanent validity. They would depend on Parliamentary sanction and could be revoked.

Clearly these are also matters which could be brought before any Commission established if the Scotland Bill goes through with Amendment 149 still in it and if Shetland then votes 'No' in the Referendum. In this case, however, assuming that the Bill proved acceptable to the Scottish electorate in the Referendum and was subsequently enacted, the Status Quo would have ceased to exist and Shetland would have to seek these protective powers within another Model.

1. Political, administrative and public finance implications

1.1 Shetland is an integral part of the *United Kingdom*. Britain represents Shetland abroad, and Shetland has no international status. Moreover, as part of the United Kingdom Shetland is also part of the European Community and belongs to other international bodies to which the UK adheres. A clear distinction can be made between integral parts of the UK and areas with 'special status' like the Isle of Man or the Channel Islands, which are not part of the UK, but are 'Crown Dependencies'.

1.2 The *Crown* exercises powers in Shetland as in the rest of the UK. Examples of the powers of the Crown are the conduct of relations with foreign countries and the disposal of the armed services. Ministers of the Crown exercise these (and many more) powers on behalf of the Monarch.

1.3 *Parliament* (or 'the Crown-in-Parliament') is the sole legislative body within the UK for Shetland. It possesses 'sovereignty', that is, it can pass any law, and such law must be upheld in the Courts. Laws emanating from the European Community are also enforced in Shetland by the British Government and the courts.

1.4 The *Courts* fulfil the judicial function of the Crown. Shetland comes within the Scottish system of law and legal administration, and Lerwick Sheriff Court sits under a Sheriff appointed by the Crown (on the advice of the Lord Advocate or Secretary of State for Scotland). The Procurator Fiscal is the public prosecutor, and is similarly Crown-appointed. Here it should be noted that a separate *Scottish* system of law and courts exists within the context of the supreme authority of the British Crown and Parliament.

1.5 There are many agencies of *Central Government* in Shetland, some of them government departments, e.g. the Department of Health and Social Security, the Department of Employment, and the Department of Agriculture and Fisheries for Scotland, and others which are public corporations, commissions, boards, and so on. It is important to note that while some are organised on a UK basis, others are confined to Scotland, or even to parts of Scotland (e.g. the Highlands, or the North of Scotland). The following list shows which bodies link Shetland with *Scotland*, and which link Shetland with the UK generally.

(1) UK bodies: Treasury; Board of Inland Revenue; Customs and Excise; Department of Trade (linked to Civil Aviation Authority, e.g. Sumburgh Airport; British Airways; Northern Lighthouse Board); Department of Industry (linked to Scottish Postal Board, Scottish Telecommunications Board, etc.); Department of Energy (especially oil); Department of Prices and Consumer Protection; Department of Employment (Jobcentres); Department of the Environment (linked to National Ports Council); Department of Health and Social Security (national insurance, cash benefits, etc.); Department of Education and Science (universities and higher research); Ministry of Defence (linked to Meteorological Office); Ministry of

Agriculture, Fisheries and Food (animal health, food-processing); Home Office (aliens, immigration); Foreign and Commonwealth Office (passports); Civil Service Department (recruitment of central government civil servants).

(2) Scottish bodies: Scottish Office; Department of Agriculture and Fisheries for Scotland; Crofters Commission; Scottish Development Department (relates to local government on planning, roads, housing, North Sea oil infrastructure); Scottish Economic Planning Department (linked to Highlands and Islands Development Board, North of Scotland Hydro-Electric Board, Scottish Tourist Board, etc.); Scottish Education Department (covers not only education but libraries and social work in a supervisory or regulatory capacity. Linked to General Teaching Council for Scotland (registers teachers), Scottish Certificate of Education Examination Board (sets and marks exams), Central Institutions (Technical Colleges, Art Colleges etc.) and Colleges of Education (teacher training, pays grants to students); Scottish Home and Health Department (administers prisons, regulates police, fire and civil defence, runs the National Health Service through Health Boards, etc. Keeps the Register of births, marriages, deaths, etc., through the Registrar General for Scotland; Lands Tribunal); Scottish Courts Administration (administers Sheriff Court); Lord Advocate's Department and Crown Office (prosecutions, etc.).

There are also UK bodies like the Herring Industry Board, the White Fish Authority and the Forestry Commission which have their Headquarters in Scotland; the first two are of importance to Shetland.

In one sense the distinction between British and Scottish bodies is not very important to the Status Quo Model. Whether British or Scottish, all are agencies of the British Government, and through the Cabinet harmony is preserved on policy matters throughout the United Kingdom. It might be said, then, that while Scotland is marked off for *administrative* and *legal* purposes from the rest of Britain, it is kept essentially within the British political system through the centralisation of *political* power in the Cabinet and Parliament. Nevertheless, the fact that Shetland is tied to Scotland for so many purposes is in another sense almost as important as the political link that all parts of the country have with the centre. For it can be quickly seen from these lists that were Shetland *not* to be part of the Scottish administrative and legal systems, then completely new systems would have to be devised for Shetland alone to take the place of those already existing.

With regard to public finance at central government level, Shetlanders pay their taxes to the British Government, and the Government determines the level and types of public expenditure. The Shetland 'balance of payments' can only be calculated with considerable imprecision.

It shows a deficit on the Public Account, which has to be met out of central finance. This is most clearly seen in the amount paid to Shetland Islands Council in Rate Support Grant, which is dealt with in

1.6

Another aspect of central administration which has implications for Shetland is employment. Government bodies employ Shetlanders, not only in Shetland but in Scotland and the rest of the UK. The total employment within Shetland in central administration can be estimated to be 104-110.

1.6 *Local Government* in Shetland is represented by the Shetland Islands Council, the successor to Zetland County Council, Lerwick Town Council, and the 14 District Councils which ceased to exist in May 1975.

The Shetland Islands Council (like its predecessors) is a *Scottish* local authority, in the sense that the system of local government in Scotland in force today was set up under the Local Government (Scotland) Act 1973. Its powers are those of an 'Islands Area', of which there are two other examples, Orkney and the Western Isles (Schedule 1, Part II). This gives Shetland 'all-purpose' authority, except for fire and police, which are exercised jointly with the Highland Region. A list of local authority functions follows.

Regional Authority Functions

Major planning and related services: strategic planning; industrial development; transportation; roads, traffic management and road safety, passenger transport, ferry services, airports; water, sewerage, flood prevention and arterial drainage; countryside and tourism. Education

Social work

Regional housing

Police

Fire

Coast protection

Consumer protection

Weights and measures

Food standards and labelling

Diseases of animals

Community centres, parks and recreation²

Museums and art galleries*

Registration of births, deaths and marriages

Registration of electors

District Authority Functions

Local planning and associated services³ : urban development;
countryside

Building control**

Housing

Community centres, parks and recreation*

Museums and art galleries*

Libraries**

Environmental health, including: cleansing; refuse collection and disposal;
food hygiene; Shops Act, etc.; clean air; markets and slaughterhouses;
burial and cremation

Regulation and licensing, including; cinemas and theatres; betting and
gaming; taxis; house-to-house collections

Islands Authority Functions

The islands authorities will exercise all of the above functions subject to joint arrangements in the case of police and fire.

Shetland Islands Council is responsible for all these functions. Fire and Police are shared with Highland. In those subsequent Models (5, 6, 7, 8 and 9) which envisage the establishment of a Shetland government with wider powers, consideration would have to be given to the question which of these functions would become the responsibility of any District Authorities the new Shetland government would wish to create.

Shetland also has special powers under the Zetland County Council Act 1974, which it inherited from the old County Council. These powers include:

- (a) Those of a harbour authority in designated areas, in particular Sullom Voe and Baltasound, which for the purposes of the Act are designated as harbours).
- (b) Control of development in the harbour area and the coastal area (e.g. power to construct works and acquire lands).
- (c) Power to invest in securities of bodies corporate (Clause 23). This permits the establishment of what are commonly referred to as Joint Ventures.
- (d) Power to set up a Reserve Fund (Clause 67). The clause states: 'If in respect of any financial year the moneys received by the Council on account of the revenue of the harbour undertaking exceed the moneys

expended or applied by the Council in respect thereof, the Council may in respect of that year apply out of the county fund and carry to the credit of a reserve fund in respect of the harbour undertaking such a sum as they consider reasonable not exceeding the amount of such excess . . . ’

This fund is to be used for various purposes relating to the harbour but also ‘for any other purpose which in the opinion of the Council is solely in the interests of the county or its inhabitants’ (Zetland County Council Act 1974, Clause 67 (3) (e)).

There has not yet been the opportunity fully to witness the practice of the extra powers the Shetland Islands Council has under the Act, partly because the Port and Harbour Agreement with the oil companies has only just been concluded. There is speculation as to the impact which the existence of the Reserve Fund may have on the Council’s other sources of income, e.g. from rates and the Rate Support Grant. However if the moneys in the Reserve Fund were to be held in a charitable trust they might be considered as being set aside from the Council’s other funds.

The Reserve Fund itself is composed of several elements. These include.

- (a) the disturbance payments from the oil companies.
- (b) the surpluses derived from the Port and Harbour Agreement with the oil companies.
- (c) profits from joint ventures which include Grand Met Shetland (employing 265), Shetland Towage (employing 265), and Shetland Aggregates (employing about 25) and from investments made from the Reserve Fund.
- (d) opportunity fees paid by the companies to the Council.
- (e) profits derived from leasing land for oil operations.

The lowest estimate of the sum that will be paid into the Reserve Fund is £50,000,000 before 1999. Tire Council, like any other local authority, is closely supervised and regulated by central government. In the case of Shetland Islands Council, the principal department involved is the Scottish Office, but other departments or agencies are important (e.g. the Department of the Environment and the National Ports Council for the Zetland Act ‘harbour’ powers; the Department of Energy for the oil industry).

The nature of central supervision over local government cannot be fully spelled out here. There are two main influences: finance, and permission/instruction to take action. The principal example of financial control is through the Rate Support Grant.

It is essential in any discussion of the Rate Support Grant to appreciate the principles on which it is based. (There is a detailed explication of these in

Appendix 4.) Basically, the Grant is made up of three 'elements': Resources, Needs and the Domestic. The first relates to the rateable value per head in the authority; the second to a formula which includes weightings for different types of population, islands and oil developments; the third to a straight subsidy on the householder's rate per £. The object is to enable all local authorities to provide equivalent standard of services. The following table will clarify this description and show the importance of the different elements.

It is acknowledged in the Shetland Islands Council's estimates for 1978-9 that the resources element will be zero when the Sullom Voe Terminal is operational. The formula for the Needs Element applies throughout Scotland, but there is an additional 'extraordinary expenses' element to compensate for 'extraordinary expenses' incurred by a few authorities because of offshore oil developments. Lastly, the Domestic Element is the result of a decision by the Secretary of State to cushion the effect of rate rises on domestic ratepayers.

There is no way in which the Rate Support Grant can be maintained at its present level. It is bound to fall as a result of the loss of the resources Element. The 'extraordinary expenses' element will be lost when oil developments become a benefit rather than a cost, and even

1976-77

	Shetland		£m	£ per head
	£m	£ per head		
1. Total expenditure met from rates and government grants	7.590	410.40	1,526.749	293.26
2. Expenditure relevant for rate support grant (i.e. excluding housing)	6.108	330.27	1,334.530	256.33
3. <i>Government Grants</i>				
Rate support grants				
Needs element (general portion)	3.130	169.24	657.700	126.33
Needs element (extraordinary 'oil' portion)	0.647	34.98	4.900	0.94
Resources element	1.443	78.03	167.400	32.15
Domestic element	0.045	2.43	42.300	8.13
Total rate support grants	5.265	284.68	872.300	167.55
Specific grants	0.241	13.03	63.665	12.23
Total rate support grants and specific grants	5.506	297.71	935.965	179.98
Housing subsidies	1.019	55.10	139.419	26.78
TOTAL government grants	6.525	352.81	1,075.384	206.56
4. Percentage of rate support grants and specific grants to relevant expenditure	90%	—	70%	—
5. Percentage of government grants to total expenditure met from rates and government grants	86%	-	70%	-

under the present system, there may be other changes in the formula on which the Needs Element is calculated. This conclusion is likely to hold good whether one is talking about the Status Quo Model or other Models in which Rate Support Grant is operating.

Other important financial controls relate to approval of capital expenditures and borrowing; rates and council house rents; provision of rate and rent rebates; auditing of accounts; valuation of property (here independent valuation assessors are used).

Numerous restrictions and regulations control the freedom of local authorities to act (e.g. in planning, house and school building, appointment and payment of teachers and other staff). Conversely, the central government may invoke 'default' powers against a local authority which fails to carry out its legal obligations.

All this adds up to a very close relationship between central and local government, and one which can be characterised as essentially hierarchical. The central government stands above local government, and can enforce national policy on all local authorities by Act of Parliament and executive action. But formal acts of enforcement are very rare, and in general business is done on a basis of continuity and compromise.

Apart from these central-local government relationships, Shetland Islands Council has links with other local authorities in Scotland through various organisations. It is a member of the Convention of Scottish Local Authorities, which represents all Scottish local government in its dealings with central government. COSLA, as it is called, includes Shetland representatives at the Convention level, and on nine subject committees. COSLA also has an Islands Policy Committee which meets several times a year in the island communities (Shetland, Orkney and the Western Isles), and Shetland is always represented at these meetings, which are arranged to suit the convenience of the individual authorities. There are also *ad hoc* meetings with Ministers on education matters, and occasionally Shetland sends along a representative. COSLA negotiates the Rate Support Grant with the Government, and the RSG at present includes an islands weighting and the extraordinary expenditure element related to oil development. Other important functions of COSLA relate to the negotiation of teachers' salaries with the teachers' unions in the Scottish Teachers' Salaries Committee, and to other local government staff matters, which local authorities in Scotland negotiate on a joint basis.

Lastly, there are strong professional links between local government officials throughout Scotland. Shetland Islands Council officials belong to professional bodies (either Scottish or Scottish branches of UK bodies) in teaching, planning, architecture, civil engineering and local government finance and valuation, etc.

2. Economic implications

The likely implications of a continuance of the Status Quo have already been examined in the previous section of the Report, *Shetland As It Is*. We do not propose therefore to repeat these here. They may be summarised as

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of the economy will continue to grow in close relation to oil developments. These will also contribute substantially to the growth of the Shetland tax base. The rise in rateable values will reduce the dependence on Central Government finance when Sullom Voe is operational. The existence of the Reserve Fund will give the Council the opportunity to try to correct imbalances in the economy and to shield those parts of the population who do not benefit from oil developments from the adverse effects of these developments.

3. International implications

3.1 At present arrangements for security may be more or less taken for granted in Shetland. They are none the less important. There are four discernible areas for which security provisions must be made. These are:

- (a) The Islands themselves.
- (b) The territorial sea where the jurisdiction of the coastal state (i.e. the United Kingdom) extends more or less as on land.
- (c) The offshore zone (waters up to 200 miles) where the coastal state asserts its authority to regulate the use of resources and possibly reserve access for its own nationals. What is at issue here is of course principally the control of fisheries.
- (d) The off-shore zone (shelf) where the seabed's resources fall within the jurisdiction of the coastal state. This clearly applies principally to oil and gas resources and installations. This also includes shell-fish attached to the sea-bed.

The security necessary to safeguard these areas may also be considered in four elements:

- (a) External security: against the threat of attack or intimidation by hostile states.
- (b) Internal security: against the threat of politically-motivated violence or terrorism.
- (c) Preservation of law and order.
- (d) Enforcement of regulations, including those of an essentially economic or environmental character. These include fisheries regulations, anti-pollution and safety regulations, evasion of liability to taxation (e.g. customs regulations).

The responsibility for the enforcement of security measures is divided:

(a) External security is the responsibility of the armed forces. The United Kingdom is a member of the North Atlantic Treaty Organisation and its external security policy, posture and provision have been formulated within the setting of this Alliance.

Shetland is regarded as being of considerable strategic importance. Air surveillance/defence and maritime surveillance/defence are of special significance. The airspace is kept under constant radar watch from Buchan (Aberdeen shore). There is a satellite station at Saxa Vord, Unst. Aircraft operate in conjunction with this radar system from Leuchars and Lossiemouth. The ground radars are part of a chain of facilities which make up the NATO Air Defence Ground Environment (NADGE).

Maritime surveillance/defence is also intensive. The Nimrod ME1's based at Kinloss fly regular patrol sorties. Other aircraft (Vulcan SR2) carry out reconnaissance missions from bases in England. For monitoring submarine activity NATO employs a variety of static devices (e.g. hydrophones). In view of the strategic importance of the area, the presumption must be made that such systems have been placed in Shetland waters.

The principal conclusion is inevitably that existing arrangements for Shetland's external security are bound up with those for the rest of the United Kingdom and indeed the NATO area as a whole. Although armed forces in Shetland itself are minimal, the Islands are regarded by the NATO command as a front-line area of a strategic importance which it would be hard to exaggerate.

(b) Internal security against terrorist activity. Formal responsibility for this rests with the Police, in this case the Northern Constabulary (based in Inverness). Since oil installations and oil-related facilities may be considered a natural terrorist target, it must be presumed that the police have contingency plans for dealing with a variety of possible incidents. (It should be noted that responsibility for installations in Shetland's waters rests with a different Police Force — Grampian (HQ Aberdeen)). The police can, if they think it necessary or desirable, call on military aid to the civil power.

Again, as with arrangements for external security, a salient feature of the cover available to Shetland is the extent to which it comes from outwith the Islands.

(c) This applies here also. As noted above, the police functions are in fact divided between the Northern Constabulary (land) and the

Grampian Police (off-shore).

(d) The fourth dimension of the expanded definition of security adopted here is the enforcement of regulations which have been formed for the

protection of off-shore economic assets and the marine environments. A host of Government Departments have responsibility for different activities at sea. This certainly involves the Ministry of Defence and the Scottish Office (through Police and the Scottish Departments of Agriculture and Fisheries) and HM Customs and Excise.

This explanation of security arrangements may appear disproportionate to the treatment of other areas in this part of the Report. It has been felt necessary to show, however, not only how comprehensive and involved security measures are, but also to what an extent in the Status Quo Shetland's security arrangements are projected from far afield, from the Scottish mainland, from the rest of the United Kingdom and from NATO.

There is probably no important area where Shetland or any of her Local Authority has so little autonomy or influence.

3.2 The intricate involvement of Shetland in a wider whole is also shown in its relationship to the EEC. Shetland relates to the EEC through United Kingdom institutions. The policies of the EEC are applied to Shetland in full: the common external tariff, the levies under the common agricultural policy, the competition rules, the value-added tax applied in the United Kingdom in conformity with the EEC's programme for fiscal harmonisation, access to the European Agricultural Guidance and Guarantee Fund (FEOGA), to the European Regional Development Fund (ERDF), and to the European Investment Bank (EIB).

To the extent that Shetland contributes to the general fund of UK revenue from taxation, it must be assumed to be paying its share of the UK's contribution to the EEC Budget. With approximately 20,000 inhabitants out of 56 million, Shetland's notional budgetary contribution in 1978 would be about £390,000 out of a UK total contribution of £1.092 million (calculated from the Preliminary Draft EEC Budget for 1978).

The position is more interesting on the side of benefits derived by Shetland from the expenditures out of the EEC Budget. As a peripheral and relatively poor region, part of the Highlands and Islands Development Area, Shetland qualifies for regional aids from the United Kingdom. Similarly, it qualifies for aids from several EEC funds, though these aids must be requested via United Kingdom agencies, and indeed EEC assistance is conditional on prior UK assistance, under the system of 'matching' grants and loans. The major UK institutions involved in aid to Shetland are: the Scottish Economic Planning Department (SEPD), the Highlands and Islands Development Board (HIDE), the Department of Agriculture and Fisheries (DAFS), the White Fish Authority (WFA) and the Herring Industry Board (HIB). The EEC agencies involved in grants or loans to Shetland are: FEOGA, ERDF, and EIB. No assistance from the European Social Fund has so far been identified.

It should be quite clear that, leaving aside for the moment the question of advantages or disadvantages of Membership, the extent of EEC influence on Shetland is considerable. Within the constitutional Status Quo this influence will undoubtedly increase. It should be remembered that in 1978 the transitional stage of United Kingdom membership will be completed; and thus the EEC relationship is one area where the Status Quo will not remain static. The Status Quo cannot be understood to mean merely the existing effects of the United Kingdom's EEC membership on Shetland. It must include the prospective development of those effects with both changing EEC policies and a changing economic structure - world, EEC, United Kingdom, Scottish and Shetland.

Much depends on whether the Community moves towards its objective, agreed in December 1969, of ultimate monetary and economic union. Monetary union would remove from the UK Government one of their economic policy instruments, though one whose value has been much questioned by some economists in recent years. In return, however, it would be reasonable to expect a more rigid development of a wide range of common policies, including the Regional Fund, the Social Fund, and a new Unemployment Fund. These developments of Community policy would imply larger transfers among the Member states, and especially to the poorer regions, which could alter radically the balance of costs and benefits of membership for the UK and for Shetland.

3.3 As stated in 1.1 Britain represents Shetland abroad and Shetland has no international status.

4. Implications for Shetland as a community

4.1 The Status Quo Model includes many features which, as far as Shetland is concerned, have been achieved only as the result of a struggle for the protection of the identity and interests of the Islands. For example, the Council's water functions were removed in the late 1960s, and the existence of the authority itself was threatened in the Wheatley Report. Shetland engaged in a vigorous campaign to reverse these central decisions or intentions, and the Local Government (Scotland) Act 1973 altered the Wheatley Report for the islands and returned the powers of the Water Board to Shetland. In 1974 another campaign resulted in the passage of the Zetland County Council Act 1974. With all these achievements behind them, Shetlanders might consider the Status Quo Model an adequate protection of their identity and interests. Yet there remain doubts. There may still be threats to Shetland through national priorities overtaking Shetland priorities, for example in oil developments. Rate Support Grant, and limitations on the use of the Reserve Fund. National policies on transport, Fishing, and broadcasting are frequently mentioned in Shetland as being adverse to the Islands' interests. Thus the Model does not guarantee the preservation of the

3 MODEL 2: REST OF SCOTLAND DEVOLVED BUT NOT SHETLAND

The adoption of some variety of this Model would make irrelevant the fears expressed by the Shetland Islands Council about the future conduct of the proposed Scottish Assembly; their statement on devolution is quoted in the next chapter. However, the Model would undoubtedly raise administrative problems of considerable complexity and their satisfactory resolution would be difficult.

It would appear that the following possibilities exist:

1. Shetland could have a special relationship with the Secretary of State and the Scottish Office.
2. Shetland could be treated as an English local authority (either as a County or what would be for England a new category of 'island authority').
3. Shetland could be attached to some other UK ministry. The Lord President of the Council has been suggested.

We have decided to limit our detailed examination to the first of these. The third option seems to have no advantages. It involves setting up a new office ignorant of, and foreign to, Shetland instead of one already well-acquainted with Shetland affairs. Number 2 might solve some difficulties, for it has been suggested that the Scottish Office, shorn of devolved functions would no longer be competent to handle the full range of Shetland business; however, we would suggest that a specially created Shetland Board could be attached to the Scottish Office to perform this task. A full description of the range of such a Board can be found in Appendix 3 (proposals relating to Amendment 149, as prepared by the Nevis Institute in January 1978).

However, there is an objection to treating Shetland as an English County, which is so strong that it appears to outweigh any short-term administrative convenience this proposal might have. Shetland relates closely to Scotland rather than England in numerous spheres, the two most conspicuous being Law and Education. The dislocation that any disturbance of this traditional pattern would have is unquantifiable but undoubtedly very great. Moreover there would be direct disadvantages; for example, rural areas are treated far less favourably in England and Wales than in Scotland in assessing the 'Needs' element in the Rate Support Grant. (See Appendix 4: The Rate Support Grant.) When it is considered that in 1976-7 the general portion (as distinct from the oil portion) of the Needs Element in the RSG for Shetland amounted to £169.24 per capita

in Shetland as against £126.33* in the rest of Scotland, it will be seen that the loss of this favourable weighting would be damaging to Shetland.

The opportunity of seeking this Model would arise if Shetland votes 'No' in the Referendum on the Scotland Bill. In that event a Commission will be set up to consider the future government and constitutional status of Shetland. It will still be open to this Commission to recommend that Shetland be included in a devolved Scotland. If it were to come to this conclusion it is probable that it would advocate certain safeguards for Shetland's interests. Such a Commission is possible even if Amendment 149 is removed from the Bill, but it would not be mandatory to set it up.

It would be necessary to establish some interim form of administration for Shetland after Scotland has been devolved and before a new form of government has been adopted. Apart from anything else the Commission could not complete its work and put forward its recommendations before the Scottish Assembly and Executive came into being. The Secretary of State has made this clear:

'Any Commission that is, among other things, considering whether there should be some relation between Orkney and Shetland and the Assembly and the Assembly Executive could not reach a conclusion on that or put forward a particular proposal without consulting the Assembly and Executive. The idea that this could be done in a few weeks or a few months is completely misguided.' (Hansard: 22nd February 1978.)

The nature of this interim arrangement would need to be settled in the near future. Appendix 3 examines the course that might be followed. This may be summarised as follows:

1. Legislation (A Shetland Act).
2. An order-in-council under a new Clause of the Scotland Act, giving power to the UK Government to make provision for the Government of Shetland.

Figures supplied by the Scottish Office.

To avoid having to set up detailed administrative machinery for the interim period, it might be thought suitable for Shetland to be temporarily administered as though it were part of the devolved Scotland, and for it to send a representative to the Scottish Assembly. Shetland's interests could be secured by a proviso that the Secretary of State would have specifically to approve all legislation before it could be applied to Shetland, or could alternatively exercise a veto on Shetland's behalf.

If this was not thought suitable, a Shetland Board as mentioned above could be created. This would certainly secure a direct line from Shetland to the Central Government.

Any of these would of course be a provisional arrangement but it has been observed that in politics “only the provisional lasts”. The Secretary of State’s reflections on timing quoted above may be taken as convincing evidence of the truth of this aphorism.

1. Political, administrative and public finance implications

1.1 International status

As in Model 1, Shetland is an integral part of the United Kingdom. The UK is responsible for all Shetland’s external affairs, but insofar as the Scottish Assembly and Executive are given certain powers under the European Communities Act 1972 (as amended by the Scotland Bill) (see Schedule 16), these powers will remain with the UK as regards Shetland.

1.2 The Crown and Executive bodies

The Crown retains all its functions regarding Shetland, and so Ministers of the UK are responsible for the functions which in Scotland have been devolved. Such functions include local government, health, education and crofting, which would otherwise be transferred from the Scottish Office to the Scottish Executive. Other Scottish Office functions important to Shetland such as electricity, agricultural and fishery regulations and cash payments, are retained by the UK (Scottish Office) under the Scotland Bill.

In this Model, functions devolved to Scotland must be exercised or controlled by a UK Department. As an interim measure (see Appendix 3 for detailed description), they could be exercised by the Scottish Executive (devolved) departments, subject to approval by the Secretary of State for Scotland. In the absence of such approval, the UK would have to make provision for Shetland through legislation and its own agencies.

An alternative method for the interim, and one which might also be a permanent arrangement, is for a Shetland Board to be established, responsible to the UK Government and Parliament for all the functions which have been devolved to Scotland. This Board is also further described in Appendix 3.

1.3 Parliament and the Scottish Assembly

Parliament would remain the sole legislative body for Shetland although in an interim situation the Scottish Assembly might legislate for Shetland, subject to the approval of the Secretary of State for Scotland.

Analogies may be drawn here with the section of the Scotland Bill (s.23) dealing with the requirement for the consent or concurrence of a Minister of the Crown in the exercise of power by a Scottish Secretary (devolved Government minister). Here, however, we are dealing with *legislation*, not *executive* actions. In this Model, all legislation applying to Shetland would have to be given the legal status of 'UK' legislation, although this might be in the form of Orders in Council under an enabling Shetland Act. Such an Act might state that Acts of the Scottish Assembly would apply in Shetland if the Secretary of State for Scotland by Order in Council decided to apply them there. He would, however, not be responsible for initiating such legislation, and if he chose not to apply a Scottish Act to Shetland, he would have to administer the previous legislation or devise alternative legislation of his own.

1.4 Courts

The Crown is responsible for the administration of justice in this Model. This covers the Government Law Officers of the Crown, the judiciary and Procurators Fiscal. To that extent there is no difference from Model 3 (Shetland with the rest of Scotland devolved). However, the UK would now have to provide for the administration of the Sheriff Court and any other court above a District Court in Shetland (a function at present exercised by the Scottish Courts Administration). Any cases heard outside Shetland (e.g. in the High Court or Court of Session) would be in courts administered by the Scottish Executive. Such courts would have to apply 'UK' or Shetland law in Shetland cases, for it has to be assumed from 1.2 above that the law applying in Shetland might not always be the law applying in a devolved Scotland.

1.5 Central administration and finance

There are two clear alternatives:

- (i) An interim arrangement, whereby agencies of the devolved government function in Shetland as in the rest of Scotland, but are subject to the power of the Secretary of State to make alternative arrangements where he wishes to depart from the laws or actions of the Scottish Government.
- (ii) A Shetland Board, which itself takes on the administration of the devolved functions on a permanent basis. For a discussion of these functions see Model 3. The Board would come within the ministerial responsibility of the Secretary of State for Scotland, and its finance would be voted by Parliament on the Scottish Office Vote. The Board would have to employ staff to cover for Shetland the functions which are to be devolved to the Scottish Executive. It would also link up with the numerous bodies which in the rest of Scotland relate to the devolved Government, such as the Crofters Commission, the Highlands and Islands Development Board, the Health Boards and the local Council. Apart from the Shetland Islands Council, such bodies would either have to be reconstituted on a Shetland-only basis (c.g. as

a 'Shetland Crofters Commission'), or would have to operate in Shetland on a basis which might be different from their operations elsewhere. In the latter case, if, for example, crofting legislation were to be changed for Scotland by the Assembly, and the UK did not accept such legislation for Shetland, then the Crofters Commission would have to apply a different law in Shetland from that which it applied beyond Shetland.

It would obviously be virtually impossible to provide all the devolved functions in Shetland itself. For example, teacher training, technical education, and advanced hospital treatment would have to be provided on the mainland. The most natural centres for such functions are in Scotland, for reasons of ease of access, traditional contact, and the absorption of Shetland in the Scottish systems of education, health administration, etc. But if it were thought necessary and desirable Shetland could reach out beyond Scotland to England in certain matters. Students might train at English colleges of education, and schools might adopt the English General Certificate of Education examination.

It is difficult to determine the financial implications of this Model for Shetland. The UK would be responsible for the provision of funds for the government of Shetland, as indeed it is for Scotland under devolution. But the expenditure pattern would be set by the Shetland Board in consultation with the Shetland Islands Council and not by a responsible government as in a devolved Scotland. The UK would be responsible for any payments made to Scottish or English bodies (e.g. Scottish Health Boards or English education authorities) for services rendered on behalf of Shetlanders. The expectation would be that such services would be granted on a reciprocal basis (such an arrangement would be applicable in most other Models as well), and the scale of Shetland's population would not impose great burdens on other authorities. Yet there may be some difficulty in securing services where shortages exist (e.g. places in a college of education or beds in a hospital), and it may be that reciprocity would be denied in some circumstances. In any case, the UK Government would have to see that adequate arrangements were made for Shetland's citizens in all the areas which are to be devolved.

1.6 Local Government and finance

The Shetland Islands Council would continue to exercise its present functions, but it would now become separated from the rest of the Scottish local government system. It would be a 'one-off local authority, relating to the Secretary of State for Scotland, either directly (interim), or through the Shetland Board. The Secretary of State or the Board would determine the Rate Support Grant after negotiation with Shetland Islands Council, exercise all the controls of central government, and determine the arrangements for negotiating local government salaries, teachers' salaries, conditions of service in Shetland, and other staff matters.

Shetland Islands Council would retain its present status. It might also assume responsibility for those functions (fire and police) at present shared with the Highland region, although no doubt *ad hoc* arrangements would be made with other authorities for services which Shetland alone could not provide (e.g. in further education and social work). Shetland would cease to be a member of the Convention of Scottish Local Authorities, and would have to perform all the functions of that body on its own behalf. These would include negotiations for RSG, teachers' salaries, local government officers' salaries, etc. Valuation would be decided for Shetland alone by Shetland's own Assessor. This would raise questions of comparability with other authorities in Scotland.

Finally, the special powers of Shetland Islands Council under the Zetland County Council Act are not affected by this Model. All planning permissions and authorisations of capital expenditure would be the responsibility of the Secretary of State for Scotland, and harbour and energy functions would relate to other UK departments, as they do now.

2. Economic Implications

The immediate general impact of this Model would be much the same as the continuance of the status quo, and can be discussed here very briefly. The Scotland Bill does not change existing economic and financial links between Scotland and England, and therefore between Scotland and an undeveloped Shetland. The complications of special administrative arrangements described above might add something to overall Shetland costs, unless Shetland interests were treated generously by UK authorities and equitably by Scottish authorities exercising devolved powers. In the longer term Shetland interests would have to be looked after by the UK, in the EEC, and the complications of separation from Scottish authorities would need to be mitigated by close cooperation — which suggests that later Models are more likely. With that, the situation might develop much as under the status quo.

2.1 Agriculture

Since agriculture is not devolved, support payments and the implementation of UK and EEC policies continue to be the responsibility of the Secretary of State for Scotland and the DAFS within the Scottish Office. In this respect therefore, there is no change and the prospects remain the same as in the Status Quo Model.

A difficulty arises however with those matters which are within the scope of the Crofters' Commission. It is probable that the Crofters' Commission could maintain liaison with Shetland, by means of a commissioner resident in, and responsible for, Shetland as at present. In this way it could continue to administer Crofting Law. A system whereby the Crofters' Commission was responsible both to the Scottish Executive and to a Shetland Board within the Scottish Office would not be impractical. Since Crofting Law does not exist in

England, it would be very difficult to administer Crofting Law through any English government body. In this respect, Shetland would lose the right and ability to influence any future change in Crofting Law; such changes would be made by the UK Government and would not be in Shetland's best interests.

petent to spend money outwith Scotland. In an atmosphere of goodwill it might be possible for the Commission to act on an agency basis, applying money from a special fund dependent on a direct grant from the UK Treasury; however, it might be preferable to establish a Shetland Crofters' Commission.

It would then be possible for Shetland to amend or dispense with Crofting Law, since this would be regarded as something affecting Shetland alone and therefore of no direct interest or concern to other parts of the UK or the UK government. This would facilitate any reorganisation of land tenure that might be thought desirable. There is at present no sign of any such radical intention, and, since it would greatly disrupt the existing traditional way of life, it may be thought highly improbable that there will be, but it should be made clear that the possibility of Shetland's altering or dispensing with Crofting Law exists in this Model, and in all those subsequent ones which involve the separation of Shetland from Scotland.

2.2 Fishing

The adoption of this constitutional Model does little to alter the Status Quo position for Shetland fisheries and the fish-processing industry.

The industry would lose the support of the HIDB. Financial aid could still be forthcoming through the White Fish Authority, Herring Industries Board and the EEC sources, FEOGA and ERDF. The total aid available might not be reduced. The HIDB is capable however of a more flexible and less bureaucratic approach which is perhaps more sympathetic to Shetland. For instance the HIDB has recently been forthcoming with grants for new boats in contradiction of EEC structural policy. Here too, the loss of the accumulated experience and particularised goodwill of the HIDB might in the long run be more important than the sum total of aid.

Shetland might benefit from having a direct line to a Minister, as a result of the administrative structure outlined above. On the other hand, the weight and different nature of the English fishing interests might counter-balance this advantage. However, since Fisheries are reserved to the UK government, the balance of interests between longdistance and inshore fishermen remains unchanged. Although decisions will eventually be taken in Brussels, this balance of interests is important because on it depends the degree of intensity with which British negotiators will pursue particular lines of argument. Shetland's changed position might however make its claims for some form of preferential treatment stand out more clearly.

3. International implications

3.1 Security and Law Enforcement

Security and defence are functions reserved to the UK government; devolution therefore makes no difference to the provisions made for Shetland's external security. Provision for Shetland's external security and defence will in fact

remain unchanged in all Models in which Shetland remains a subsidiary part of NATO.

Since responsibility for police forces is also reserved, Shetland still comes under the Northern Constabulary; offshore police work remains the responsibility of Grampian police.

3.2 Relations with the EEC

Shetland's constitutional relationship with the EEC remains unaltered in this Model. Depending on the precise relations between Shetland and Westminster and Shetland and Edinburgh, the administrative channels for economic relations may be altered. Grants from the European Regional Development Fund (ERDF) might be channelled through London rather than Edinburgh. However, there should be no changes in matters of substance, such as criteria for eligibility to receive ERDF grants.

3.3 Relations with other states and international organisations

The UK's practice, confirmed in the Scotland Bill, has always been to regard the conclusion of formal treaties as the exclusive province of central government. It is true however that a number of States have provisions in their constitutions empowering component units within them to conclude international agreements. Most of these States have federal constitutions, but there is no reason in principle why this power might not be extended to any unit within States. It is not an absurd hypothesis to suggest that a choice of Model 2 might lead to Shetland's acquisition of such a right; the Island's distance from London, and the very different nature of the problems confronted there might lead to this.

It should be stressed though that this is a purely theoretical statement; certainly the present intentions of the UK Parliament do not incline in this direction. No such right is granted to a devolved Scotland by the Scotland Bill; it is therefore unlikely that it would be accorded to Shetland.

4. Implications for Shetland as a community

4.1 Preservation of distinct identity and culture

This Model is clearly intended to increase the individuality of Shetland in the system of government. It detaches it from the general Scottish system of government, and sets it up as a unique authority in the United Kingdom. No other island authority, unless Orkney also votes 'No' in the Scotland Bill Referendum, will have such a position as a local authority linked to a Minister of the Crown either directly or through a special Board. This is bound to aid the preservation of Shetland's distinct identity and culture.

4.2 Articulation of Shetland's voice on community interests and access to other bodies.

Shetland's voice will be clearly heard at UK level through the arrangements in tills Model. It will not, however, be so clearly heard as before in the Scottish context. Shetland will have no representation in the Scottish Assembly, will cease to be a member of the Convention of Scottish Local Authorities, and will find its links with the Scottish professional bodies (e.g. in education, law, medicine, architecture, accountancy, valuation) weakened. In education, for example, the training and registration of teachers, the shaping of the curriculum, the setting and marking of exams, etc., are all the province of Scottish bodies, from which Shetland would be detached. While Shetland may not at present play a major part in these Scottish activities, it has guaranteed access to them all, and generally supports their policy outcomes. It is not clear how Shetland could provide its own distinct systems in such matters, and whether it would want to do so. Yet to be detached from devolution would imply a greater Shetland identity and isolation than at present exists.

Beyond Scotland, Shetland might find that its access to decisionmaking bodies was improved in this Model. It would be the only local authority within the responsibility of a Cabinet Minister (the Secretary of State for Scotland), which should help its impact on UK policy. This might even help it with regard to the European Community, as the Secretary of State for Scotland has access to the Council of Ministers, and his staff have access to other Community institutions, such as the Commission.

5. General impact of the Model

The general impact of this Model would be very unsettling for Shetland, at least in the short term. In the interim arrangements, Shetland might find that, while as much as possible was done to continue with things as before, a gap had opened between Shetland and Scotland. It would then be necessary for Shetland either to live without the links now binding it to Scotland in administrative, educational and legal matters or to develop arrangements with Scotland such as the Isle of Man now has with England.

The retention of links with Scotland through the Scottish Office, or a Shetland Board attached to the Scottish Office, would only partially compensate for the detachment from a devolved Scotland. It is not clear how the Scottish Office or a Shetland Board could cope with such a responsibility for Shetland in the long run. The Scottish Office would have shed most of its staff to the Scottish Executive, and all its staff in devolved matters such as local government supervision, education, health, etc. To take these on again for Shetland alone, either in the department or in the Board, would prove irksome, and probably unsatisfactory from a civil service career point of view.

Nevertheless there are, for the most part, administrative matters that could be
~~handled by the local authorities and the local health authorities.~~

4 MODEL 3: SHETLAND DEVOLVED WITH THE REST OF SCOTLAND

In one sense this is the Model that offers the least change and the most continuity. It is therefore (after Model 1) the least hypothetical of the Models. Indeed many of the uncertainties are those already considered in discussing the Status Quo. Nevertheless, these are the doubts which prompted the Shetland Islands Council 'Statements on Devolution' (May 1975, November 1976, January 1978).

In the second of these statements the Shetland Islands Council said:

'Tire Council believe that the majority of Shetlanders are satisfied with the present status quo and with what has been achieved for Shetland ... it is the Council's considered opinion that Shetland's position is threatened by imminent changes in the Constitutional framework of the United Kingdom . . . The Council has asked what benefits Shetland might gain from a Scottish Assembly. They can see none . . . The Council have asked what disadvantages there might be for Shetland in a Scottish Assembly. They can suggest many. Among the most important are:

(a) that the Government's proposals take no account of the possibility that a further reorganisation of local government may be necessary as a result of Devolution. Shetland could therefore lose its all-purpose authority status established in 1973.

(b) that the controls and opportunities won by Shetland in relation to North Sea oil developments may be undermined or taken away. For example, it is possible that the Scottish Assembly could remove responsibility for operating the Sullom Voe Port from the Council and give it to a third party. Such action could undermine the achievements of the Council and its predecessor body.

(c) that the problems of West Central Scotland, with that area's social deprivation and economic troubles, could make such demands upon the resources of a Scottish Assembly that the needs of isolated community such as Shetland will receive diminishing attention.

(d) that a Scottish Assembly may vary the Rate Support Grant distribution formulae in a manner which favours the highly populated and deprived areas of Scotland at the expense of Shetland. In addition, whereas the Council are reasonably assured that the distinction between

(i) disturbance and other monies intended specifically to protect

Shetland's future and (ii) grants intended specifically to promote the national interest in Shetland is understood by Government, they are far from assured that this distinction will be recognised and perpetuated by a Scottish Assembly.

(e) that the controls proposed for the Scottish Assembly over capital investment by local authorities could create a situation in which the Sullom Voe developments might be used as a political weapon by Assembly members opposed to British Government policies. Tire results of such a conflict of opinion could have disastrous results for the economic well-being of both Britian and Shetland.

(f) that in allocating its block grant, and given its limited revenue-raising powers, the Assembly may choose to allocate more finance for its own use and less for local government. Alternatively, a surcharge on local authority taxation as suggested by Layfield could only lead to unrest among ratepayers, particularly if those ratepayers living in Shetland saw no additional benefits accruing to Shetland.

(g) that Shetland's voice on subjects such as fishing, agriculture, or North Sea oil should remain clear and unencumbered. It is recognised that in principle these are not proposed as devolved subjects but their treatment is complicated by the proposed supervision by an Assembly of bodies such as the H1DB.

It has seemed proper at this point in the Report to set out, in the Council's own words, the disadvantages perceived in Model 3.

It is as well also to outline the powers that will be granted to the Scottish Assembly and Executive.

In general terms the Assembly and Executive would be responsible for Health; Social Welfare; Education; Housing; Local Government and Finance; Land Use and Development; Pollution; Erosion and Flooding; the Countryside; Transport; Roads; Marine Works, Agricultural Land (Tenure and Management); Crofting (including Crofting Grants); but not moneys deriving from Department of Agriculture and Fisheries Scotland (DAFS); Fisheries (Fresh Water Fisheries and within a distance of three nautical miles of the shoreline); Forestry; Water (Supply of Water and Reservoirs); Fire; Tourism; Ancient Monuments; Registration and Statistics; Miscellaneous Services (such as Licensing, Shop Hours etc.); Courts and the legal profession; Tribunals and Inquiries; Public Records; Civil Law matters; Crime.

The Assembly's income would come from a Block grant voted by the UK Parliament; it would not have the power to raise revenue. Tire Asembly

would have a legislative capacity, the Executive a decisiontaking and administrative one. Shetland would be represented in both the Assembly and the UK Parliament. In the latter a Member would still represent Orkney and Shetland; in the Assembly there would be a Member for Shetland.

Administratively this Model would involve little change, at least in the immediate future. Most of the devolved responsibilities cover areas where Shetland is closely linked with Scotland and the education, legal, health, housing, social work and planning systems remain essentially the same. They are of course subject to the Assembly, but it is not possible to make a realistic prediction of future political changes. It should be remembered, however, that there is a safeguard in the power of the Secretary of State and the Privy Council to block Assembly legislation. This may be regarded as a valuable constitutional check, but it does depend on the willingness of the Secretary of State to exercise his residual authority; it is not difficult to imagine situations where he might be reluctant to do so. It would, though, be pure conjecture to consider the Assembly's distribution of the Block Grant; but it may be supposed that the UK Parliament would require very strong evidence to support an assertion that Shetland's share was not a fair proportion of the total.

It must be stressed that the doubts occasioned by this Model are political. They reflect a fear of the untried and the unknown. The immediate shape of administrative structure is clear enough, far clearer than in any Model after the Status Quo. The doubts are occasioned by uncertainty as to the policies likely to be adopted by the Scottish Assembly and Scottish Executive. These are doubts which, in a world where politicians' promises are sceptically received, can only be allayed by experience.

It is not part of our brief to consider the merits of the doubts expressed by the Council as to the possible operation of this Model; it is however pertinent to point out that there are no certainties on these points in the Status Quo Model either. However this Model operates, one thing remains clear. The Assembly is subordinate to the UK Parliament, where sovereign power continues to reside; and many of the matters most vital to Shetland are

This Model is for the benefit of the people of Shetland and the Islands.

affects more than the powers of the Shetland Islands Council. For example, it reaches into crofting, the National Health Service, and teacher training, none of which are local functions. Conversely, Shetland Islands Council has powers under the Zetland County Council Act 1974 which make Shetland different from local authorities elsewhere, certainly those on the mainland of Scotland. Thus there are special local government problems which apply to Shetland under devolution.

We have not considered any types of devolution which might be introduced should the Scotland Bill not pass, or not be put into operation. Alternative schemes which have been suggested range from the former Conservative policy of a Scottish Assembly linked to Westminster with no Scottish Executive, to the much stronger forms of devolution, with tax-raising powers, suggested by some backbenchers. It is difficult to be specific about these schemes in the absence of legislation. Finally, it must be assumed that the system of devolution introduced under the Scotland Bill will evolve as time goes by. The treatment of the Model is, however, based on the Bill as it now stands, although some pointers are given as to how devolution might develop.

1. Political, administrative, and public finance implications

1.1 International status

Shetland and Scotland are integral parts of the UK, which is responsible for all external relations. Should the Assembly or Executive act in a way incompatible with European Community obligations or any other international obligations of the UK, then the Secretary of State may veto such action (s. 20 (1) (b); s. 37 (2)). Such obligations include the agricultural, fishery, regional, etc., policies of the European Community, and the international agreements relating to the Law of the Sea, collective security, etc. This effectively removes questions of agricultural price supports (but not crofting grants), fishing limits and quotas, North Sea oil and gas, and defence, from the remit of the Scottish Assembly and Executive.

However, Schedule 16 of the Scotland Bill makes provision for the Scottish Assembly to legislate, and for a Scottish Secretary (member of the Scottish Executive) to act, in place of the UK in matters relating to the European Community, if such matters come within the devolved sector. Examples of these would include transport, the environment, and education, which could be affected by Community law. Implementation of such law would be by the devolved authorities, not by the UK.

1.2 The Crown and Executive bodies

The Crown is the source of all devolved authority, as well as of 'UK' powers in Scotland. In the devolved sector, the Crown, through the Secretary of State:

- (a) summons and dissolves the Assembly;

- (b) appoints the First Secretary and other Scottish Secretaries of the devolved Executive;
- (c) scrutinises Assembly Bills for competence, and may refer such Bills to the Judicial Committee of the Privy Council, or, if international obligations are involved, may veto such Bills;
- (d) may refer Assembly Bills to Parliament for ‘policy over-ride’ if these affect matters which have not been devolved;
- (e) gives consent in Council to Assembly Bills;
- (f) must give consent, or act concurrently with members of the Scottish Executive, in certain matters. Such matters are listed in Schedules 4, 5, 14, Part II, and Schedule 16 of the Scotland Bill. In some cases, another Minister of the Crown may be involved. Examples are terms and conditions of service in the Health and Fire Services (Schedule 4); the Community Land Act 1975, s.18 (Schedule 5); planning interventions (Schedule 14, Part II); and the Highlands and Islands Development (Scotland) Act 1965 (Schedule 16).

The Crown retains direct control over non-devolved matters (‘reserved functions’). These are divided into *central* government functions, such as energy, external relations, civil aviation, etc., and *local* government functions such as police, electoral registration and ports (other than marine works). The central functions are of course administered by agencies of the central government, while the local functions are administered by local authorities, under controls set by the central government.

The devolved Scottish Government Executive has functions which cover matters arising out of legislation passed by the Scottish Assembly (Schedule 10), and matters within the powers of the Scottish Executive but not within the legislative competence of the Assembly (Schedule 11). Examples of the former include health, social welfare, education, housing, local government and finance, land use and development, etc. There are 26 Groups listed in Schedule 10. Examples of functions devolved to the Scottish Executive alone include grants to universities, local authority guarantees of housing loans, and certain powers over land use and development.

The Scottish Assembly and Executive will be responsible for many bodies which at present are linked to the Scottish Office. These include several of great importance to Shetland:

- Crofters Commission
- Lands Tribunal for Scotland/Lands Valuation Appeal Court
- Countryside Commission for Scotland
- Scottish Tourist Board
- General Teaching Council for Scotland
- Scottish Certificate of Education Examination Board

Scottish Teachers' Salaries Committee
Scottish Teachers' Service Conditions Committee
Central Institutions and Colleges of Education
Health Boards
Scottish Health Service Common Services Agency (including ambulances)
Social Work Services Group
Registrar General for Scotland
Scottish Courts Administration (administration of Lerwick Sheriff Court)
List D Schools
Prisons
Highlands and Islands Development Board (in part)
Scottish Development Agency (in part)
The Law Society of Scotland
Faculty of Advocates
Scottish Law Commission
Scottish Transport Group
Scottish Traffic Commissioners (bus fares etc.)

Other public bodies will have links either with that part of the Scottish Office which deals with reserved matters or with other UK departments. This list includes:

North of Scotland Hydro-Electric Board
Scottish Gas Board
Civil Aviation Authority (including air fares)
British Airways
Northern Lighthouse Board
Scottish Postal Board and Scottish Telecommunications Board (Post Office and Telephones)
National Ports Council (re Harbour Authority)
Manpower Services Commission (Jobcentres)
Meteorological Office
Board of Customs and Excise
Board of Inland Revenue
White Fish Authority
Herring Industry Board
Industrial Tribunals
Supplementary Benefits Commission
Lerwick Sheriff Court (but *not* administration)

Procurator Fiscal's Office
Scottish Land Court
High Court of Justiciary and Court of Session
BBC and IBA
Price Commission (including sea fares)

Then, as in the case of authorities under the Crown, there are functions performed by local authorities, subject to the legislative or executive authority of the Scottish Assembly and Executive. Such matters include the provision of schools and the appointment of teachers, town and country planning, rating and valuation for rating, and harbours used principally for the fishing or agricultural industry or for the maintenance of communications between places in Scotland. Shetland Islands Council would be responsible to the Scottish Assembly and Executive when exercising devolved functions, and to the UK Government when exercising reserved functions.

1.3 Parliament and the Scottish Assembly

Shetland is subject to two sets of laws — those passed by Parliament, and those passed by the Scottish Assembly. Acts of Parliament carry supreme authority, and are unrestricted as to scope or validity. Assembly Acts, however, must be *intra vires*, and can be challenged on grounds of competence in court, with ultimate appeal to the Judicial Committee of the Privy Council (s.19, 20, 63, Schedule 12). The Government may seek to persuade Parliament to over-ride an Assembly Act on policy grounds, or if it is held to affect a reserved matter (s.36).

It is important to discover what is covered by the terms 'devolved function' and 'reserved function', and how the Bill would operate in respect of these. It is beyond the scope of this Report to give a full treatment of such matters, and much will depend on future interpre

tation. Considerable discussion about the Bill has already taken place in Shetland, including correspondence and meetings between Government ministers and members of Shetland Islands Council. Most of the relevant questions are dealt with in the next section, dealing with local government and finance. Here it should be noted that in any devolved system of government, the central government (in this case, the UK) retains supremacy over the devolved authorities. Despite the loss of Clause 1 of the Scotland Bill, which re-affirmed the supreme authority of Parliament to make laws for the United Kingdom or any part of it, there is no alteration in the power of Parliament to make whatever laws it likes, nor are the courts able to deny the validity of Acts of Parliament. For such a system of 'judicial review', a higher body of law would have to be established in the form of a Constitution, against which Acts of Parliament would be tested for constitutionality.

Moreover, the UK Government might conceivably use the power of the purse to make good any shortfall in Shetland's income which might be caused by a cutback in funds under the control of the Scottish Assembly. This would apply to Rate Support Grant, specific grants, approval of capital expenditure, and loans. Whether the UK would do so would depend on its assessment of the national interest and of Shetland's needs at the time.

1.4 Local government and finance

Shetland Islands Council has been particularly concerned about the future of its powers under devolution. Despite prolonged discussion with the Government about the implications of the Scotland Bill in this respect the Council has not been convinced by all the assurances given that Shetland's interests are safeguarded under the Bill. Moreover, there are certain matters worrying the Council about which the Government has been unable to give assurances. Briefly, the main questions at issue are:—

- (a) The continued existence of Shetland Islands Council as an all-purpose local authority. Under the Scotland Bill, the structure of local government is devolved, so no legal assurance can be given as the Bill now stands that the Council or its present functions will continue to exist. But this is also true under the Status Quo Model (Model 1).
- (b) The future level of Rate Support Grant and how it might be affected by the additional income from oil disturbance payments, harbour revenue, etc. As Rate Support Grant is devolved, no legal assurance can be given as to its future level for Shetland. But even under the Status Quo Model, RSG could be altered by the Secretary of State, after negotiation in the Convention of Scottish Local Authorities.
- (c) The vulnerability of the Reserve Fund under devolution. The Government maintains that, since Harbour powers are a reserved function, any income relating to these powers could not come within the scope of the

Scottish Assembly. However, the legal status of the Reserve Fund is at present unclear since all local authority income passes through the General Fund (except any part held in Trust) (Local Government (Scotland) Act 1973 s.93). Since the money destined for the Reserve Fund is mixed with the General Fund of the authority, there are bound to be doubts as to the separability of these sources of income when the balance of accounts for the local authority is considered. Moreover, the needs of the Harbour Authority have to be met before any surplus is paid into the Reserve Fund.

(d) The question of the authorisation of capital expenditures. Some members of the Council believe that the Scottish Executive could refuse capital authorisation for Shetland with regard to developments at Sullom Voe, etc. This would follow from the devolution of consent power under s.94 of the Local Government Act 1973. The Government has replied that with regard to a reserved function (such as harbours), the UK would provide the necessary consent. What is not clear is how the UK could give consent to capital expenditure in clearly devolved matters such as housing, schools, roads and water, which would be necessary for the 'infrastructure' at oil terminals, etc. It could however give specific grants for these purposes.

(e) Similar issues arise about compulsory purchase of land, planning consents, and the level of Rate Support Grant for reserved local functions (for a definition of such functions see 1.2 above). Most of these questions can only be resolved by future legal interpretation but some could be covered by amendments to the Scotland Bill which explicitly safeguarded the existence of Shetland Islands Council with its present powers, and reserved the entire Zetland County Council Act 1974. There might also be a clarification of the legal status of the various elements of the Reserve Fund and its relationship to the General Fund, the Port and Harbour Account, and the Rate Support Grant. These last matters would, however, be better dealt with in separate legislation, or by other action, since they are strictly not problems of devolution.

2. Economic implications

This Model offers the most continuity after Model 1. Many of the uncertainties have already been discussed in the last section of Chapter 2 of the Report, *Shetland As It Is*. These uncertainties exist largely in the governmental, financial and administrative areas discussed above. Inasmuch as the Scottish Assembly has been denied revenue-raising powers its general economic policy must remain within parameters established by the UK Government. We have already referred to the possibility that its allocation of its Block Grant might discriminate against the Island Communities in favour of the depressed industrial and urban areas of West Central Scotland. This is of course a possibility but we have found no evidence to support it. Much of Strathclyde (including Glasgow and the Clyde Valley itself) is already classed as a Special Development Area in the UK. By comparison Shetland is a Development Area, like the rest of Scotland except Aberdeen which is only an intermediate area. Moreover, there is reason to

suppose that interests and political groupings may be more balanced in the Scottish Assembly than a glance at the current distribution of Parliamentary seats alone might indicate.

2.1 Fishing

Fisheries are a reserved function over which the Scottish Assembly and Executive exercise no control. What is devolved to the Assembly is the “protection, improvement and maintenance of salmon and freshwater fisheries in any waters, including any part of the sea up to a distance of three nautical miles from the Low Water mark of any part of the mainland or adjacent islands of Scotland or, where an estuarial limit fixed under the Salmon Fisheries (Scotland) Acts 1828 to 1868 extends beyond that distance, up to the estuarial limit”. (Scotland Bill Schedule 10.) Under this Model Shetland has therefore no power beyond what exists at present (which is a merely persuasive power) to extend control over the management of fishery resources.

However, this power of persuasion might be more effectively exercised in this Model than in the Status Quo.

First, a Scottish Assembly and Executive may well find itself able to urge Scottish interests, even in reserved matters, more strongly than is the case at present.

Second, Shetland will be able to speak more clearly in a purely Scottish context than in the UK one.

Nevertheless, the vital decisions for Fisheries will still be taken in Brussels and, to a lesser degree, London.

This Model would not involve any disruption of existing relations with the H1DB, WFA or HIB.

2.2 Transport

Transport costs are a major problem for Shetland in this as in other Models. The Western Isles will receive in 1978 a Transport Subsidy of £3,600,000 and Orkney of £365,000 (figures supplied by the Secretary of State for Scotland in an answer to the MP for Orkney and Shetland) while Shetland receives nothing. It remains true however that Shetland has had no success in putting forward its claims for special treatment in this area, that all the Island groups, despite subsidies have cause to complain of high transport costs (complaints which can be heard in the Highland Region also), and that they might constitute a more effective pressure group in the Assembly than they do at Westminster.

3. International implications

3.1 Security and Law Enforcement

Although it remains true that under this Model there are unlikely to be far-reaching changes for security and regulation enforcement, there is nevertheless room for new emphasis. Fishery resources management and control of pollution at sea are reserved functions, but they are also areas where tension between local, 'regional' or coastal community interest and the national interest is probable. The likelihood is, therefore, that a Scottish Assembly would either be eager to acquire new powers of control, or be anxious to win approval for discriminatory practice in accordance with the local or community interest without necessarily going so far as to challenge the formal terms of devolution. The question of 'local' enforcement effort would arise. Obtaining this freedom of policy-making and the ability to enforce it would involve paying the price of a more costly policing arrangement. The community existing between Shetland fishing interests and Scotland's (see 2.1 of this Model) makes it likely that this would be acceptable.

3.2 Relations with the EEC

Even the administrative changes arising under Model 2 should not arise. There would be no change in Shetland's relations, via Edinburgh and London, with the EEC.

3.3 Relations with other states and international organisations

It is very unlikely that Shetland would be able to negotiate any international capacity under this Model. Not only is this denied to the Scottish Assembly and contrary to UK practice, but the faint possibility conceded in Model 2 would disappear, together with the peculiar status Shetland would enjoy under that Model. As part of a devolved Scotland, Shetland would stand in more or less the same relation to Edinburgh and Westminster as Orkney, the Western Isles or, to a lesser extent, the Highland Region.

4. Implications for Shetland as a community

4.1 Preservation of distinct identity and culture

The principal question which arises here, as it does in the other Models, is how far Shetland is part of Scotland — in its sympathies and culture, and in its 'affairs of state' — the political, administrative, legal, educational, etc., activities of modern government. It may be that many Shetlanders feel somewhat detached from Scotland, and of course they are different in many aspects of their culture. But there is also no doubt that at the moment they are closely linked with Scotland for most of their 'affairs of state'. Whether these links serve them well is another matter, and in the face of Scottish devolution, some people in Shetland have sought to break them, presumably because they fear the consequences of a decision-making process which is more Scottish than the present process. These people consider that the present control exercised by the UK Parliament and Government over all

5 MODEL 4: SHETLAND AS PART OF AN INDEPENDENT SCOTLAND

Consideration of this Model involves an analysis of the different ways in which Scottish independence might come about, and consequently of the atmosphere that might prevail. If the Scotland Bill becomes law and a devolved Scottish Assembly and Executive are set up under the terms of the Bill, then it may be assumed that independence would not come about until the mid-1980s at the earliest and would then be achieved by negotiation. However, we must admit the possibility of the Bill being defeated or otherwise not enacted. In that case it is possible that bitterness would grow among many who felt Scotland's legitimate aspirations had been thwarted and that some of these would turn to violence and acts of terrorism. On the first assumption, the achievement of Scottish independence would follow the pattern of Australia or New Zealand. On the second, the model would be Ireland or some variety of the many anti-colonialist movements of the post-war era. It is also possible that negotiations for independence between the Scottish Assembly and the UK Government would break down and that Scotland would then make a Unilateral Declaration of Independence.

The means of achievement would affect the nature of the Scottish State. They would influence the important question of State Succession, of the constitution to be adopted and of membership of international organisations like NATO and the EEC. We propose to examine the first two of these questions here, while NATO and the EEC are treated in Sections 3.1 and 3.2 of this model.

The area of International Law, generally termed state succession, is confused and difficult. There are two opposed schools of thought. One recognises universal succession under which all the obligations of the predecessor state are automatically inherited. The other asserts the "clean slate" principle, under which no obligations are inherited. For a full discussion of this question, see Volume II Chapter 6 of this Report, *International Law* by John P Grant. However it may be said here that Scotland's inheritance of public debt and international obligations would depend on "an inheritance agreement", even though this would itself be of no international validity until confirmed by a Treaty between the predecessor state (whether still called the United Kingdom or not) and the new Scottish State. The nature and content of this agreement would be affected by the circumstances in which it was made.

The question of Scottish succession to the North Sea oil fields is equally complex. The International Court of Justice has stated that a State's rights to

an area of the Continental Shelf exist “by virtue of its sovereignty over the land” and has termed a State’s title of its share of mineral deposits of the Continental Shelf as ‘inherent’. However the central rule in drawing a Continental Shelf boundary is that it should be effected by negotiation. Where agreement is not possible the emphasis in the Geneva Convention is on the median or equidistance line; in terms of customary law it is on an equitable division of the shelf. Although the *Continental Shelf (Jurisdiction) Order (1968)* declared that Scots law should cover most gas and oil installations activities above latitude 55°5', it cannot be automatically assumed that Scotland would inherit all installations above this line. The line was set down for administrative purposes. It bears no close relation to the median line or any other line of delimitation. It cannot be taken as a probable boundary between two independent states. For a full discussion of the question of oil and gas deposits in relation to Scottish independence the reader is referred to John P Grant: *Oil and Gas in Independence and Devolution: the legal implications for Scotland* (Edinburgh 1976). However, no matter where the line might eventually be drawn, Scotland would inherit the oil fields in the Shetland basin, assuming that this Model operates and that Shetland is part of the new Scottish State. (The possible consequences for Scotland, the UK and Shetland, if Shetland were to be detached from Scotland, have been provocatively, if cursorily, suggested by Ray Perman (Financial Times, 10 February 1978). The gist of Mr Perman’s suggestion was that, in the light of the arbitration decision in the dispute between Britain and France over the western approaches to the Channel, such a course might involve the loss of at least the most northerly fields to Norway; and that this could happen whether Shetland remained a part of the UK or became independent.)

The question of succession would not necessarily affect the form of the constitution of the new state. In a sense this Model here provides Scotland with a blank cheque; this applies to its relations with Shetland also. As a sovereign state Scotland could decide its own institutions. Indeed, it may reasonably be assumed that this would be regarded as the first task of the new state. There is no reason to suppose that Scotland would be content merely to take over Westminster powers and structures and establish them in Edinburgh. The Assembly might transform itself into a Constituent Assembly whose work would eventually be submitted to the electorate in a referendum. This has been normal practice in European States where there has been an abrupt break in the continuity of institutions.

If these deliberations produced a written Constitution then Parliament would not possess sovereignty, for it would be possible to appeal against Acts of Parliament to a supreme Judicial Authority on the grounds that they were

unconstitutional. If the rights of local authorities would possess a status which their equivalents do not have at present.

However, on the assumption that independence comes about as a development of the devolved system, the Scottish Assembly in the interim period might have altered the administrative structure of local government, amended the powers of local authorities and changed their relations with Edinburgh. It seems likely that an Assembly will indeed regard such remodelling as a priority, though, on the evidence available, it appears that the Islands Authorities would not be changed. With this possibility in mind, the description of the system of government which we give below can only be speculation based on probable outcomes. Therefore we have not provided the detail which was given in Models 1 to 3, for these Models are based on existing practice or elaborate legislation. Any detail which we could provide in Model 4 would have to follow either the proposals of the Scottish National Party for the constitution and policies of an independent Scotland, or the practice of independent states elsewhere; and such practice is legion. SNP policies can be studied in the policy documents of the party, for example, *Scotland's Future* (1974), and Gavin Kennedy (ed.), *The Radical Alternative: Papers for an Independent Scotland* (Palingsenesis Press, Edinburgh 1976) and the statements of SNP representatives on Shetland (though these last may be found to conflict with each other). Speculation about the future of Scotland under independence which is not SNP policy can be read in D. Mackay (ed.), *Scotland 1980(f)* Press, Edinburgh 1977), and R. Underwood (ed.), *The Future of Scotland* (Croom Helm, London 1977). We shall draw on these sources, but we do not expect to find there an exact guide to what would happen in an independent Scotland.

However, there are certain elements which would weigh with a Scottish government and certain options open to such a government, both of which exist irrespective of those interim developments, of the Constitution adopted and of such a government's political complexion. It is perhaps appropriate to set these out here.

The first is the peculiar imbalance of the country where almost four-fifths of the population is concentrated in the narrow central belt. This gives rise to frequently expressed fears of 'government from Strathclyde', but these might more fairly be expressed as fear that policies will be framed to suit the densely urban areas at the expense of the rural communities. Shetland's geographical isolation only serves to highlight a distrust which is shared to a greater or lesser extent by other regions.

Second there is another imbalance, this time between East and West. This shows a contrast between areas which are developing rapidly on the basis of advanced technology and seizing the opportunities offered by oil, and the West, still too often harnessed to out of date technology and industrial

structures. This suggests that a prime consideration of a Scottish government would be how to regenerate the industrial and social structures of the Glasgow conurbation.

At the same time there is a historic consciousness of the deprivations suffered by the Highlands and Islands. It would be a mistake to underrate this. There can be little doubt that, other things being equal, a Scottish government would be well-inclined to the problems of these areas. Indeed Shetland's expressed fear that too much will be weighted towards Strathclyde and its areas of multiple social deprivation can be matched by others' expressed misgivings that too many decisions in a new Scotland would be made for social rather than strictly economic reasons.

The various tensions and contrasts might persuade a Scottish Constituent Assembly to eschew a centralised state structure and prefer a looser one in which Shetland could acquire a considerable degree of autonomy. We have not however considered in detail here how this might operate, since it seems rather a variety of Model 8, in which Shetland would enjoy Special Status in relation to Scotland rather than the UK.

1. Political, administrative and public finance implications

1.1 International status

Scotland is an independent state, with international recognition. It may or may not be a member of the European Community and of the Commonwealth. Shetland is an integral part of Scotland, although it is possible to conceive of various forms of relationship that Shetland could have to Scotland. It could have 'special status' along the lines of the Faroes in its relationship with Denmark. This appears to be the policy of the SNP candidate for Orkney and Shetland. It could have devolution along the lines of Scotland in its relationship with the UK. It could become a 'dependency' of Scotland, just as the Isle of Man or the Channel Islands are dependencies of Britain. It could become a 'condominium' of Scotland and England, which we discuss under Model 7. Here, we shall assume that Shetland is a local authority, under the authority of the Scottish Parliament, with the same relationship to Scotland in central and local government as it has under the Status Quo Model (Model 1) to the UK.

1.2 The Crown and Executive bodies

The British Crown may have some part to play in an independent Scotland (if a connection is retained). This would most probably be along the lines of the commonwealth countries which recognise the Queen as Head of State (e.g.

Canada, Australia, and New Zealand). If so, in a sense the source of authority in an independent Scotland would still be the British Crown.

Scotland has its own Government, which is responsible to the Scottish Parliament. It would establish Ministries, Boards, etc., as does the present Government of the UK.

1.3 Parliament

The Scottish Parliament is the supreme legislative body. Whether it would be 'sovereign' or not would depend on the status of the Scottish Constitution, of a Bill of Rights, and so on. If the Constitution and Bill of Rights were established as 'supreme law', then Acts of the Scottish Parliament could be tested in court for constitutionality.

1.4 Courts

The Scottish legal system would, in principle, continue as before, with the possible exception mentioned above that a court might exercise a 'judicial review' of the Acts of the Scottish Parliament or of executive actions for their constitutionality.

~~1.5 Central Administration and Financial Sources of UK Territory,~~

British Airways etc.

All taxes would be Scottish taxes. If Scotland remained within the EEC, VAT and the Common External Tariff (CET) would still have to be operated. The involvement of Scottish industry and business with English is such that it might prove politically, if not economically, desirable to harmonise rates of Corporation tax. Consideration could however be given to discriminatory tax measures to encourage new industry, and some variety of a Regional Employment Premium could be restored to protect designated areas, while, if Scotland were to withdraw from the EEC, there would be greater scope for action of this kind.

1.6 Local government and finance

Shetland Islands Council would retain its present powers, but be subject to the authority of the Scottish Parliament and Government, just as now it comes under the UK Parliament and Government. Whether it would keep its existence and powers over time is a matter of speculation.

Its finance would remain the same, with Rate Support Grant, the Reserve Fund, etc., continuing, at least in the short term. A Scottish Government, however, might wish to introduce a local income tax, particularly if there was any inclination towards a loose political structure with considerable local autonomy. It could threaten the Reserve Fund. Any guide to these possibilities must come from the programme of the political parties, bearing in mind that what parties say out of office does not always correspond with what they do when they get into power. It might be added that extreme statements in opposition tend to get moderated when a party takes office.

2. Economic Implications

Shetland as part of an Independent Scotland would be part of a new monetary and economic area, and it is impossible at this time to predict how the system and policies of an independent Scotland would affect the general and the particular interests of Shetland. Shetlanders would need to form their views as the likely shape of events became more clear.

The situation would be considerably affected by whether Scotland was accepted as a member of the EEC, or whether it entered into association with the EEC, or whether (subject to general international obligations, existing or undertaken) it pursued an independent policy. It would also be affected by the degree to which its natural close financial and economic relation with England was disrupted for political reasons. Except in extreme circumstances, the close economic and financial relationship of Eire with the UK would seem to point to a continuance, though substantial oil revenues and a strong balance of payments would give Scotland a greater freedom of manoeuvre. There is considerable

debate in Scotland at present as to whether an independent Scotland would harmonise its exchange rate with England. If there were to be a strong Scottish pound, the effect on the indigenous Shetland industries, which are highly export-conscious, might be serious. The worst hit might be fish-processing. The main export market is at present in the United States, and it may be imagined that this would be lost if the Scottish pound was allowed to float high above the dollar. The knitwear industry, producing a high quality product for the upper end of the market, could probably overcome this difficulty.

It should be stressed that many economists feel that a strong Scottish pound would so reduce the general acceptability of Scottish exports as to be disastrous for manufacturing. It would also make Scotland a less attractive country for tourists. On balance it may be considered that Scotland is more likely to try to hold the Scottish pound within one or two points of the English. Nevertheless the possibility outlined does exist and might persuade Shetland, in the intervening period, to try to establish industries oriented towards the Scottish mainland or towards countries with notably hard currencies like West Germany.

(For a discussion of this problem see *Scotland: 1980* (Q Press Edinburgh 1977) and the debate between C R Smallwood and D Mackay in *Our Changing Scotland 1976-7* (ed. Clarke and Drucker, EUSP.)

None of this would need to affect Shetland adversely, if Scotland remained reasonably prosperous. As has already been said, Shetland would be a proportionately larger part of Scotland than of the UK, though still small.

2.1 Agriculture

If Scotland was in the EEC, the situation would not differ from other Models. An independent Scottish agricultural policy would be likely to take account of the special needs of the Islands, to the extent that this had been done in the past.

2.2 Fishing

Again, the relationship with the EEC is the crucial factor and has already been discussed. Scotland outside the EEC would presumably insist on its fishing rights, with benefit to Shetland, even with increased competition from mainland Scotland.

2.3 Textiles

Shetland textiles — like other largely Scottish woollens, are sold on overseas markets, which even an oil-rich Scotland would not wish to neglect. As has already been said, the prosperity of the Shetland industry depends on labour conditions and wage rates, and on competition and tariff and other barriers in its markets.

2.4 Oil

The pattern would be approaching that for 1985 described above. Subject to existing agreements, a Scottish Government would have the freedom to modify its oil policies, but Sullom Voe would be operational, and the pattern of exploration and exploitation would have become more fixed in the intervening years. Legal and technical reasons combine to restrict any alteration in the rate of Depletion, which a Scottish government might wish to make, to 20 per cent.

3. International implications

3.1 Security and Law Enforcement

The provision of security for an independent Scotland turns on the questions of the means by which such independence was attained, the terms of independence and the policies adopted by a future Scottish Government. The range of speculation on these questions is wide and inevitably uncertain. It is, however, still assumed for the purposes of the Model that independence has been attained by negotiation and Scotland's claim to off-shore oil has been recognised subject to compensation (which might be very large indeed) payable to England. On this basis, which would include a Scottish capability to assume international obligations more or less as she wished, it is possible to make predictions.

Scotland (and with Scotland, Shetland) remains a member of NATO, though (like Norway and Denmark) nuclear weapons are not based on its soil. A defence union with the rest of the UK (or England) is maintained. Under such an arrangement, there would be no alteration in Shetland's security arrangements to protect the Islands against an external threat. Shetland's position of peculiar strategic importance (see Map 2) must make this a priority consideration in any constitutional Model. Should Scotland elect to withdraw from NATO (which is not the policy of the SNP) Shetland might, under this Model, feel dangerously exposed.

There would clearly be powerful reasons to maintain a similar continuity in provision for internal security and there is no *prima facie* case why this should not be done. However, the possibility exists that a newly-independent Scotland might be troubled by an internal security problem, caused by discontented political activists who would turn to terrorism. (The Irish Civil War of 1922-3 and the activities of the Organisation de l'Armee Secrete (OAS) in Algeria are two examples of responses to the turbulence engendered by the gaining of independence in states where for one reason or another groups were violently opposed either to the terms or to the fact of such independence.) Clearly, Shetland's oil and gas installations are prime targets for terrorist action. It is therefore possible that this Model would lead to the application of more stringent security regulations and an increase in the military or police provision for the Islands, but this might also be necessary under the Status Quo Model if a

defeat or abandonment of the Scotland Bill were to provoke an extremist minority to acts of terrorism.

It is assumed that attention to Scotland's economic and environmental security would generate change; that fisheries and indeed the maritime environment in general would carry more weight in the consideration of Scottish policies than they currently do in the United Kingdom; and that this would mean an increase in Government activity (and employment) in and around Shetland.

It must also be assumed that Shetland would be called upon to bear a higher proportion of security costs than is the case at present, partly because there might well be higher per capita income than in an independent Scotland and partly because Shetland would be less insignificant in this new context.

3.2 *Relations with the EEC*

A major question must be whether an independent Scotland would choose (or be allowed) to become a member of the EEC. Certainly it would be necessary to renegotiate membership, for an immediate effect of a new international treaty giving Scotland (with Shetland) full independent sovereignty would be that the new state would cease to be a member of the community (Article 237, Treaty of Rome). If a Scottish wish for membership was being favourably regarded, transitional arrangements might be agreed on to prevent interim disruption of trade. However, it is unlikely that everything could continue as if Scotland was still a member. For example, access to the ERDF and FEOGA guarantee fund might be suspended together with contributions to the Community Budget. Shetland could suffer from such a period of suspended membership in the shape of lost grants or loans.

It is quite possible however that Scotland's application for admission might not be reviewed favourably. Scotland's secession from the United Kingdom would create an unwelcome precedent which might be followed by Bavaria, Brittany etc. (see T. Dalyell: *Devolution: The End of Britain* p.51, London 1977).

One obviously cannot forecast exact terms for Scottish entry. In an atmosphere of goodwill there could no doubt involve minimal change from the Status Quo, such change being to Scotland's benefit. However, if Scotland achieved independence after acrimonious bargaining with England over oil revenues, terms of membership might be harder.

Apart from these political uncertainties, the economic prospects are cloudy. With a sizeable share of the North Sea oil revenues, Scotland would have a per capita income above the average. This means that Scottish contributions to the Community Budget would be higher than receipts. Scottish wealth would also reduce the prospect of qualifying for ERDF and FEOGA grants. The fact that fisheries would be proportionally more important to an independent Scotland than to the UK would make a strong case for reserved fishing areas, controlled

by licence, if this was the method of fishery protection considered most suitable. Again, however, the country's wealth might argue against generous treatment, especially as fishing areas such as Shetland and Aberdeen also tend to benefit from oil development.

It is clear that much of this argument turns in circles, depending again on how oil revenues are apportioned.

Arguments against membership might encourage Scotland to remain outside the Community. These arguments would have to be strong to weigh against the loss of export markets in England and on the Continent that such exclusion would involve. An attempt might be made to negotiate a form of associate membership and a free trade agreement. In the light of the Norwegian experience this would probably result in the restriction of certain exports to the Community. The terms of the Norwegian agreement were fairly onerous so far as 'sensitive' products, notably aluminium and paper were concerned. Scotland, within a comparable agreement, would suffer similar disabilities. In return however Scotland would not have to apply the Common Agricultural Policy nor make contributions to the Community Budget. Most important of all, it would be possible to declare its own 200 mile (or up to the median line) fishing zone. So far as Shetland is concerned, such an arrangement would have much to commend it. It would not suffer directly from the harsher terms of industrial trade (though it could not escape the general consequences of any economic recession this might produce; for example, a greater proportion of Shetland taxes might have to go towards paying for a rise in unemployment). Fisheries policy would be under Scottish control and it would be up to Shetland to make provision for the protection of fishing interests in collaboration with the Scottish government. It should not be forgotten however that adequate measures for such protection might have been devised somewhere along the line leading to an independent Scotland. In that case exclusion from the EEC might be viewed differently in Shetland.

3.3 Relations with other states and international organisations

Shetland enjoys no possibility of establishing international contracts or participating in international bodies or concluding international agreements beyond that outlined in earlier Models. Any such capability would exist only at the discretion of the Scottish State. If this is organised on the unitary Model of the existing UK state, all international relations would remain the responsibility of central government. It might however be possible to maintain observers or a Shetland lobby at Brussels to press Shetland's case there. The status of such a delegation would depend first on the willingness of the Scottish Government to accord it any official standing and secondly on the willingness of the EEC or an appropriate department of the EEC to receive it on such a basis. Clearly this

would be more likely if the Scottish State were to adopt a loose structure or grant outlying regions substantial autonomy.

4. Implications for Shetland as a community

4.1 Preservation of distinct identity and culture

Insofar as Shetland has a ‘British’ identity and culture, this Model would weaken if not destroy that identity. Shetland, as part of Scotland, would be detached from the UK as we now know it, even if still a member of the Commonwealth.

Insofar as Shetland identifies with Scotland, the Model would clearly aid in preserving and strengthening that identity. Shetland would be represented throughout the world by a Scottish Government, and Shetlanders would hold a Scottish passport. They would fly a Scottish flag.

Insofar as Shetland looks to its own community for its identity and culture, the Model is neutral in its effect. Shetland might have any number of forms of government within the Model, ranging from local authority status to the status of the Faroes. As in the Models relating to devolution, Shetlanders must decide for themselves whether their links with Scotland or their links with the UK as a whole better serve their interests with regard to the preservation of a distinct identity and culture.

4.2 Articulation of Shetland’s voice on community interests and access to other bodies

Little more can be said under this heading than has been said under 4.1. Shetland would lose its voice in London, and in the UK-minus-Scotland generally. It would gain a stronger voice within Scotland, and perhaps a more powerful voice in decision-making, because of the smaller scale of Scotland as compared with the present UK. However, many in Shetland deny that this would overcome the alleged conflict of interest between the central belt of Scotland and the island communities.

~~4.3 General impact of the Model on the island communities~~

6 MODEL 5: SHETLAND DEVOLVED SEPARATELY FROM SCOTLAND

This Model assumes the following scheme:

Scotland	Devolved Governments
	Shetland
	(Wales)
	(? Northern Ireland)
	(? England/English Regions)
	(?? Western Isles)
	(?? Orkney)

It may be conveniently described as 'Devolution all round'.

The Government intends to legislate for devolution only to Scotland and Wales (in the present session). Devolution to Northern Ireland existed between 1921 and 1974, and may be re-introduced. A Consultative White Paper was issued in December 1976 on Devolution to English Regions. There are those who look for some devolution settlement for England; they are conspicuous neither for numbers, nor for support, nor for enthusiasm. No scheme has yet been produced for devolution to Shetland. This Model follows the pattern set by devolution to Scotland in the Scotland Bill (note that this is not the pattern for devolution to Wales), and the division of powers is that in Model 3, with Shetland taking the place of Scotland. It

prepared already. For Shetland to claim such a system for itself would be more difficult.

There would be a Shetland Assembly and Shetland Executive with the same powers as listed in Schedule 10 and Schedule 11 of the Scotland Bill. Thus Shetland would relate to the UK Government and not to Scotland. The Model would therefore give Shetland greater powers to safeguard some of its interests, in particular the planning powers granted under the Zetland County Council Act. It would ensure that control of oil development remained in Shetland so far as such development was subject to planning permission. There would of course be no power to alter the rate of depletion, or grant or amend licences, while harbour powers would not be devolved.

It is clear that the full implementation of this Model would result in an increase in administrative staff and costs within Shetland. There are at present 495 full-time, non manual staff employed by the Shetland Islands Council and, while some of the new responsibilities would be minimal in Shetland, to make provision for them would result in additions to present staff numbers. As an example, a recent decision by the Department of Health and Social Security to process social security claims in Lerwick instead of Wick (on the mainland of Scotland) caused the staff in the Lerwick office to double in numbers from 11 to 22. However, this increase in administrative costs need not impose any additional financial burden on Shetland since it should be taken into account in assessing the Block Grant made to Shetland by the UK.

This Model would almost certainly require Shetland to come to some arrangement with Scotland over the continued provision of certain services. It is inconceivable, for instance, that Shetland would wish to attempt to provide all specialist Health services at present provided by the Grampian Health Board. Some of these, out-patient clinics held by consultants for example, are already charged at cost to the Shetland Health Board (which in the Model would come under the Shetland Assembly and Executive), and there is no insuperable obstacle to the extension of this system. What is probable is that other services in Scotland such as in-patient treatment (e.g. Psychiatry, abnormal Obstetrics and Cardio-Thoracic) would now become chargeable to the appropriate Shetland authority.

The Model thus shares in the potential awkwardness inherent in all those Models which detach Shetland from the Scottish political system while maintaining extensive links with Scotland in other respects. The administrative awkwardness can be overcome. Contract payments could be worked out and the cost of these services to Shetland would become direct rather than as at present being met from general taxation. However, Shetland would find itself with little option but to accept the consequences

of decisions without the constitutional ability to influence the making of these decisions. An example may be taken from the field of education. The Scottish Assembly might decide to alter the examination system, raise or lower the school leaving age, reform the General Teaching Council, establish new professional requirements for teachers. Shetland would either have to go along with these decisions or decide to ignore them, accepting the possibility that such action might handicap the career prospects of either students or teachers. It may be that it is felt that even now Shetland's influence in such areas is small; but representation in the Scottish Assembly at the least increases the chances that Shetland's view will be heard and that policies which Shetland and others consider prospectively harmful will be correspondingly amended.

Clearly there may be few occasions when this disadvantage will be experienced. It must however be understood that a constitutional restructuring of the nature we are considering may last for some time, quite probably into the post-oil era. What is not felt as an immediate disadvantage might well become so then.

There is another possibility which must affect the consideration of this Model. This is that Scotland may move from a devolved to an independent status, while Shetland remains devolved from London. This would increase the chances of a divergence emerging between Scotland and Shetland. In that case Shetland would probably wish for its position to be reconsidered also and want to move further towards a special status. This Model would then be seen to be a staging-post not a place of rest. It is likely therefore that the success or failure of this Model would be to a considerable extent determined by events beyond Shetland's limited control.

1. Political, administrative and public finance implications

~~Public interaction with the UK Government, and the UK Government, in matters which are the subject of Community legislation.~~

1.2 The Crown and Executive bodies

As in Model 3, the Crown, through the Secretary of State, exercises a variety of controls over the Shetland Assembly and Executive. The UK also exercises 'reserved functions' in matters which have not been devolved. Thus, UK departments such as Social Security, Energy, and Trade (responsible for the Civil Aviation Authority) continue to operate in Shetland.

The real problems start when one considers the devolved functions. In the case of Scottish devolution these functions include the Health Service, teacher training and examinations, crofting, courts and legal profession,

civil and criminal law, local government finance, etc. Shetland, with a population of only 20,000, could hardly provide many of these services by itself. Scotland, with 5 million people, and a well-developed governmental structure already dealing with the devolved functions on a Scottish basis, is able to continue these under devolution without too much difficulty. Shetland detached from the Scottish system of government, would either have to provide these services on its own or go to Scotland or to other parts of the UK for them.

Shetland might also find that its range of devolved services would be more limited than the range of services devolved to Scotland because of this. Such services might be restricted to essentially local government services, with the UK providing the rest. But this does not solve the central dilemma: most 'central' government services in Shetland are in fact 'Scottish' because of the existence of Scots Law, Scottish social institutions like education and Scottish public administration.

1.3 Parliament and the Shetland Assembly

The Shetland Assembly is the principal novelty in this part of the Model. Shetlanders elect their own Assembly to legislate in devolved matters. They are not represented in the Scottish Assembly, but continue to have an MP in Westminster.

The relationship between Parliament and the Shetland Assembly follows that between Parliament and the Scottish Assembly (see Model 3, 1.3).

Finance for the Shetland Assembly is provided by a Block Grant voted by Parliament.

1.4 Local government and finance

With a Shetland Assembly established as the Shetland legislature, local

government might have to revert to the pattern before 1975, or to some other reformed system. There could not be an all-purpose Shetland Islands Council side-by-side with a Shetland Assembly. No doubt the local functions would have to be greatly restricted in scope, to leave room for those of the Assembly.

The Assembly provides the finance for the local authorities through Rate Support Grant, etc. The Assembly inherits the powers of the Shetland Islands Council under the Zetland County Council Act 1974, and administers the Reserve Fund.

2. Economic implications

The new Shetland Assembly would have no fiscal powers. Therefore, unless its Block Grant from the UK Government were to be substantially more than the sum total of Rate Support Grant and other central government grants, its ability to effect economic change in Shetland would be little greater than it already possesses. It must be assumed that Shetland would operate its own Crofting Commission to administer crofting law and make grants, while the present Research and Development Department of the SIC might take on some of the tasks now performed by the HIDB in Shetland. There must be a possibility however that this Model would detach Shetland from the Scottish system without offering sufficient control over the future economy to compensate for the obvious disadvantages.

2.1 *Fishing*

Fisheries' management and fisheries' policies would be reserved to the UK Government and would be pursued within the confines of the EEC Common Fisheries Policy. Shetland would not gain any capacity to follow a distinctive policy under this Model. The most that might be hoped for is that Shetland would be able to speak with a clearer voice. If the devolved governments were able either communally or separately to establish 'observer status' at the EEC (see 3.2 below), then it might be possible to support Shetland fishing interests more effectively.

2.2 *Oil*

Energy would be a reserved function. Shetland would have no claim to oil revenues, beyond that enjoyed by Shetlanders as UK citizens. On the other hand, as remarked above, this Model would safeguard the SIC's Port and Harbour Agreement and the existence of the Reserve Fund.

3. International implications

3.1 *Security and Law Enforcement*

Since this Model is in effect a variation on the themes of devolution already examined questions of security and law enforcement are basically unaltered from these earlier Models. Provision for external security and the procedures for invoking military aid to the civil power would be affected only marginally. It is probable that Shetland would have to establish its police force on a different basis since the links with the Highland region and Grampian region of Scotland might prove difficult to operate in the changed circumstances. As in earlier Models matters such as management of fishery resources or the prevention of marine pollution might remain the responsibility of the government of the United Kingdom, but a Shetland Assembly might seek new powers in this connection in order to ensure its ability to safeguard its own interests. Certainly the possibility of a regime emerging for Shetland and Shetland Waters which was different from that operating in the rest of the UK must be considered to exist. Therefore the related question of local enforcement effort would arise. This could involve a more costly policing arrangement which might be the responsibility of the Shetland authorities.

3.2 Relations with the EEC

Relations with the EEC would basically be unaltered, though applications for grants might now originate in Shetland rather than Edinburgh or London. Shetland would not be able to alter conditions of membership and would have to accept Community Policies and be subject to Community Law. However, if, on the lines of the German Lander, the devolved parts of the UK were able to establish 'observer status' at the Council of Ministers, Shetland might be in a stronger position to press its interests. It should be said though that the German Lander's delegate represents all the Lander, so that Shetland might still find itself one interest competing with others.

3.3 Relations with other states and international organisations

Apart from the possibility outlined above, Shetland would, on the basis of the Scotland Bill, be incompetent to make international agreements.

4. Implications for Shetland as a community

4.1 Preservation of distinct identity and culture

Shetland would be up-graded under this Model from an area with a local authority to an area with a local legislature. One would expect it to have enhanced status and weight in the United Kingdom on account of this. Shetland would negotiate its Block Grant directly with the UK Government, and would not as at present merely take its place with other Scottish local authorities in the negotiations over the Rate Support Grant.

But once again the question of identity arises. If Shetland wishes to modify its Scottish identity and links, then this Model is satisfactory, and may even improve the prospect of preserving Shetland's own identity. But if Shetland does belong with Scotland and would prefer to be linked to the Scottish system of government rather than to the English, then this Model does not serve Shetland's interests.

4.2 Articulation of Shetland's voice on community interests and access to
~~of the Shetland Islands with the British Isles and~~

MODEL 6: SHETLAND AS PART OF A UK FEDERATION

Although the Kilbrandon Commission on the Constitution found little demand for a Federal system for the UK and therefore rejected it, it remains a possibility that must be considered. Obstacles to its implementation have already been outlined in the Introduction to the Report. It is however supported at least by the Liberal Party and by certain elements in the Conservative Party in Scotland. It should be said though that the Liberal Party's proposals do not include Shetland as one of the constituent units of the Federation.

Federation has in the past generally been associated with the merger of separate states, but there are tendencies visible in certain European countries which suggest that the centralised unitary state is failing to satisfy the requirement of geographically peripheral groups or what may be termed submerged nationalities. The constitution of the Italian Republic for example recognises semi-autonomous regions — Sicily, Sardinia, the Trento-Adige and the Vai d'Aosta. All these exist on the geographical periphery; and there are also differences of language or dialect from central regions. In France the Bretons, and in Spain the Basques and Catalans, have intensified their demands for autonomy. The growth of the Scottish and Welsh nationalist movements does not need elaboration here; indeed this Report is in part evidence of their influence.

A Federal system is a possible outcome of this dissatisfaction with the unitary state. It is unlikely to be an immediate one but it could gain credibility as an alternative to the extension of devolution to independence.

The principal feature of a federal system is the division of sovereignty between two levels of government — federal and provincial. Neither is subordinate to the other. The provincial administration is entrenched in the constitution. This differs from devolution where the central government can control the region assembly.

Generally the federal authority has responsibility for Foreign Affairs and National Security, while the provincial government administers health, education, etc. Both levels of government levy taxes. The police forces are provincial, but there is generally a federal force as well (the FBI, the Royal Canadian Mounted Police). In the USA there are Federal and State Courts at all levels; there is also a US Department of Justice and the Attorney-General, while the Supreme Court is, amongst other things, a Federal Court of Appeal.

It must be said however that Federal systems vary widely in their operation. Those which derive most closely from the British form of government are

Canada and Australia. Other well-known federal countries with 'liberal-democratic' forms of government are the United States, West Germany and Switzerland. These have many features which make it difficult to compare them directly with Britain, but they do serve to indicate how manifold and yet effective Federal systems may be.

A trend should be also mentioned, which has been apparent in the last fifty years. This is a tendency, clearly visible in the USA since the Roosevelt administration, for Federal Authorities to become increasingly involved in provincial matters; this is often related to the inability of the provincial governments to finance large-scale capital investments. Clearly this inability is more often found in small provinces or those with limited resources; in such cases dependence on the Federal Authority is greatly increased. It is assumed that Shetland would find itself in this position.

We have decided to base this Model on the Canadian Federation using Prince Edward Island (population 112,000) as the counterpart to Shetland. This is because Canada among the federal countries seems closest to the UK in constitutional practice and Prince Edward Island is somewhat similar to Shetland in size, isolation and distinct identity. However, it cannot be assumed that, were a federal system to be introduced in Britain, it would very closely resemble that of Canada. The Model we present here is then basically a translation of the Canadian Constitution to Britain, with Shetland in the place of Prince Edward Island. This is clearly problematic as a practical proposition but it does have the benefit of being based on an actual system of government rather than on a theoretical and untested blue-print. We have also assumed that Scotland would itself be one province in the UK Federation, though it is of course conceivable that the Western Isles or Orkney might, like Shetland, seek individual provincial status.

Finally, we may say that for Shetland, the problems of achieving this Model fall into two parts:

(i) achieving a federal system for Britain generally (including England or the regions of England),
achieving separate Provincial status for Shetland, outside Scotland.

Although these problems resemble those arising under devolution, the difference with federalism is that a federal system must include the majority of the population (i.e. those in England), while a devolution system can be applied to parts of the country only (e.g. to Northern Ireland, or Scotland, or Wales, or Shetland), and omit England entirely. The main problem then in achieving this Model is to persuade England to participate in a federal system, in which it is

always given to Provincial legislation.

The Province has its own Government (the Executive Council) headed by a Premier, and there are Ministries such as Development, Health and Welfare, Industry and Commerce, Education and Justice, Tourist Development, Fisheries and Labour, Highways and Public Works, Agriculture, Finance and the Environment.

1.3 Parliament and Legislative bodies

The Federal Parliament sits in London, and Shetland is represented in both Houses. Parliament is not a 'sovereign' body, as is the UK Parliament at present, since it is restricted in its powers by the Constitution and the courts. It must legislate within the federal 'sphere', but there are exclusive powers in this sphere, as well as powers which are exercised concurrently with the Provinces. Exclusive Federal powers include:

- Foreign affairs and defence
- Regulation of trade and commerce
- Customs and excise
- Public debt and property
- Postal services
- Navigation and shipping; sea coast and inland fisheries
- Ferries between Provinces
- Currency, banking, weights and measures, interest, etc.
- Unemployment Insurance
- Marriage and divorce
- Criminal law (except constitution of courts)
- Penitentiaries
- Disallowance of Provincial legislation by the Federal Cabinet
- Appointment of judges by the Governor-General
- Laws for the 'Peace, Order and good Government' of Britain (except in exclusively Provincial sphere)

Powers held concurrently by the Federal and Provincial Governments:

- Taxation and loans (customs and excise: Federal only)
- Agriculture
- Immigration
- Old Age Pensions

Powers exclusive to the Province include:

Property and civil rights in the Province

Education

Health and Welfare (Federally grant-aided)

Management and sale of public land

Natural resources on land

Local works (except such works which the Parliament of the UK declares to be for the general advantage of the UK, or for the advantage of two or more Provinces, here oil installations might be included).

Shetland has its own Legislative Assembly of 32 Members elected for five years. Nine of these form the Executive Council (Cabinet).

1.4 Courts

All judges are appointed by the Crown, superior, district and county court judges by the Governor-General, the others by the Lieutenant- Governor of the Province. Shetland administers the courts, and has its own Court of Appeal. There are two UK Courts, the Supreme Court and the Federal Court, the former dealing with constitutional cases. It can decide, or issue an advisory opinion, on any dispute arising from the Constitution. In Canada, for instance, such a dispute exists at the moment between the Province of Newfoundland and the Canadian Government over the ownership of offshore oil resources. Both Governments have asked the Supreme Court of Canada for an advisory opinion on the matter.

1.5 Central administration and finance

In a federal system there is a complex division of powers between the Federal and Provincial Governments. In the case of a small Province such as Shetland or Prince Edward Island, the range of services provided by the Province is necessarily limited. This gives rise to citizens of the Province having to make use of services provided in other Provinces. In a federal system all citizens have access to the services run by Provinces other than their own. This applies especially to educational and health services. Such rights derive from the 'equal protection of the laws' which all citizens enjoy. However, there are in practice limitations to these rights. Citizens may have to establish residence in a Province to benefit from the social security payments available there. They may be charged higher fees at a Provincial university if they are not citizens of the Province. They may find that 'full faith and credit' is not always given by one Province to the laws of another.

This makes each Province, no matter how small, attempt to build up its own self-sufficiency. Prince Edward Island, for example, now has its own university and college of applied arts and technology.

There are Federal and Provincial taxes, grants and other payments from one level of government to the other, nearly always from higher to lower. These have the aims of spreading resources more evenly across the country, and securing Provincial cooperation in the implementation of Federal policies. A description of such payments is given in the Paper on Prince Edward Island.*

Shetland would levy personal and corporate income tax. Shetlanders would also pay Federal taxes, including income tax and VAT. In Canada the provinces levy Sales and Payroll taxes, but in the only EEC Federation (West Germany) VAT accrues to the Federal Government. Shetland would share control of offshore oil and gas developments with the Federal Government and receive a percentage of the royalties from such developments. It would receive Federal grants and payments amounting to more than its income from its own (non-oil) sources, including equalisation payments designed to make it possible for Shetland to provide reasonable levels of basic public services without having to resort to levels of taxation which are above the average for all Provinces. The formula for these payments is worked out at a Federal- Provincial Conference.

1.6 Local government and finance

Local government is entirely a matter for the Province. It can shape its own system, and must provide all the finance for local services (this is unlike the position in the United States, where the Federal Government can deal directly with local authorities, and give them grants).

Since Shetland has a Provincial legislature and executive, the Shetland Islands Council would be replaced by district councils and community councils if this was considered desirable.

2. Economic implications

If Shetland were to become a Province in a UK Federation certain of the anxieties expressed by the SIC in their devolution statements would be allayed. Shetland would now have secure planning powers over the oil revenues and the existence of the Reserve Fund could be guaranteed. The possibility must exist however that either the Reserve Fund itself

* Prince Edward Island receives 75% of royalties from oil development. It cannot be expected that Shetland, as a Province in a UK Federation, would receive so large a share in view of the vast resources off Shetland. Or, more probably, any share Shetland was granted in the Tax and Royalty revenues from oil would be taken into account in the consideration of any scheme of equalisation on the Canadian Model. It should be said that this possibility that Shetland might obtain such a share, however small, of tax and royalty revenues introduces a new variable into this and later Models which makes all economic prediction extremely arbitrary. If Shetland receives part of these revenues which will certainly amount to more than £1,000m per

annum by the mid- 1980s, then the economic problems outlined in Chapter 2 and subsequent Models would be likely to become at least temporarily irrelevant.

Clearly the more autonomy Shetland has, the more likely it is to receive a share of these revenues directly, rather than as an unidentifiable part of general government expenditure in Shetland or in that category described as unallocated. On a scale ranging from zero to 100% Shetland's share in a Federal state is likely to be small, granted the importance of oil to the UK economy as a whole.

Shetland would levy its own provincial taxes and this might give the Shetland Provincial government greater control over the Shetland economy. However, if Shetland has not been granted a share of oil revenues and if it was desired to maintain public services at their current level, this freedom of manoeuvre would be extremely limited, since in those circumstances Shetland would still be receiving equalisation subsidies from the Federal UK government.

2.1 Agriculture

In this Model Shetland would not acquire any capability to alter the terms of agricultural support, though it is possible again that it might prove more convenient to reconstitute the Crofters' Commission on a Shetland basis.

2.2 Fishing

On the Canadian Model Fisheries are within the Federal sphere. We have said that Federal Models are of great variety and there is no binding reason why this particular aspect should be followed in any UK Federation. Nevertheless since Fisheries involve relations with other States and since such external relations are invariably within the Federal sphere, it is difficult to see how Shetland could have a more distinct identity than it has at present and this could aid attempts to delimit Shetland waters.

3. International implications

3.1 Security and Law Enforcement

Provisions for the external security of Shetland differ hardly at all from earlier Models (except Model 4) since these remain the responsibility of the UK government. In the division of responsibilities between the Federal and Provincial governments which we have outlined, navigation and shipping, sea coast and fisheries remain the responsibility of the Federal authorities. We have suggested that the UK might declare that oil installations (on- and off-shore) were for the general advantage of the UK and that therefore their defence would also be within the Federal sphere. The UK Government alone could sanction the use of the military as an aid to the Civil Power.

However there might be changes in the methods of enforcement of law and public order, the protection of life and property and the control of the economic and environmental aspect of security. Although such matters as fisheries and the management of fishery resources might remain the responsibility of the Federal Government (as is the case in our Canadian Model of Prince Edward Island) and would anyway continue to be subject

to the EEC Common Fisheries Policy, these are areas where tensions between the Federal and Provincial Governments might be expected. The possibility that Shetland would want to adopt a different strategy to Fisheries from the Federal Government must be considered. In that case the question of a local enforcement effort would arise. This would probably be more expensive, for Shetland could not necessarily rely on the Federal Government to enforce a policy distinct to Shetland.

The principal difference between this Model and the preceding ones in this respect rests in the considerably stronger position of a Provincial Government entrenched in a Federal Constitution than that of a devolved government existing during the pleasure of the UK Parliament.

A Federal system pre-supposes the creation of an exclusively Shetland police court and legal system. In practice, it might well be possible, as it would certainly be cheaper, to remain within the Scottish legal system though Shetland might no longer share a sheriff with Orkney, and to preserve strong links with the Northern Constabulary or establish such links with the Grampian police instead.

3.2 Relations with the EEC

Relations with the EEC remain the responsibility of the Federal government, as in the case of the Federal Republic of Germany. However the German Lander have an Observer to look after their collective interests in the Council of Ministers and it may be presumed that the provinces in a Federal UK would wish to follow this practice. Shetland would of course only be one voice among the other provinces, and not the most important. There might be changes in the administrative arrangements but there would be no fundamental alteration in the Constitutional relationship. Shetland would still be bound by Community law which the Provincial government would have to enforce in those areas within its sphere. Tire CFP and CAP would still be applied; it might be possible however for Shetland with its now distinct identity to speak with a clearer voice on these matters to maintain a Fisheries Liaison Office in Brussels. The Common External Tariff would still apply.

3.3 Relations with other states and international organisations

Provincial status in a Federation does not accord any rights to International Status. However, a number of Federal States have provisions in their constitutions empowering component units within them to conclude international agreements; so the German Lander, the Soviet Union Republics and the Swiss Cantons are all given such power. Generally, it only extends to all agreements that are related to the units' legislative competence; it does not cover political agreements. Any agreement is subject to approval by the Federal Government.

The Canadian constitution is silent on this matter and the Canadian Government has insisted that it alone has competence to conclude international agreements. Nevertheless the Provinces have in fact concluded agreements with States (e.g. the cultural and educational agreement between Quebec and France 1965) and with component units in States (e.g. cultural agreement between Quebec and Louisiana 1969 and numerous reciprocal agreements between Provinces and American border states on matters of common interest).

It is possible for Provinces to establish representatives abroad as Quebec, Ontario and Alberta have done, and some international institutions permit associate membership. Six of the UN's specialised agencies (FAO, IMCO, ITU, UNESCO, WHO, WMO) grant this on application from the State responsible for its external affairs to component units within that state.

4. Implications for Shetland as a community

4.1 Preservation of distinct identity and culture

This Model would aid the preservation of Shetland's distinct identity and culture, at the cost of breaking many of its links with Scotland. Scotland would be a separate Province, with its own institutions, in which Shetland would not be represented. No doubt, numerous *ad hoc* arrangements and agreements would be made between Shetland and Scotland for the reciprocal provision of services. For these, however, Shetland would tend to have little to offer Scotland in return (e.g. in health and education). Shetland would have to establish as many services of its own as it could afford. It would be heavily dependent on the UK (Federal) Government for financial aid if it did not have access to oil revenues.

4.2 Articulation of Shetland's voice on community interests and access to other bodies.

Shetland would have control over a much greater range of its affairs than at present. This can be seen from the list of Provincial powers and Provincial ministries in 1.2 and 1.3 above.

It would also have a stronger voice in its dealings with the UK Government, since in a federal system along Canadian lines the Provincial Governments meet frequently in conference with the Federal Government to discuss federal legislation and the Federal-Provincial equalisation payments scheme. But heavily-populated Provinces can outvote or outclass the smaller Provinces in these discussions.

There are conferences of Provincial Premiers, where a common 'Provincial' line is hammered out. The peculiar position and history of Shetland suggests that Shetland's main links must be with Scotland. Thus a special Shetland-Scotland conference would have to be established to arrange the reciprocal, or other, provision of Scottish services for Shetlanders. Otherwise, Shetlanders would have to go to England for such services. In a federal system, however, the rights of citizens to move freely from Province to Province and to benefit from their services is fairly well established. But it is certainly not as automatic or as cost-free as in a unitary state such as Britain is now.

Shetland's access to other states and international organisations would be enhanced, with the possibility of setting up trade offices abroad. But its relationship with the European Community would remain the responsibility of the UK Government, which would apply European Law in Shetland, except in Provincial matters, where the

Province itself would have to act.

5. General Impact of the Model on Shetland

A Federal Britain, with Shetland as a Province, implies a greater change than that under the Models we have discussed upto now. More powers are transferred to Shetland under federalism than would be under devolution. (Model 5). This must cause a greater upheaval. But there are even greater gains in autonomy, and in the attractiveness of the system for officials, politicians, etc., who would make a career in Shetland government.

Federalism is a somewhat legalistic system of government, and one which may not be very well adapted to coping with great disparities in the size, wealth or culture of the constituent units of the Federation. Canada has tried to cope with these problems, through increasing decentralisation, complex equalisation payments, etc., but the discontent remains acute among many of the Provinces. Quebec threatens secession, and the Maritime Provinces (of which Prince Edward Island is one) feel deprived and isolated from the centre of government. So do the Prairie Provinces of the west and British Columbia. Thus the example of Canada is not a particularly promising one for Shetland or Britain to follow; on the other hand, the geographical and social differences between Canada and Britain are so great, and the geography of Canada contributes so largely to the problems of the Federation, that it is not necessary to expect that Canadian problems would be reproduced in the UK.

Prince Edward Island

The Canadian federation is highly decentralised in practice, and the Maritime Provinces, of which Prince Edward Island is one, are similar to Shetland in their geography, economy and sparsity of population. Yet Prince Edward Island has 120,000 people, and is fairly well integrated into the Maritime complex of Provinces — New Brunswick, Nova Scotia and Newfoundland. Shetland, on the other hand, is an isolated group of islands of 20,000 people. However, Prince Edward Island is as far from Ottawa as Shetland is from London, and operates within a separate time zone. It must feel just as remote as Shetland. Indeed the peculiar situation of Prince Edward Island makes all too familiar reading for anyone acquainted with Britain's northerly islands, yet its tenacious struggle to retain autonomy serves as an extremely

Commonwealth Model 5. It has few bargaining assets, either

as it does not produce anything which is not produced in quantity elsewhere, and transportation costs make it hard for its exports to be competitive. The economy is largely rural and is dominated almost entirely by agriculture. There are few sources of public revenue since there are no large concentrations of industrial activity, property, or capital; no public lands and few large personal incomes. Hence there is a restricted field for either personal or corporate taxation.

The obvious inability of a small agricultural economy to finance public services on the same scale as the rest of Canada has been a problem for a long time, and the financial history of the Island has always been one of subsidy claims.

The Island's legislature is characterised by its unusual structure following the amalgamation of what were once upper and lower houses. The 30 member assembly is made up of 15 'Councillors' and 15 'Assemblymen'. The franchise for electing the former is still based on rights of property whereas the franchise for the latter is merely dependent on 12 months' residence in the Province. (Tire property holder has two votes). But, once elected, the Councillor and Assemblyman have equal status. The Cabinet or executive council comprises 9 and, therefore, when the Government's majority is small, more than half its supporters may be in power. The administration is even stronger and is without parallel in any of the other provinces.

Appointments at all levels in the Civil Service are made directly by the Cabinet. There is no Civil Service commission, no set procedure for admission, and no examinations. Salaries are not fixed for each position, but are set by order-in-council or by estimate, according to what the Government, at the moment of hiring, is willing to pay to have a job done or to obtain the services of a particular individual. Civil Service posts on the Island have thus continued to be the patronage of the Government of the day and, although a prospective appointee's abilities are generally considered, his being politically acceptable to the Cabinet has been fully as important a qualification. Tire Civil Service has suffered from two main problems. Firstly, many Islanders of ability have found their efforts frustrated by the system of patronage and have moved elsewhere. Secondly, the Civil Service is exclusive to Islanders and has failed to benefit from the talents and experiences of outsiders. There are 8 small departments: Justice, Public Works, Agriculture, Industry and Natural Resources, Health and Welfare, Education, Provincial Secretary and Provincial Treasury.

The head of the Provincial Government and the crown representative is the Lieutenant-Governor. He is a symbolic figure rather than an administrator, and his functions are mostly nominal and initiated by the Premier — summoning, proroguing and dissolving the Legislature — although on rare occasions of constitutional difficulty he may invoke the emergency powers of the Crown. The Governor is usually selected by the party in power as a reward for considerable services rendered.

The Province's relations with the Federal Government are influenced by its small size. Politically the number of votes contributed by the Island is very small and its members of Parliament have rarely played a prominent role in Ottawa. In the Senate the Island has four representatives while some of the large provinces have 24.

Nevertheless, this gives it a very favourable population per senator of 1:28,000 compared with 1:158,000 for Ontario. Therefore, to some extent it is over-represented. It also has four members in the House of Commons. However, it is poorly represented in the Federal Cabinet since it is not always possible to find a capable minister amongst such a small number.

The features of Canadian federalism which are most relevant to Shetland, using the example of Prince Edward Island, are:

OIL — Natural resources are within Provincial Powers, but offshore oil and gas ownership is in dispute between the Federal Government and the Provinces. In 1977, Prince Edward Island, along with New Brunswick and Nova Scotia, made an agreement with the Federal Government, whereby a joint Federal-Provincial Board was set up to administer oil developments offshore of the three Provinces. This Board is to deal with licences for exploration and production, and will divide the revenues between Canada and the Provinces in the ratio 25:75. In the event of a deadlock (the Board is composed of three Federal and three Provincial members), the Federal Minister can decide, after a time-lag. Harbour powers (but see Exceptions, below) and property taxation are Provincial powers, and inter-Provincial commerce, exports and imports, and Canadian 'Energy Policy' are Federal Powers.

TAXATION — This is concurrent with the Federal Government. In the Fiscal Year ending March 31st 1977, Prince Edward Island obtained its gross revenue from:

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Gross general revenue

The important point to notice from the point of view of public finance is the Canadian equalisation programme. This is a programme of unconditional grants to provinces which have tax bases of below- average productivity and hence a below-average capacity to finance public services. The purpose of equalisation is to make it possible for those provinces to provide reasonable levels of basic public services without having to resort to levels of taxation which are above the average of all provinces. As such, it bears a strong resemblance to the resources element in RSG.

Prince Edward Island received \$56.4m in equalisation in 1976/77, out of a total gross general revenue of \$219m, and total federal grants of \$128.7. In the calculation of equalisation (which is a matter of negotiation between the Federal Government and all the Provinces) income from natural resources is treated separately. Only half of that income is counted as a state's revenue source, since to include such revenues, in a period of rapidly rising natural resource incomes in the oil-producing Provinces, would have the effect of also raising the liability of the Federal Government to pay equalisation to the 'have- not' Provinces. Prince Edward Island is a 'have-not' Province, while Alberta is a 'have' Province and receives nothing in equalisation payments. Were Prince Edward Island to be at the centre of profitable oil extraction, and sharing in the revenues to the extent of 75%, it would probably lose its equalisation payments. This is particularly relevant to Shetland, which is already in an 'Alberta' situation, but has not yet lost its RSG.

General Division of Powers:

Exclusive to Prince Edward Island:

Property and civil rights in the province

Education

Management and sale of public land; natural resources on land Local works (EXCEPT such works which the Parliament of Canada declares to be for the general advantage of Canada or for the advantage of two or more Provinces; here the oil installations might be included)

Justice (administration of courts), hospitals, shop licences.

Concurrent with the Federal Government:

Taxation and loans (customs and excise: Federal only)

Agriculture

Immigration

Exclusive to Prince Federal Government:

Foreign affairs and defence

Regulation of trade and commerce

Public debt and property

Postal services

Navigation and shipping; sea coast and inland fisheries

Ferries between Provinces

Currency, banking, weights and measures, interest, etc.

Marriage and divorce

Criminal law (except constitution of courts)

Penitentiaries

Disallowance of Provincial legislation by the Federal Cabinet

(Laws from the Privy Council, Orders in Council, or Government of Canada)

8 MODEL 7: SHETLAND AS A CONDOMINIUM OF ENGLAND AND SCOTLAND

The idea of a Condominium is unfamiliar. It may appear out-of-date and it has colonial overtones. Nevertheless it is worth examining, and there are certain circumstances in which it could be an agreed solution to problems raised by Shetland.

The Model assumes that Scotland has become a sovereign state, leaving the rest of the United Kingdom as another sovereign state, here called 'England', although it might include Wales and Northern Ireland. Shetland would come under the joint control of Scotland and England for certain matters, notably external relations and defence, North Sea oil and perhaps fishery limits. The Shetland Labour Party Association is a proponent of the Condominium solution for Shetland, should Scotland secede from the UK.

It is possible to base this Model on an existing Condominium — for example, Andorra (population 30,000), which is under the joint control of France and Spain, or the New Hebrides (population 89,000), a group of islands in the South Pacific under the joint control of Britain and France. However, this may be somewhat unfair to the Shetland Labour Party's conception of a Condominium (see statement of Shetland Labour Party's Devolution Views, late 1977), which is based not so much on these examples as on specific requirements to suit the case of Shetland. In this Model, we have attempted to take account both of their approach and of the existing examples. We have appended a brief note on Andorra, though it is likely to be of more interest than practical value.

In the Introduction to the Report, we stated that it was difficult "to conceive of circumstances in which the Condominium could appeal simultaneously to England, Scotland and Shetland". This remains the case. The inherent clumsiness of the structure means that it is unlikely to commend itself except as a means of resolving otherwise insuperable difficulties. We can conceive these as involving the division of oil revenues if Scotland were to move from devolution to independence. Since so much of North Sea Oil lies within Shetland waters, the Condominium whereby England and Scotland would share sovereignty over Shetland might be proposed as a means of regulating oil activities and allocating oil revenues acceptable to both parties. This might be the case if Shetland had either participated in a devolved Scotland but evinced a desire to retain a UK (English) connection in the event of independence, or had established some form of Special Status, probably falling short of that described in Model 8. In either case an independent Scotland might well claim that Shetland was an integral part of its territory. Shetland would have to establish its right not to be ruled by Scotland alone. It would

have to persuade England to adopt Shetland as part of its 'dominium'. This would probably not be difficult during the oil era. We can imagine the Condominium emerging from a period of dispute. Certainly the low key nature of the politics of other Condominia (Andorra and the New Hebrides) must be contrasted with the highly-charged political situation in which Shetland would find itself in a dispute between England and Scotland with oil at stake.

There must be a possibility in these circumstances that Shetland would have Condominium forced upon it, for the Condominium Model is essentially one in which two major powers agree to dominate a small country for their common advantage. It could then be a solution imposed on Shetland by England and Scotland. Nevertheless, within it, Shetland could enjoy a considerable degree of autonomy and prosperity, especially since it might well be granted a small share of oil revenues. The question of fishing limits would still depend on relations with the EEC which are discussed below.

1. Political, administrative and public finance implications

1.1 International status

Shetland has no international persona, and is represented abroad by Scotland and England. Its relations with third countries depend on the agreement of Scotland and England. Its "jurisdiction" over the sea might be confined to a 12-mile band from its shores. There might be no control over fishing or oil and gas beyond that limit. There could be customs posts on Shetland, and no free trade between Shetland, Scotland and England, except under licence. This might have to be modified, however, if Scotland and England were both members of the European Community.

There is Shetland citizenship, as well as Scottish and English citizenship. In Andorra, citizens have a French passport, with an Andorran stamp. The Shetland government could issue its own stamps, but not currency.

1.2 The Crown and Executive bodies

If Scotland and England both retain the British Crown as a source of governmental authority, then the Crown also provides the authority for the government of Shetland. If Scotland does not retain the Crown, then the Condominium Government is itself the source of authority in Shetland.

This Government consists of Resident Commissioners of Scotland and England, who each have staffs to run the services provided by their national governments. Such services include customs and excise, immigration, posts and telephones, oil-related matters, electricity, health and education.

There is also an elected Shetland Council to deal with services not performed by the Condominium Government, and to advise the Condominium of the wishes of the people. However, the members of the Condominium (either Scotland or England) can

exercise a veto over certain governmental actions in Shetland, while actions of the Condominium Government may be subject to approval by the Shetland Council (as in Andorra).

If one follows the Condominium Model suggested by the Shetland Labour Party, then Shetland would have the right to withdraw from the EEC, and to declare its own fishery limit. It would also be part of any body formed by Scotland and England to regulate revenues and control the rate of extraction of oil.

1.3 Parliament or legislative bodies and functions

There are two sources of law for Shetland:

- (a) the Condominium Government
- (b) the Shetland Council

The system of 'checks and balances' as between these two has already been discussed. It represents veto powers, possessed not only by Scotland and England severally, but also by the Shetland Council. Tire UK Parliament ceases to legislate for Shetland, and there is no 'sovereign' legislative authority for the making of Shetland law. Instead, mutual agreement is necessary.

1.4 Courts

Both Scotland and England provide a judge for the Shetland courts. Together, these judges form the Supreme Court. Appeals might lie to the Judicial Committee of the Privy Council, if Scotland recognised such a court. The legal system is that of Shetland alone, but each state in the Condominium would no doubt apply its own jurisprudence to

cases coming before its respective judges.

7.5 Central administration and finance

As with the legislative bodies, there are two forms of executive, the Condominium and the Shetland Council. Each operates within its 'sphere'. What the spheres might be is indicated under 1.2 above, but the division of power would be a matter of negotiation and administrative feasibility. The simplest division would be to let the Condominium take on the powers at present exercised by central government, leaving the Shetland Council with the present range of local government functions. Services in Scotland and England would be open to Shetlanders, on a reciprocal basis.

Central services would be financed from national (Scottish and English) funds, while local services would be financed by tax rates, Condominium grants, and borrowing. Staffing would be on a different basis from at present, since Government departments and agencies as such would not operate in Shetland. The Condominium would recruit its own staff. Officials of the

Shetland Council would not be part of the Scottish local government system, but would be separately recruited.

Although this might be the simplest solution there is no reason to suppose it would necessarily be adopted. While Shetland might still wish to avail itself of certain mainland services and remain within the Scottish system of education and health, it might also prefer to possess fiscal authority, as does Andorra. This would avoid questions as to what share of Shetland finance should be provided by the Condominium sovereigns. Indeed if Shetland were to have customs posts (and any association with the EEC would require the imposition of the Common External Tariff), then it might seem logical that Shetland should finance those services for which it has assumed responsibility from its own resources. If Shetland had been allocated some percentage of oil revenues, such financial provision would be possible without any lowering of the standard of service.

1.6 Local government and finance

One could either view the Shetland Council as the top tier of local government (as does the Shetland Labour Party), or as the directly- elected Shetland legislature. We have adopted the second alternative.

In either case, there would be a tier of local government below the all-Shetland Council, at District, or Parish or Community level. This tier would perform functions such as representation on schools, roads, housing, etc., and perhaps minor executive functions. It might have the power to levy a rate, but could be financed by requisition on the Shetland Council.

2. Economic implications

In this Model the two crucial points for the Shetland economy are:

- (a) the terms of the financial settlement, and, in particular, whether Shetland is allocated a percentage of oil revenues
- (b) the terms of Shetland's association with the EEC

There is little that can be said on the first of these points which goes beyond what was said in the last chapter. The possibility must be that the unusual nature of the Condominium settlement will allow Shetland to participate in the tax and royalty revenues from oil, at least to the extent that covers total expenditure on Shetland and on Shetland's behalf today. This would be a minimal percentage of these revenues; however, in any division of oil revenues, one area's gain involves a loss elsewhere. Shetland might also be able in this Model to levy tax on oil- related activities, though it would have to be careful to frame this in such a way as not to have an adverse effect on other industrial activity.

Certainly the financial settlement is likely to enable Shetland to maintain public services at an adequate level. It should also be sufficient to permit Shetland to be free from financial constraints on economic planning.

(b) is dealt with in section 3.2.

2.1 Agriculture

The prospects will depend on the relations with the EEC.

2.2 Fishing

Again the relations established with the EEC will be decisive. As in Model 6, Shetland's changed and enhanced position will make it easier for a distinctive Shetland policy to be pursued. However, it is possible that the better the deal Shetland has made on oil, the more difficult it will be to get a satisfactory fishing agreement, since oil wealth would reduce the credibility of claims that Shetland depends on fishing. However, since we cannot imagine this Model coming into being in the near future, the possibility must also exist that a Common Fisheries Policy, satisfactory to Shetland, might already have been introduced.

3. International implications

3.1 Security and Law Enforcement

Under the Condominium Shetland's foreign affairs and defence remain the prerogative of the two sovereigns. Shetland's fiscal autonomy extends to the imposition of customs duties, the collection of which would be Shetland's responsibility. Shetland would undoubtedly wish to pursue a distinctive fishing policy. The possibilities of doing so are discussed below. This might take the form of licensing powers or quota arrangements or imposing closed seasons, closed areas, proscribed species and permitted gear, it might involve local control of rights to land. In any case it would require Shetland to assume responsibility for the enforcement of such regulations.

Shetland might wish to regulate all aspects of the exploitation of offshore resources to minimise the risks of pollution and accidents. In general this would mean that Shetland would have to assume most of the responsibilities outlined for Scotland in Model 4.

3.2 Relations with the EEC

This is also the first Model (except Model 4) in which Shetland would have an option over membership of the EEC (and in Model 4 the decision would be taken in Edinburgh). This case requires examination since there are various possibilities. It depends first on whether both England and Scotland are themselves members of the EEC. If Scotland is not a member, Shetland would be in the position now held by Andorra (q.v.): a condominium of two sovereigns: France inside the Community and Spain without. The two sovereign powers would choose whether to try to bring Shetland into the EEC, leave it outside, or obtain a special status. In fact if both sovereigns are members of the Community, the same options would apply, but there would clearly be a better chance for Shetland's entry in this case. Since

condominium implies a special status for Shetland towards Scotland and England, it would almost certainly require special status in the EEC.

Special status in the EEC was granted to Jersey, Guernsey and the Isle of Man. None of the three has a separate sovereignty. The impact on the islands is mainly in respect of two areas — free trade and nondiscrimination in the free movement of persons and business; though they are still in fact permitted to apply housing controls over the setting up of new businesses. The Islands' domestic autonomy and in particular their fiscal independence have not been impaired. The Common Agricultural Policy is applied but the revenue from import levies accrues to the Islands' budgets. VAT is not applied.

Since they do not contribute to the Community Budget, the Islands cannot benefit from the expenditures of the EEC Budget. However, it is possible that they could receive loans from the European Investment Bank, since there are precedents for non-member countries doing so.

However, for Shetland the crucial point, as in all discussion of relations with the EEC, would be the question of fishing rights. Since Shetland would have assumed a greater responsibility for its own well-being, it might be in a stronger position to claim preferential rights. These have been recognised by the international Court of Justice in the *Fisheries Jurisdiction Case (1974)* as existing for coastal states in a situation of special dependence on fishing. Shetland's ability to press for these rights in any negotiations with the EEC might well depend on the assiduity with which they were urged by the sovereign Condominium powers, England and Scotland. Again, as in earlier Models they might only be granted to Shetland if England and Scotland were prepared to make concessions to EEC partners in other areas. Since it would be in the interests of both England and Scotland that the Condominium arrangements should work smoothly, such concessions might be forthcoming.

If Scotland were not to apply for membership of the European Community then it might be easier to make satisfactory fishing arrangements for Shetland outwith the Community and an exclusive zone could probably be established; however, despite the SNP's history of opposition to the Community, it is probable that the consequences to Scotland's industrial sector of exclusion from the Community markets would, as discussed in Model 4, make it likely that Scotland would apply for membership.

In this Model Shetland could obtain what might be termed nonsovereign statehood (dependent status). The essence of this is that an entity has all the attributes of statehood but chooses to permit another state (or states) to exercise some important aspect of government, particularly foreign affairs.

It would be possible for Shetland as a non-sovereign state to acquire the power of making treaties in addition to those international capabilities established in earlier Models.

Although it would not be possible to acquire full continental shelf rights, Shetland could establish full fishing rights as a non-sovereign state. This is not a necessary consequence of the Model, and the possibilities of doing so have already been examined.

4. Implications for Shetland as a community

4.1 Preservation of distinct identity and culture

Shetland might gain considerably under this Model, if powers were available to decide matters such as:

- (a) fishery limits
- (b) whether to remain in the European Community
- (c) the rate of extraction of oil and a share in the revenues from oil

These are the suggestions made on behalf of the Condominium Model by the Shetland Labour Party. They are perhaps not so much matters of Shetland's identity and culture, as of her economic interests. Unfortunately, we are unable to predict whether the adoption of this Model would lead to such powers coming to Shetland. The most likely outcome would be that Scotland and England would each exercise a veto over any development which it saw to be against its respective interests. This might not correspond with the interests of Shetland.

4.2 Articulation of Shetland's voice on community interests and access to other bodies

Shetland would have good access to the Condominium Government to voice its community interests. It would, however, have no real control over the decisions of the Condominium, although there might be some kind of veto as in Andorra. The political weight would rest with the states making up the Condominium.

There would be no access by Shetland to bodies outside Shetland. Shetland would not be represented in Scotland, England, the European Community, or in any international capacity. This would lead to the isolation of Shetland from the decision-making process in matters which would vitally affect it. Condominium has overtones of colonial rule about it.

5. General impact of the Model

This is a difficult Model to introduce in a territory which has been an integral part of a country for centuries. In the cases where it exists, there is a history either of colonial rule or of isolated, mountain existence. Moreover, it has elements of the archaic about it — a form of government which seems out-of-place in the twentieth century.

It implies a considerable upheaval in the practice of central and local government in Shetland. Not only would it place greater emphasis on a government in Shetland. Not only would it place greater emphasis on a purely Shetland form of government, but it would import into Shetland an entirely new institution — the Condominium Government — which would

be more 'foreign' than anything at present in Shetland. The staffing changes involved here would be correspondingly great. Shetlanders might welcome the opportunities to take part in their own form of government, but might resent the intrusion of the Resident Commissioners and their staffs. In any case, all semblance to the present systems of central and local administration would disappear.

Andorra

Andorra is the only European condominium. The sovereignty is vested jointly in the Bishop of Urgel (in Spain) and the President of the French Republic. These 'princes' exercise their powers by representatives permanently resident in Andorra, though the French President employs the Prefect of the Department of Pyrenees Occidentales to look after his interests. Internal government is in the hands of an elected Council of the Valleys, but the two sovereigns may veto its decrees.

Andorra enjoys fiscal autonomy. Imports pass through France and Spain. If licensed by the permanent delegates of these countries, they are not taxed. France imposes a 25% ad valorem tax on unlicensed imports.

No attempt has been made to bring Andorra within the Treaty of Rome and in fact Andorra operates rather severe restrictions on foreign business.

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Q MODEL 8: SHETLAND WITH SPECIAL STATUS

This is a very important Model. Some Shetlanders feel that their particular position and special interests might be best protected, if there is to be constitutional change, by the granting of a special status within the UK. Unlike other Models which only become directly relevant if there are future developments, this possibility needs immediate consideration, for it could be within the area of examination by a Commission set up as a result of a 'No' vote in the Referendum on the Scotland Bill. The SIC could, if it so decided, put forward proposals for some form of Special Status, different from separate devolution under Model 5.

It is not easy to define special status because it would be a new development within the United Kingdom; but there are three island groups in the seas near the UK which have special forms of government; the Channel Islands, the Isle of Man and Faroe⁵. The first two are not parts of the UK but dependencies of the Crown. They are within the EEC but with special status. Faroe on the other hand is an integral part of Denmark with Home Rule; but it is outwith the European Community, though, being Danish citizens, the Faroese enjoy individual rights as Community members and will participate in direct elections to the European Parliament. We examine the main features of these special forms of government as an indication of what might be appropriate for Shetland.

There is also the possibility that if Scotland were becoming independent, Shetland within a devolved Scotland (Model 3) might then seek a special status either in relation to the UK (England) or to Scotland. The description below is in terms of the UK, but much of it would be applicable in these circumstances in terms of Scotland; indeed, in view of the involvement of Shetland with Scottish systems of law, education and administration which we have already discussed, it may be felt that this Model would in fact be more easily implemented in relation to Scotland rather than the UK; such a status, similar to Faroe's, is indeed SNP policy. A final possibility is that special status now would be a basis for claiming Federal Status if there were moves towards a UK Federation (Model 6).

This Model would involve major changes in Shetland and the complications and implications of a considerable degree of Home Rule would have to be carefully weighed against the advantages which Shetland might gain from it, and then compared with the position where Shetland remains essentially a local authority but with enhanced powers.

The Channel Islands and the Isle of Man

The Crown dependencies exist in their somewhat anomalous condition for historical reasons. The Channel Islands are the last remnants of the Duchy of Normandy to pertain to the British Crown. Rights of government over the Isle of Man were granted to the Stanley family (Earls of Derby) when it came under the Crown. Their autonomy has been preserved because there was no major reason for the UK to seek fully to absorb the islands (though it may be noted that the UK brought the Isle of Man more fully under direct control in the eighteenth century when smuggling affected UK interests). They are a good example of the importance of being unimportant and creating no problems. Shetland's position today is important and, unlike the other island dependencies, it has long been an integral part of Scotland and the UK.

Moreover the continued internal autonomy of the island dependencies (Jersey, Guernsey, and the Isle of Man, population 50,000) has been made possible by a prosperous economy. It may be argued that this is in fact the consequence of self-government, but the climatic conditions which enable the Channel Islands to excel in market gardening and the varied attractions that they and the Isle of Man have for tourists have no parallel in Shetland. The fact that the populations are significantly larger, and that modern administration has been built up slowly over the last century in parallel with that of the UK also differentiates their conditions from Shetland. To build up political and law-making institutions, to control separate courts and police, to decide upon and collect taxes, and to administer most of the functions of Government would be a major task, though not an insuperable one, for a population only now rising about twenty thousand. To create partial or complete breaks from the systems in the UK, particularly in Scotland, would cause much dislocation, and common sense might urge Shetland to maintain far more links and common services than does the Isle of Man, as well as to look southward for specialised services.

The System of Government in the Isle of Man and Relations with the UK Government

Although the Isle of Man is very different from Shetland in social and economic structure it seems useful to append here a brief description of its system of government, which may be taken as a guide to possible

constitutional arrangements. The Isle of Man constitution is partly regulated by statute, but much of it is still unwritten and is the result of long developments related to the Island's individual history.

A brief summary is as follows:

- (i) The Crown has ultimate responsibility for the good government of the Isle of Man.
- (ii) Ultimate legislative supremacy rests with Parliament at Westminster.
- (iii) The Crown, acting through the United Kingdom Government, is responsible for (a) the defence and (b) the international relations of the Isle of Man.
- (iv) The Isle of Man has its own Courts and system of law and administration of justice.
- (v) The Lieutenant-Governor, who represents the Crown, is head of the administration. He is also directly responsible for the police and the administration of justice. He is also required to correspond regularly with the Home Secretary to keep him informed on matters affecting the Government of the Isle of Man and to seek any necessary instructions. He still has significant functions in relation to expenditure proposals and is assisted by a statutory Executive Council.
- (vi) The *House of Keys* has 24 popularly elected representatives. General elections take place at intervals of five years by electors of 18 years or over. Government is not organised on a party system - most of the House are "independents". The Upper House or *Legislative Council* consists of eight members elected from the Lower House and three ex-officio members.
- (vii) The government and legislature of the Isle of Man are autonomous in respect of matters which do not transcend the frontiers of the Isle of Man (which includes the land mass, territorial waters, ground beneath territorial waters and air space); including (but not limited to) the levying, the collection and the control of insular revenues; finance, agriculture and fisheries; criminal law; harbours; mineral rights; police; social services; trades and professions.
- (viii) Isle of Man legislation, after being signed by the Lieutenant-Governor and members of the legislature, requires the Royal Assent.
- (ix) Legislation receives the Royal Assent subject to the advice of the Privy Council, in effect the Home Secretary.

The case of Faroe is rather different and in many important respects far more akin to Shetland's. The Zetland County Council (predecessor to the present Shetland Islands Council) recognized this at least as far back as 1962, when they sent a delegation to Faroe and issued a report containing recommendations of how certain Faroese practices might be adapted to Shetland. It does not appear that many of these recommendations have been put into effect; they exist rather as evidence that the Shetland interest in the Faroese version of Special Status goes back some way beyond the present political turbulence and the disruptions of the oil era.

There are close similarities between the groups of islands. They share an ancestry, at least in part. The partial nature of this is, however, important. The Faroese are of pure Viking stock. The Shetlanders' Norse blood is mixed with Scots. As Professor Donaldson puts it: 'unity of race was disrupted by the immigration of a considerable number of Scots into the islands from the fifteenth century onwards, and already in 1600 something like a quarter or a third of the inhabitants of Shetland had names which point to a partially Scottish ancestry' (Appendix I of this Report).

To an even greater extent than Shetland Faroe depends on fishing. Though their economy was based on wool till the mid-nineteenth century there has been no modern Faroese industry to compare to Shetland knitwear. Indeed Faroe presents a remarkable example of a prosperous community almost entirely dependent on one resource. One-third of the gross national product and 95% of Faroese exports come from fish.

The Faroes were until the end of the Second World War, a Danish County. The stood in a similar relation to the Danish Crown and Parliament as Shetland to the British. During the War when Denmark was under Nazi occupation, the Faroes were subject to a protective occupation by Great Britain. Wartime fish sales to the UK, though costly in human life, were the basis of a Faroese prosperity which has increased steadily. A 1946 Referendum produced a majority for Independence of less than 50%, (there was a third option). The Danish government compromised. The Faroes were granted internal Home Rule and continued to be represented in the Danish Parliament, and the parties favouring continued relationship with Denmark have continued in power. Denmark retained charge of Defence and Foreign Affairs.

However, the Faroes have not constituted a self-sufficient economic unit capable of maintaining the same level of social and educational services as Denmark itself without assistance from the Danish exchequer. This currently amounts to some 40% of public expenditure in Faroe. Whether the control of fishing limits will increase Faroese self-sufficiency has yet to be seen.

There are Faroese who would like to break the links with Denmark and move to full independence. This could not be achieved without accepting, at least initially, a drop in the level of public spending. However, the

Republican party which advocates independence from Denmark has six seats in the 26 member L[^]gting or Faroese Parliament.

Yet the Faroese identification with Shetland is only partial. There are important differences.

- (a) Faroese's geographical remoteness is even greater than Shetland's.
- (b) The Faroese population is double Shetland's.
- (c) No commercially exploitable oil reserves have yet been discovered in Faroese waters.
- (d) The Faroese are marked off from Denmark by language. In Shetland the old Norse language died out in the seventeenth/ eighteenth century. A distinctive dialect survives, but it is no more distinctive than the dialect of Buchan in Aberdeenshire. The importance of linguistic differences in the formation of national consciousness has long been recognised. As the Faroese Fisheries Minister, Petur Reinert, has said: 'The national movement began as a struggle for our language. It is our language which gives us our identity, makes us different from the Danes'.* It may be felt that this expresses a degree of difference not experienced in Shetland, and that there is indeed another Islands community in Scotland that bears a stronger resemblance to the Faroes in this respect.

~~By the name of the Scottish Gaelic language Shetland, the so-called~~

Shetlander as 'fundamental'.* This is, in his words, "the existence of political parties in Faroe, divided on the basis of relationships with the national government in Denmark and along conventional lines with respect to social and economic policies. The Farocse parties have been developing since the late nineteenth century and played a major role in attainment of the Home Rule Act in 1948. . .What seems never to have been appreciated in Shetland is that these political achievements and the political maturity which went with them were the result of this long period of development, characterized by many internal and external political battles and divisions, some of them bitter. No such political consciousness has ever really existed in Shetland."

It might be assumed that this lack of a political tradition would necessarily mean that the time-scale for this Model also would be long. However the opportunity given by the Scotland Bill Referendum and the prospect that a Commission may be established to consider constitutional arrangements for Shetland could precipitate the Model's achievement. There is no doubt that the importance of the oil and gas off Shetland's coasts and the part played by Shetland in the devolution debate have drawn attention to Shetland's problems. Awareness of these is likely to continue.

Shetlanders may see many advantages in this Model. It may offer the best safeguards for Fisheries; it is possible that Faroe is only now experiencing the benefit of its 200 mile limit. The fact that Shetland will be less subject to the effects of economic policies designed principally for the UK as a whole may make it easier to prepare for the postoil era. Nevertheless it would be unwise to opt for this Model without an awareness of the possible disadvantages also. Principally these consist of the consequences of the possible exclusion of Shetlanders from services and benefits they presently enjoy. One cannot go outside a system of government (here the UK or Scotland) and expected to be treated exactly as if one were an integral member of it. This affects particularly social security benefits such as pensions, family allowance and unemployment benefits, but also access to hospitals, colleges and universities. There can be no guarantee that, having adopted this Model, Shetlanders will remain as they were in these respects. However for the most part the Channel Islands prefer not to reproduce the UK's social security system, which is coupled with high taxation. If Shetland wished to maintain the same level of services as the UK or Scotland, then it would have to pay for them or extract subsidies, on the Faroe Model, from the parent country.

*Jamcs Hunter 'Nation with its Identity Regained' in *The Press and Journal*.

1. Political, administrative and public finance implications of a status comparable to the Island dependencies or Faroe

The following paragraphs are drafted in terms of a special status in relation to the UK, which is the possibility needing present examination. Many of the

points would apply if the issue had arisen of special status in relation to an independent Scotland.

1.1. International Status

Shetland is an integral part of the United Kingdom, but with certain international powers of its own. It has its own jurisdiction over aspects of the sea adjacent to its coasts, extending to 12 or 200 miles in the case of fishing limits.* It conducts its own negotiations on fishing with the European Community and other countries. It could try like Faroe or, to a less extent, the island Dependencies, to obtain special terms for membership of the European Community.

Representation abroad, and foreign policy and defence, remain matters for the UK. However, if on the Faroe Model, Shetland can make bilateral agreements with other countries for fishing quotas within its limits. Shetland can set up offices abroad as Faroe is represented in Aberdeen, and send representatives to certain international organisations (but *not* to the United Nations and other bodies which recognise only sovereign states). Shetland can have its own flag, postal services and stamps, bank-notes and perhaps coins, and broadcasting, but these are obtained as a result of negotiation with the UK, and are closely connected with the UK's own Post Office, broadcasting, etc.

Shetlanders have UK citizenship and passports, but the words 'Shetland Islands' might be added to 'United Kingdom of Great Britain and Northern Ireland'.

1.2. Crown and Executive Bodies

The Crown remains the source of authority in Shetland. According to which islands example is taken, the Crown performs somewhat different roles. It may be represented by a Lieutenant-Governor or Commissioner and certain other officials, principally law officers (Isle of Man and Channel Islands). Its Lieutenant-General may head the Island Government (Isle of Man); or act as a channel of communication between the islands and the UK Government (Channel Islands); or the Crown may administer the functions within the sphere of the UK (Faroe). * The Isle of Man and the Channel Islands have a 12-mile limit while Faroe has a 200 mile limit.

The Crown-in-Parliament exercises supreme authority over Shetland and can legislate in any matter. In its own right, the Crown gives assent in Council to Shetland legislation and is responsible for good government in the Islands and for questions of external relations.

The Crown's other powers depend on the division of powers between Shetland and the UK. Some possibilities are discussed under 1.5 below. If Scotland is devolved within the UK, since Shetland may continue to look to

the Scottish mainland for certain services, such as health, education and justice, there need to be relations with the Scottish Assembly and Executive.

1.3. *Parliament and Legislative bodies and functions*

The UK Parliament would keep legislative sovereignty over Shetland, but laws passed at Westminster would apply in Shetland only if

- (a) Parliament explicitly or implicitly so decides, or
- (b) the legislation comes within the 'national' sphere.

In the case of (a), on the Isle of Man Model, the UK normally restricts legislation covering Shetland to international relations, defence, postal services, shipping, broadcasting and nationality. It consults the Shetland Government before extending UK legislation to Shetland and might legislate on the invitation of Shetland. Shetland either is not represented in the UK Parliament (Isle of Man; Channel Islands), or is represented by one or two MPs (Faroe).

Shetland has its own legislative body, which is able to pass laws in all matters not reserved to the UK. The Shetland sphere varies according to whether the Isle of Man/Island Dependencies example or the Faroe example is taken, thus:

- (a) Isle of Man/Channel Islands Model
Shetland sphere: taxation* and public expenditure (but not customs and excise, except perhaps collection (Channel Islands only). All functions except foreign relations and defence.
- (b) Faroe Islands Model.
Shetland sphere: taxation, including customs and excise. 60% of public expenditure (see Volume Two, Chapter 10, Table 3).

*We have followed the Models of those island groups with Special Status. All of them have fiscal powers. However, it is hard to conceive that, if Shetland were to be granted Special Status now, it would receive the power to raise revenue by taxation when this is denied, by the terms of the Scotland Bill, to a devolved Scotland.

Most functions, *except* defence, foreign relations, monetary exchange rates, police, judiciary, the Church, and the Shipping Inspectorate are either totally or partially devolved. Examples of total Shetland control: local constitutional arrangements, harbour dues, agriculture and local fisheries. Thus Shetland would maintain or increase its planning controls on oil developments in the islands. Examples of shared Shetland/UK functions: education, health, social security, fisheries and transportation. (See Volume Two, Chapter 10).

1.4. Courts

Shetland would have its own system of courts, with judges appointed by the Crown. There would be a right of appeal to the Judicial Committee of the Privy Council or Court of Session in civil cases, and to the High Court of Judiciary in criminal cases (if related to Scotland).

1.5. Central administration and finance

Central administration would be divided into two 'spheres', the UK sphere and the Shetland sphere. The examples of the Isle of Man, the Channel Islands and Faroe afford contrasting systems of government in this respect. In the Isle of Man and the Channel Islands, the islands administer practically all functions of government, except customs in the Isle of Man and defence. In Faroe, on the other hand, the Danish Government administers an important range of services through its own agencies. As we have seen, these include most education, health, social security, the police, the courts and the church.

Public finance is also different in the two types of island government. The Isle of Man and the Channel Islands have lower rates of tax than the UK. This makes them tax havens, attractive to residents and companies, with benefit to their economies, subject to any defensive action by UK authorities. They must, however, conform to UK customs and excise charges, and apply the common external tariff and internal customs policies of the EEC. The Isle of Man receives a share of the 'Common Purse' of UK + Isle of Man customs receipts. It also obtained a share in UK oil licence fees and royalties, in return for renouncing offshore mineral rights outside the three-mile limit. The Channel Islands have no 'Common Purse' arrangements, and no share of UK oil revenues. The revenue from import levies (including those under the EEC Common Agricultural Policy) belongs to the Islands, and no part is paid to the UK or the European Community. On the other hand, no benefit is received from UK or Community funds.

Faroe levies its own taxes and customs. There are no Danish taxes. However, unlike the Isle of Man and the Channel Islands, the Parent Country provides for the running of important services in the islands, amounting in 1975/76 to 40% of total Faroese public expenditure. In Faroe, a considerable number of public servants are employed by the Danish state, while in the Isle of Man and Channel Islands their number is minimal (mainly customs in the Isle of Man, and defence in the Channel Islands). This reflects the fact that social security, agricultural and fishery support, etc., payments are maintained at Danish levels in Faroe, but UK payments are not made in the Isle of Man or the Channel Islands.

Tire question would arise of a Shetland contribution to the UK Exchequer for common services provided. Tire contribution might be quite small per

head of population compared with the amount paid on the mainland, and might disappear altogether if Shetland were unable to provide its services from its own source of revenue. Faroe, as we have seen, is heavily subsidised by Denmark. With a considerable income from oil, at least in the short term, Shetland should be able to provide for itself and pay a net contribution to the UK as well* as does the Isle of Man.

Shetland would run its own civil service, doubtless making use of the present local government staff in the islands, with additional staff perhaps partly from existing central government, to cope with new functions. The UK would maintain staff according to its functions.

1.6. Local government and finance

Local government is limited to district and community matters, since the Shetland Islands Council has been superseded by the Islands legislature and executive. Shetland is entirely responsible for its own system of local government and must provide its own Rate Support Grant, assuming that local rates are levied (a local income tax is levied in Faroe).

2. Economic implications

2.1. General

The attractions of Special Status may be summarized briefly as:

*This presumes an agreement with the UK and/or the oil companies for revenues to come to Shetland. The same problems here arise as in the Status Quo Model regarding the status of such revenues in the general revenues of Shetland, affecting any contribution to the UK.

- (a) the ability to maintain cultural identity;
- (b) the opportunity to manage the Shetland economy in a way that gives the highest priority to exclusively Shetland interests.

Only the second of these is basically economic, but it may be felt that the maintenance of a Shetland identity depends on the ability to manage the Shetland economy successfully.

Special status does not alter the economic considerations outlined in the second chapter of the Report: *Shetland As It Is*. It is assumed however that any Shetland decision to press for Special Status would be motivated by the desire to secure the best conditions for coping with the difficulties arising from them.

The prime considerations were:

- (a) The wish to preserve the traditional industries. It is understood that the value of agriculture is primarily social, while the fishing and knitwear industries have both social and economic value.
- (b) The need to maintain Shetland control over oil developments.
- (c) The effects of the shift in balance towards an economic structure with a large service component.
- (d) The weakness of manufacturing industry, other than fishprocessing and knitwear.
- (e) Tire economic dependence on the UK central government for Public Finance and the need to import most container goods.
- (f) Tire high transport costs between Shetland and the Scottish mainland.
- (g) The need to prepare for the post-oil era. Without such preparation Shetland would be likely to revert to problems associated with emigration, lack of opportunities for school-leavers and the inability to continue to' provide an acceptable level of public and social services.

~~Some of the major problems associated with the oil industry are:~~
 generous grants to new industries etc. However, these industries would still find it difficult to overcome the problems caused by Shetland's distance from markets, the probable high labour costs and, possibly shortage of labour. Moreover, such industries might be in a sense artificial and unlikely to survive except with continued support.

Shetland would not necessarily have to survive without Public Finance support from the UK or Scotland (e). As has been seen Faroe receives 40% of Public Expenditure from Denmark. Whether this would be necessary would depend on the decisions taken regarding oil. While Shetland is becoming relatively more prosperous it seems likely that the Faroese position in relation to Central Government would be more attractive than the Manx or Channel Island position, unless the oil in Shetland waters were brought into the picture. If, as an element in the settlement, Shetland were given a share in the proceeds of taxation on the oil recovered from these reserves, or an adequate subvention in lieu, it could support social services for most or all of the oil period. But this might become difficult in the long run. Shetland cannot establish the strong tourist and residential base of the Channel Islands or the Isle of Man, nor would it be likely to be able, or to be allowed, to establish substantially lower rates of taxation to encourage financial services. It may be added that this would apply even more strongly under the Faroese Model.

Shetland would continue in any Model to import most consumer goods (e). While the fishing and fish-processing industries are prosperous and oil continues to generate wealth, this is not a problem. However, it would throw Shetland back on dependence after oil unless a substitute can be found. The

same applies to transport costs (f). These are inevitably high. It may be possible within one of the earlier Models to persuade Central Government to assume responsibility for transport costs, which can, for instance, make construction almost 50% more expensive in Shetland than in central Scotland. There is no reason to assume this would be possible if Shetland has a greater degree of autonomy than is enjoyed at present. During the oil era Shetland itself might subsidise these in the hope that this period of protection would generate development; it might however merely stimulate consumption, and help to feed the already high import-propensity.

Shetland's need to prepare for the post-oil era is central to any strategy. If it is considered that a concentration on Fishing on the Faroese pattern is the best course to pursue, then a Model such as this may, subject to the relations that can be established with the EEC, best serve Shetland. It does however throw full responsibility for their future on to Shetlanders themselves. The success of any Model involving autonomy is likely to be short if the oil era is not used productively, since assumption of such responsibility will also involve the assumption of more social costs than are currently directly borne by Shetland.

2.2. *Fishing*

On the Isle of Man Model Shetland would only be able to lay claim to a 12 mile fishing limit. Any opportunity to obtain preferential treatment beyond this, and operate a licensing system within the preferential area, would still, as in earlier Models, depend on the arrangements that could be made with the EEC. Since most of the Shetland catch lies within a 12-50 mile radius of the coast, there would be little gained from a special status with regard to the EEC that did not offer something more than the Isle of Man possesses.

The Faroese Model is quite different. The Faroese were reluctant to join the EEC when Denmark sought membership in 1972 because they did not want to give up their fishing rights to EEC vessels. At that time a stipulation was made that a decision would be reached on Faroese membership before December 1975. Between these dates UNCLOS (the United Nations Conference on the Law of the Sea) met and failed to come to an agreement. Norway decided, in a referendum, not to join the Community. Iceland unilaterally extended fishing limits to 50 miles in 1974 and then to 200. The Icelandic example was followed by Canada. In the light of the European Council of Ministers' inability to put forward firm proposals for a revision of fishing policies for coastal states, Faroe first declined to take up membership (the other consequences of this are examined in 3.2.) and then in 1976 imposed a 200 mile fishing limit to come into effect on 1st January 1977.

The significant difference between Faroe's position and Shetland's should be clear. Faroe was operating from outside the Community. Shetland

would be negotiating (or the UK would be negotiating on Shetland's behalf)

~~Shetland's interests in the UK, the UK's interests in Shetland or~~

catch in Shetland waters. There is in Faroe a Danish Fisheries Bank which issues low interest loans for the purpose of fishing boats. Whether Shetland would wish to establish something similar would be a political decision. It is assumed that Shetland would manage the licensing system so as to exclude industrial fishing by foreign boats, but that the importance of foreign landings in Shetland to the fish-processing industry would mean that licences were still generously granted. The issue of licences could however be conditional on landing at least part of the catch in Shetland.

3. International implications

3.1. Security and Law Enforcement

External security and defence would remain the responsibility of the UK. If Shetland had fiscal autonomy it would imply the creation of a Shetland Board of Customs. It is likely that Shetland would wish to impose a Shetland fishing policy. Here there is a significant difference from Model 7. On the assumption that Shetland had adopted the Faroese Model with a 200 mile limit (or a limit up to the median line) it would certainly be necessary for Shetland to make provision for the supervision and regulation of Shetland waters. It seems that the Faroese solution — the establishment (in 1976) of a distinctive service to undertake various coastguard functions — would be more likely to commend itself than the Manx solution under which the policing of regulations is left to the national government. This appears inevitable since in many cases it might be nationals of the United Kingdom against whom enforcement would have to be made.

It is worth considering the force necessary to provide Shetland with what we may call coastguard capability. Neither aircraft nor surface ships would need to be highly sophisticated but, because of the extent of the area to be controlled and the frequency of effort that might well be necessary, either a medium capability maritime controlled aircraft or several light patrol planes would be required. These could carry out the task of surveying the area. In addition enough patrol vessels of sufficient quality would be required to carry out effective control over Shetland's extensive sea space. Details of suitable craft are given in the second part of the appendix paper (Security and Law Enforcement, Volume Two).

3.2. Relations with the EEC

This Model depends on the UK being able to arrange a change in Shetland's status in negotiations with other EEC members. Special Status in the UK implies Special Status in the EEC, since in areas where special economic provisions would be relevant (taxation, establishment etc.) EEC law predominates over UK law.

Tire basis of tire special status enjoyed by the Channel Islands and the Isle of Man is as follows: The impact on the islands is principally in two areas: free trade and non-discrimination in the free movement of persons and businesses. The

islands have progressed to full customs union with the EEC (Shetland is of course already in this position). Foreign nationals are free to take up residence or set up businesses without immigration restriction other than under tire terms of The Treaty of Rome (again this is already the case in Shetland). However, the islands are still permitted to apply housing controls and controls over the establishment of new businesses.

Tire Islands' self-government and in particular their fiscal independence have not been affected. Although the common external tariff is applied, its purpose is only to prevent trade deflection, and the revenues accrue to the Islands' budgets and are not paid over to Brussels. Similarly the Common Agricultural Policy (CAP) is applied, but again the revenue accruing from import levies is part of the Islands' budgets.

Since the Islands do not contribute to the Community Budget, they cannot benefit from EEC expenditures. As far as Shetland is concerned the principal effects of this would be loss of grants from ERDF and FEOGA. However, there are precedents for non-member countries receiving loans from the European Investment Bank. Accordingly an entity with Special Status could benefit in this way.

All matters relating to the EEC are dealt with through the Channel Islands and Isle of Man desks at the Home Office. The Islands have no direct contact with Brussels.

However, there are reasons why the EEC might resist Shetland's claim to Special Status. First, the Channel Islands and the Isle of Man possessed this historically with regard to Britain.

Second, as indicated in Model 6, there are visible tendencies to fragmentation in a number of European States. Special Status for Shetland could encourage demands from Brittany, Corsica, possibly Sicily, and, if Spain joins the Community, from Catalonia and Vizcaya (The Basque Country).

Were Shetland to decide that its interests would be better served by exclusion from the EEC, it would be necessary to try to negotiate the 'Faroese solution'. The implications of this for fisheries were considered in Section 2 of this Model.

Other aspects of the Faroes' relationship with the EEC may be noted briefly. Faroes exports to the Community pay only 20% of the import tariff levied on goods coming into the Common Market. This concession only applies to goods of genuine Faroese origin and is strictly regulated to prevent Faroe being used as a staging-post by those wishing to evade the Import Tariff. Such goods must come direct from Faroe or from Faroese registered boats flying the Faroese flag and under Faroese command. Goods must be made in the Faroes or on Faroese 'floating factories'. In return Faroe has had to reduce duties paid on EEC goods coming into the imports from the EEC in the same way. Faroese goods still enter Denmark free of import duty.

3.3. Relations with other states and international organisations

Although the UK would remain responsible for Shetland's external affairs there is a possibility that under this Model Shetland might be able to acquire some competence to conclude international agreements. This would probably relate only to matters within the legislative competence of Shetland. Agreements would be concluded through, or with the assistance of, the UK (or Scottish in the other variety of this Model) government. Shetland would probably not be able to maintain a legation abroad since this is generally an attribute of full sovereignty, but direct contacts might be possible with the agreement of the UK Government. Short of associate membership and observer status of international bodies, a non-State entity may press to secure some representation in matters that affect their vital interests. Until recently, the Secretary of State for Scotland represented the UK in the discussions in the Council of Ministers on the European Common Fisheries policy. It is likely if Shetland's special status still involved association with the EEC, Shetland would wish to acquire some status at any meetings to consider fisheries (and probably) energy policies.

4. Implications for Shetland as a community

4.1. Preservation of distinct identity and culture

Tire Model is considered by many to be a method of ensuring the preservation of Shetland's distinct identity and culture. Certainly, all the examples we have quoted of Islands using this Model are of distinctive island communities, whose way of life is markedly different from the mainland - whether as a result of geographical remoteness (Faroe), or detachment (Channel Islands and Isle of Man), or of a different cultural and historical heritage (all examples). Shetland resembles these island governments in many of these respects. It is remote and detached from the mainland, and its history is a crossnational one, having both Scandinavian and Scottish elements in it.

Moreover, Shetland has economic interests in common with these island communities. These interests are closely tied up with its identity and culture. Most important are the fishing industry, agriculture, and specialised manufactures. It is essential, therefore, when considering this Model to discover whether these interests would be protected by moving to 'Special Status' for Shetland. The evidence suggests that they would, for under this Model Shetland would have some control over its fishery limits, ranging from a fairly narrow band of 12 miles, if the Isle of Man and Channel Islands example were followed, to 200 miles if the Faroe example were taken.

Another advantage for Shetland under the Model is the special relationship with the European Community. Shetland could remain technically outside the Community, as Faroe, or it could be treated by the Community in a different way from the UK (Isle of Man, Channel Islands).

This would of course affect agriculture and manufactures, since the Common Agricultural Policy and other EEC policies would not apply in Shetland. Yet to a large extent the free trade area would apply to Shetland, and the common external tariff would be in operation.

Shetland would have some grounds for claiming rights over offshore natural resources under this Model. However, these rights are unlikely to include the major oil fields lying off Shetland, and the UK would probably restrict Shetland to a 12- or even 3-mile band in this respect. The Isle of Man gave up all rights in the Irish Sea outside its 3-mile limit in 1966, in return for a share in UK oil royalties. Faroe can only achieve rights over offshore minerals by agreement with Denmark. Nevertheless, Shetland under this Model would have a stronger claim to participate in offshore oil developments and revenues than it does as a mere local authority, even with its special powers under the Zetland Act.

Lastly, Shetland's control over its own economy would be strengthened. A much greater range of decisions could be taken in regard to grants, loans, tax concessions etc., to aid the establishment and protection of industry. It might be possible to adjust tax rates to attract industry and maintain an active population. Transport rates could be subsidised, although it must be expected that the UK or private operators would still provide most of the sea and air services.

All this adds up to a big change in the system of government in Shetland from that which at present exists. It can be justified on the grounds that Shetland is a distinct community with its own interests, clearly separated from those of the UK generally, so that only a special system of government is appropriate.

However, it might be asked whether Shetland is in fact as different from the mainland as are these other examples of island governments, and thus whether it has as many distinct features to preserve. It has been an integral part of the United Kingdom since 1707, and an integral (if somewhat detached) part of Scotland before that. Since 1889 it has had a normal local authority in the Scottish system of local government, and has been fully integrated into the Scottish and British systems of public administration, education, law religion, and so on. There is, as we have seen, no language barrier between Shetland and the rest of the country, as in Faroe. Thus, despite the undoubted advantages which Island Status would have for the preservation of the distinctness of Shetland, one must consider whether this distinctness does merit such a break from the normal forms of government in the rest of the country.

5. General impact of the Model

The impact of this Model on Shetland would vary according to whether the Faroe example or the Isle of Man/Channel Islands example were followed. The Faroese variety in some respects implies less of a break with the existing system of government: Shetland remains an integral part of the UK,

with at least one Member of Parliament at Westminster. The UK (including the Scottish devolved Government) continues to perform important functions in Shetland, covering health, education, police, and so on. These services are maintained at UK levels. There is a large contribution from the UK to public expenditure in Shetland.

In the Isle of Man/Channel Islands example, however, Shetland ceases to be part of the UK, and has no representation in Westminster. Nearly all functions are performed by the Shetland Government, and Shetland must pay for these itself. The level of provision of services is not on a par with that in the UK.

Shetland would consider itself much more of a 'place apart' than it does just now. It could have its own flag, bank-notes and perhaps currency, variety of passport, and local broadcasting (outside the BBC or IBA). Its taxes might be entirely Shetland taxes. It might become a tax haven, especially if it negotiated a considerable income from oil. On the other hand, it might have to maintain UK tax rates, if it were to receive large subsidies from the UK (the analogy here is with Northern Ireland under devolution).

Shetland would have complete charge of its local government system, whose staff would be detached from the Scottish local government structure. The same would apply to the Shetland civil service in 'home rule' matters. These would have to be recruited from the pool of civil servants at present working for central government or by translation from local government. Bodies such as the Crofters Commission, the Highlands and Islands Development Board, the Hydro Board, etc. might disappear, at least in their present form.

It might be thought that this impact could be easily absorbed by Shetland, and even welcomed. There would probably be two points of view in the Islands on this: one that welcomes change, and an increasing independence along the lines of the Faroe Islands, and one that does not wish to upset a system of government which has been in operation for many years. Most Shetlanders would probably try to avoid any diminution of Shetland's status as an integral part of the United Kingdom (or Scotland). Thus the impact the Model would have on Shetland would depend on the relative strengths of the different views, and their desire to welcome or obstruct its adoption. It would be constructive to compare the degree of consensus in Faroe, or in the Isle of Man, or the Channel Islands, on the system of government in these islands, with that in Shetland on 'Special Status' as described in this Model.

But, as in all these later Models, what happens in Shetland cannot be divorced from its effect on the other parts of the United Kingdom; such prospective effects must contribute to the practicability of the Model. If the Commission envisaged as a result of a 'No' vote in the Scotland Bill Referendum were to recommend that Shetland be granted Special Status now, and this recommendation were to be implemented, the effects would stretch far beyond Shetland.

It would be taken by many in all parts of the UK as removing the oil reserves in Shetland waters from any Scottish State that might be set up in the future. Scottish Nationalists would tend to see it as an attempt to preempt these oil reserves for England, and it cannot be assumed that all would acquiesce in the decision. No doubt it would also lessen the attractions of nationalism for many, but these would not be the political activists. The effect might be to create bitterness and division in the United Kingdom and in Scotland. On the one hand, chances of co-operation with the Scottish Assembly and Executive would be lessened; on the other, it might be felt that the UK now had a vested interest in keeping Shetland happy and prosperous.

It may be thought that this is overstating a hypothetical reaction, but the awareness of possible dangers should be prominent in the consideration of any political action, and that Shetland may become an innocent bone of contention between England and Scotland is a sufficiently real possibility. An analysis of the House of Commons voting figures on Amendment 149 might dispel any illusions on this matter.

Finally, were an independent Scottish state to be established it cannot be assumed that it would accept Shetland's exclusion from such a state as a fait accompli. Nor would a Scottish claim to Shetland necessarily lack international support. The Spanish claim on Gibraltar and the Argentinian claim on the Falkland Islands have both received consistent support in the United Nations. It may be argued that there would be important differences; that in both cases it is possible to represent the British presence as a colonial one, and that this would not apply in Shetland; and that the independent existence of the Scottish state was interrupted in 1707, while Spain and Argentina have a continuous historic existence. Nevertheless the two claims may be taken as constituting a precedent and it is significant that the UN Assembly has ignored referenda in which the inhabitants of Gibraltar and the Falkland Islands indicated that they wished to maintain their relationship with the United Kingdom and not be incorporated in Spain and Argentina respectively.

MODEL9: SHETLAND FULLY INDEPENDENT

It may appear improbable that Shetland could ever function as an independent state. Indeed, the circumstances in which this might come about are hard to visualise. It is possible that Shetland independence could be the result of a series of events so bizarre as to be at present unthinkable, such as a European War or the well-nigh complete collapse of the European economy and state structure. In such circumstances anything might happen; an independent Shetland would not be the strangest body to emerge from such a holocaust. It is not necessary however to go so far in order to elaborate possible hypotheses. On the assumption that either Model 7 or Model 8 has been operating we can imagine a variety of circumstances which would prompt Shetland to move to full independence. A political regime might have been established in the UK (Model 8) or in Scotland or England and Wales (Model 7) so unsympathetic as to seem to threaten vital Shetland interests. For example an extreme Left-wing UK Government might lead to a Shetland Declaration of Independence, supported, even perhaps encouraged, by the Oil Companies. Such a Shetland State would undoubtedly need protection and this could mean that independence was nominal and formal, while in reality Shetland survived as a satellite of the USA or the EEC. Alternatively, a Communist government might come to power in Shetland, possibly in opposition to a conceivably excessive oil company influence on the Shetland administration. Communist strength in Iceland (in many ways a community similar to Shetland, though much larger with a population of 125,000) may suggest that this is not an absurd hypothesis. Such a regime might well wish to break the UK connection and look to the Soviet Union for support. It might be however that nothing so dramatic was required, and that Shetland would simply evolve from Model 8 to Model 9. The strength of the support in the Faroes for the Republican Party which aims to break the link with Denmark may be taken as evidence of such a possibility.

Clearly the circumstances in which Shetland became independent would influence the style or nature of that independence. It should be said that the variety of independent states is very great. There are states, like the United Kingdom, Norway or the Republic of Ireland, which have seats in the United Nations and full control over foreign as well as domestic affairs. They are full members of the international community and it is states like these that most people have in mind when they picture an

independent state. But there are others which, though nominally independent, are so small that they cannot merit seats in the UN or even have full control over foreign and domestic affairs. Such states include Liechtenstein (population 22,000), Monaco (population 24,000), and San Marino (population 17,000). Since the state with the smallest population in the United Nations (the Maldives population 115,000) has over five times the population of Shetland, and is remote from any other state (it lies in the Indian Ocean), it seems likely that Shetland would incline rather to the category of independent states which are virtual protectorates of other states and have only a limited role in international affairs. Certainly, in the more extreme ways in which we have suggested Shetland independence might come about, the Shetland state would need to look for some protector.

In this variety of possibilities it is necessary to make assumptions if we are to offer a Model for an independent Shetland. While acknowledging the other routes by which the Model might be reached we are assuming that it develops from Model 8; and that by and large, relations with the UK and Scotland are not hostile.

1. Political, administrative and public finance implications

1.1 International status

In this Model Shetland has become an independent state. It may be protected by the United Kingdom in matters of defence, fishing limits, but it may prefer to make these arrangements for itself (see 3.1). It is either bound by the UK's foreign policy or is neutral. It is not a member of the United Nations, but can send representatives to other international organisations (see 3.3 below). It may be a member of the European Community, or associated with the Community (see 3.2). It can have embassies or consulates abroad but in most states it will be represented by the UK. It may be a member of the Commonwealth, and it may have applied for membership of the Nordic Council.

It has full rights over the sea. For example, it can enforce a fishing zone extending to the 200 mile limit or the median line of seas shared with other states. If Shetland is in the EEC, the existence of fishing rights will depend on EEC policies. Shetland will possess rights over its share of the Continental Shelf. The delimitation of these rights will be subject to the same conditions as were discussed in Model 4. The same problems of succession outlined there would arise. However the line of delimitation was drawn, Shetland, as an independent state, would probably acquire control over some of the biggest oil fields. It is possible that any negotiated independence would have had to acknowledge English (or UK) claims for

compensation. Much would of course depend on the timing of Shetland independence, but it seems unlikely that there would be any pressure for independence unless oil extraction was going to continue for some time.

1.2 The Crown and Executive bodies

Shetland could retain its links with the British Crown, or it could become a Republic; there are precedents for both within the Commonwealth. In the former case the Queen would be represented by a Governor-General. In the latter case, Shetland would have its own Head of State.

Shetland has its own Government, but the representative of the Crown (if there is one) may have certain formal powers over the appointment and dismissal of Ministers. He may also have powers (recently exercised in Australia, for instance) relating to the summoning and dissolving of the Shetland legislature, Assent to Shetland Bills etc. It should be stressed that the form of the Constitution and the extent of the powers of the Governor-General or President would be for Shetland to decide.

It is possible that the UK has retained some rights in Shetland with regard to defence; this would depend on whether Shetland remained in the NATO alliance. If so, military forces of the Crown may be deployed in and around Shetland. If Shetland's break with the UK had been unilateral and violent, then Shetland might have to accept the presence of other "protective" forces. Inasmuch as Shetland wished to enforce distinctive fishing or environmental policies, it would be necessary to deploy forces as discussed in 3.1 below.

1.3 Parliament and Legislative bodies and Junctions

Shetland has legislative sovereignty in its own Parliament. This Parliament itself may be sovereign or Shetland may adopt a written constitution. Otherwise the proviso may survive that the Crown may formally summon and dissolve Parliament, and give assent to Shetland Bills. This does not imply UK control over Shetland laws.

The competence and procedures of tire Shetland legislature are matters for Shetland to decide. The European States of comparable size are all rather anomalous historical survivals. They tend to be principalities (Monaco, Liechtenstein) or city-states dating from Mediaeval times (San Marino). They can hardly be considered probable Models.

1.4 Courts

Shetland has its own courts, but may allow appeals on constitutional questions to the Judicial Committee of the Privy Council. At present Shetland shares a Sheriff with Orkney and Civil Law cases and criminal matters beyond the Sheriffs jurisdiction are referred to Edinburgh or

Aberdeen. It seems unlikely that any independent State would continue this practice. It would therefore be necessary to create a system of courts capable of dealing with the whole range of legal issues. There are no advocates in Shetland, but it would probably be possible to expand the scope of solicitors' activities so as to repair this deficiency.

1.5 Central administration and finance

Shetland has its own Prime Minister and Ministers, covering all functions of government. All taxes and public expenditure are decided by the Shetland government, but if Shetland is a member of the European Community, the laws of the Community apply in Shetland. Such laws cover contributions to the Community budget, agriculture and fisheries policies (including quotas and farm price supports), industrial competition, and regional aids. If Shetland is not a member of the Community or has negotiated special status within it, these would not apply. Shetland issues its own stamps, passports, bank notes and currency.

In this Model Shetland has lost whatever external financial assistance has been available before independence. It seems likely that, as an independent state, Shetland would have to be self-supporting. Any dependence on external financial aid might tend to reduce the real value of independence. Nevertheless it is easy to make too much of this. There are Third World countries which receive substantial foreign aid without sacrificing freedom of action; the trick is to get it from more than one source.

1.6 Local government and finance

Shetland has full control over the structure and financing of local government.

During the oil era the tax base within Shetland would be likely to be sufficient, as in earlier Models, to maintain a reasonable standard of administration. Since Shetland would have rights over the oil in Shetland waters (1.1 above), it would also, subject to existing rights and obligations, be able to obtain revenues (as shown in Volume Two, Chapter 4) more than sufficient, on any hypothesis, to keep up administrative and social services, to finance those services (e.g. specialised health, higher education) better provided on the mainland or elsewhere, and to invest abroad to provide the external resources for imports and the maintenance of its administration in the post-oil period. With such revenues, Shetland would be likely to be a net contributor to, rather than recipient of EEC resources, if Shetland remained in the EEC.

2. Economic implications

Shetland would, by reasons of geography and normal connections, remain closely connected with the mainland, except to the extent that it established new links. The degree of freedom which it would have to develop separate economic policies would depend on whether Shetland remained within the EEC, or sought a special relationship with the EEC or did not apply for membership of the Community. In any case it would be likely to have the financial resources to support the traditional industries and give inducements to new industries, but it must be assumed that excluding oil Shetland would still import considerably more than it exported.

It is conceivable that Shetland could run into exchange rate difficulties, if a Shetland pound was allowed to run free during the oil period, that Shetland exports, particularly of fish, fish products and knitwear, would become uncompetitively dear, while if a strong Shetland currency made imports cheap the difficulties of establishing new industries would be correspondingly greater.

Principally, however, independence for Shetland would mean that the questions confronting Shetland's economy which were discussed in the second chapter of the Report, would be thrown squarely on Shetland's shoulders.

2.1 Agriculture

It is assumed that Shetland is either an Associate Member of the EEC or outwith the Community. In either case Shetland would not be bound by the Common Agricultural Policy. However the support of the Crofting system would now devolve upon the Shetland government. During the oil period there would be no problem in providing the large percentage of crofters' income that comes at present in the form of subsidies, grants or support payments. It would probably be possible to increase these and to subsidise transport to make Shetland agricultural products more attractive; though this second proposal might make access to Community markets difficult and, if Scotland were in the EEC, a closure of the Scottish market could have adverse consequences for Shetland. Nevertheless, in view of the likely world shortage of meat products in the period under review, alternative outlets could probably be found. Shetland could remodel the Crofting system since the existence of crofting law would now be a matter for the Shetland Parliament, but the social costs might still outweigh any possible economic benefits.

2.2 Fishing

It must be assumed that Shetland as an independent state would have negotiated either an exclusive fishing zone or the establishment of a preferential area within which a licensing system operated as the basis of any Associate Membership of the EEC. If it had not been possible to come to agreement on these lines, it seems more likely that Shetland would have preferred to remain outside the Community despite the external tariff that

would operate against Shetland exports even to Scotland and England, restriction on free movement of persons and businesses, and provision of common services that might be imposed. In that case Shetland would establish its fishing limits extending 200 miles or to the median line with Scotland and Norway. It would be essential for Shetland to concentrate on the strengthening of the fishing industry, since it would remain the securest indigenous source of wealth. Independence and a share of oil would give Shetland the opportunity to have the most modern and best-equipped fleet and facilities, while the imposition of fishing limits would ensure the conservation of the resource.

2.3 Oil

It is unprofitable to speculate on the oil revenues that would fall to an independent Shetland State, since this would depend on the climate, timing and circumstances of independence. At one extreme Shetland could find itself in a 'Kuwait situation' where the biggest problem is how to spend the money, since by the mid-1980s the Tax and Royalties yield from oil in Shetland waters will come to more than £1,000m per annum.

It would probably be impossible for Shetland to absorb any substantial share of these revenues either directly by the Shetland government or indirectly by way of transfers to Shetland citizens. Tire examples of the difficulties experienced by much larger societies (e.g. Iran and

Nigeria) in attempting to do this are instructive.

Alternatively, as suggested above, absorption might be attempted by investing large parts of the flow of funds in Shetland itself, perhaps in an attempt to alter the fundamentally primary (and primary-linked) industrial structure. It has been suggested in other Models that the scope for such diversification would be limited. New industries would encounter the difficulties of high labour costs and distance from markets. These could be disguised by subsidy, but such subsidisation might lead to discrimination against the products in their potential markets.

Otherwise the Shetland government could try to spread the impact of oil into the future. This would have the additional benefit of easing the transition to the post-oil economy. The ways of doing this would be complex and various, in detail beyond the scope of tills Report. They fall into two broad categories.

- (a) attempts to restrict the rate of oil production,
- (b) long-term investment of the revenues.

The difficulties of altering the rate of depletion have been already discussed in Chapter 5 (Model 4: Shetland in an Independent Scotland). In (b) it would be possible for the Shetland Government to regulate the pattern of consumption by making long-term loans or by acquiring an investment portfolio in which long-term ventures with deferred profits (like forestry) predominated.

3. International implications

3.1 Security and Law Enforcement

The immediacy of the security and law enforcement problem facing an independent Shetland government would depend on the circumstances in which independence had come about. Working still on the hypothesis that Shetland had arrived at this point by transition from an earlier Model, probably 7 or 8, and by agreement with the UK (or Scottish or English) government, it is assumed that Shetland would remain with the NATO alliance. In that case Shetland could perhaps choose to enter into some form of Defence Union with the former United Kingdom. It is certain that the strategic importance of Shetland would make any other course unwelcome to all those members of NATO with interests in Northern Seas.

On the other hand, Shetland could choose to establish its own naval and military forces; Luxembourg is an example of a small state that has done just this, but Luxembourg's forces are of a type quite unsuited to Shetland's needs. Assuming that Shetland wished to exercise some degree of control over coastal waters, there would be a choice between being content with a capacity to exercise surveillance, or preferring a substantial enforcement organisation (Coastguard). For the first, the minimum capability might consist of at least one patrol vessel whose size and design would depend on the distribution of effort between Coastal and inshore Fisheries supervision; and one helicopter or light aircraft to provide area surveillance. For the second, Shetland would require:

- (a) aircraft for area surveillance
- (b) shore facilities for data analysis
- (c) surface patrol vessels for local supervision, boarding and arrest.

In fact this would not go far beyond what would be needed to ensure the effective working of a licensing system as envisaged in earlier Models.

Shetland would have to assume full responsibility for all other aspects of security, including the precautions that might be necessary to protect oil installations against terrorist activity. The more highly charged the atmosphere in which Shetland independence had been achieved, the greater and more expensive these precautions would have to be.

3.2 Relations with the EEC

An independent Shetland would have the choice of negotiating entry to the EEC or seeking only association, or remaining without. The Shetland vote in the 1975 EEC Referendum need not be taken as indicating an irrevocable preference for exclusion. While special arrangements could be made with the EEC, they need not be very favourable to Shetland. Shetland's wealth would perhaps preclude access to ERDF grants and probably to FEOGA ones also. Oil riches leading to high levels of imports of manufactures and agricultural products from third countries would raise the incidence of CET duties and CAP levies paid into the EEC Budget. Contributions related, via the VAT tranche, to consumer final expenditure would be much higher than the existing notional Shetland contribution to the EEC Budget.

Shetland would have to accept the Common Fisheries Policy, although it might in the interim period have been modified in a way agreeable to Shetland. It is assumed again that a satisfactory resolution of the Fisheries question would be the principal determining factor in Shetland's relations with the European Community.

Given the importance the EEC attaches to energy supplies, Shetland would no doubt like to use oil as a bargaining counter. However, oil could only be directed towards the Community countries if Shetland possessed the property rights in the oil, which at present rest with the oil companies.

Outside the EEC, an independent Shetland could determine its own economic policies: currency, tariffs etc. Independence would be beneficial to the Fisheries, since Shetland would be able to declare its own 200 mile exclusive zone, up to the median lines with the UK (or Scotland), Norway and the Faroes. Fishing vessels of other nations could be excluded from this zone, or admitted by licence.

3.3 Relations with other states and international organisations

Although Shetland would probably not be accepted as a member of the United Nations and would probably prefer the United Kingdom (or England or Scotland) or conceivably some other power to look after its external relations, it would nevertheless have the ability to make treaties, enter into international agreements, establish offices abroad, despatch official and accredited missions and acquire associate membership (at least) of international bodies. Its status would be more clearly defined than in earlier Models and its freedom of action, within the restrictions of size and relative strength and political influence, extended.

4. Implications for Shetland as a Community

4.1 Preservation of distinct identity and culture

As an independent State, Shetland has the maximum control over its own destiny. No other Model can give it so much protection for its distinct identity and culture, but that part of its identity which is experienced as part of Scotland and the UK is destroyed. Moreover, even under this Model, Shetland might have policies imposed on it from outside, especially as regarding defence and foreign relations, oil and gas, fishery limits and customs and excise, and transport. These policies could emanate either from Scotland, the UK or other states, or from international organisations such as the EEC or NATO. Its position vis-a-vis the oil companies might be weaker also as a small, independent country than as part of the UK. A 'strictly anonymous American oil man' was reported in the Economist (18th February 1978) as saying: 'we like dealing with little guys — it's easier to get them to see things our way, know what I mean?'. He was talking about Scotland, not Shetland.

4.2 Articulation of Shetland's voice on community interests and access to other bodies

Shetland could voice its community interests at all times, and does not need to seek access to any higher governmental or legislative authority *within* the state. But this would be a somewhat unrealistic gain in view of the dependence of Shetland on other countries and international bodies. Shetland would have to seek access to these in order to protect its interest, and here the situation is uncertain. Would it be heard in London, Brussels, or Washington? It seems unlikely that it would be a member of the United Nations, and full membership of the European Community might be difficult to obtain. It would thus not have a seat 'at the top table' in many contexts. Shetlanders would have to consider whether independence could compensate for absence from important decision-making bodies. As an integral part of the UK, or Scotland, Shetland would have such representation, although the 'voice' represented would not be Shetland's alone.

5. General Impact of the Model

This Model introduces such uncertainty, and the circumstances in which it might come about are so variable, that any assessment of its likely impact must be extremely speculative. Principally this speculation must turn on the outcome of any negotiations concerning the delimitation of Shetland's share of the Continental Shelf, and the consequent rights to oil and gas deposits. It is clear that it would be difficult, even in an atmosphere of goodwill, to reach an agreement on these matters that would satisfy Shetland, Scotland and the United Kingdom (England, Wales and Northern Ireland/England). The terms of such an agreement would undoubtedly affect Shetland's relations with England and Scotland.

Apart from this, Independence would enable Shetland to strengthen links with the Northern States and Communities — Norway, Iceland, Faroe — with which it feels an affinity (it seems likely of course that an Independent Scotland would also want to do this). Such efforts are both possible and probable in earlier Models where Shetland has acquired a degree of autonomy, but could obviously be taken further by an independent State.

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APPENDI
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APPENDIX I-----

NORSE AND SCOTTISH LAW IN SHETLAND: THE BACKGROUND

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The Question of Sovereignty

The transactions of 1468-9, whereby the land and rights of the Norwegian crown in Orkney and Shetland were pledged to the Scottish crown, were only two incidents in a long process whereby the islands were gradually transferred from Norwegian control and were stage by stage incorporated into the Scottish kingdom. Those transactions did not in themselves mean an abrupt substitution of Scottish rule and Scots law for Norwegian rule and Norse law.

Much had already happened before 1468, firstly in the international scene. By the treaty of Perth in 1266, Norway ceded to Scotland the Isle of Man and the Hebrides and all other islands on the west and south of the great 'haff or sea, in return for 4000 merks in four annual instalments and 100 merks annually in perpetuity — the 'Annual of Norway', as the Scots called it.¹ Orkney and Shetland were expressly reserved to Norway, but, only fifteen years later, a treaty arranging the marriage of Alexander III's daughter to King Erik of Norway provided that should the Norwegians not fulfil the terms then Orkney was to be ceded to Scotland:² so the possibility of a cession of Orkney had been envisaged nearly two hundred years before 1468.

Soon after that, Scotland was involved in her long wars with England and — although the treaty of 1266 was confirmed in 1312 — relations with Norway did not figure much in Scottish history again until the fifteenth century. In 1426 the obligation to pay the Annual of Norway was reaffirmed.³ Then, in 1460, when the marriage of Princess Margaret of Denmark to James III was first discussed, the Scots proposed that to make up her dowry the Annual of Norway should be extinguished and Orkney and Shetland ceded to Scotland.⁴

Thus, even in international terms, the contracts of 1468-9 were not startlingly novel in so far as they involved a transfer of Orkney and Shetland. But much had been happening before 1468-9 within the islands

themselves. Scottish influence had been infiltrating into Orkney for a long time. Intermarriage between the Orkney earls and Scottish families had begun so far back as the end of the tenth century, and after 1231 the earldom passed to a series of Scottish lines, finally the St Clairs (1379). These Scottish earls, to put it at the lowest, can have done nothing to maintain, far less to strengthen, the connection with Norway. Shetland, however, which had formed part of the earldom of Orkney in earlier times, had been detached from it in 1195, and thereafter, at least until the St Clair earls came in in 1379 and probably even longer, Shetland was ruled by a governor appointed from Norway.

It was true that the Orkney earls, though now Scots, were invested on terms designed to safeguard the rights of the Norwegian crown, and for twenty-two years in the fourteenth century and for fourteen years in the early fifteenth the Norwegian king took the earldom into his own hands. But whether he could succeed in making good his rights is another matter. The first St Clair earl, in defiance of the terms of his investiture, built a castle in Kirkwall; the last of them, when summoned in 1460 and 1461 to give his personal allegiance to the king of Denmark and Norway, excused himself, and there seems to be no evidence that he ever did homage to Christian I.⁵ Besides, the Orkney earls seem to have been withdrawing from any part in Norwegian affairs. In 1389, when twenty Norwegian councillors had declared that King Erik was the rightful heir to the Norwegian crown, the second to be mentioned among them was Henry Sinclair, Earl of Orkney.⁶ By contrast, after Christian I came to the throne, there was no representative present from Orkney either when he was elected as Norwegian king, when he was proved to be the true heir, or when he was crowned in 1450. It is also noticeable that between 1420 and 1434, when the Norwegian king had taken the earldom into his own hands, the administration was nonetheless carried on by Scotsmen — first Thomas Tulloch, the Bishop, then David Menzies of Weem and finally the bishop again. It looks as if it was proving impracticable for the Norwegian king, whatever his intentions, to make his power effective in this distant dependency.

Scottish infiltration extended to the church as well as to secular organisation, although the bishopric of Orkney (which included Shetland) was in the province of the Archbishop of Nidaros (Trondheim). Just four years after Henry Sinclair became Earl of Orkney (1379), we find that Robert Sinclair was Bishop of Orkney, and from that point all the bishops seem to have been Scots. It is more remarkable that already in the 1380s the archdeaconry of Shetland was held by Scots, and in the fifteenth century that benefice, like the bishopric, fell into the hands of Tullochs — three of them in succession. Thus even Shetland, though to some extent screened

from Scottish influence in secular affairs, was exposed to Scottish influence through the church.

Looking over all the evidence, it can hardly be doubted that the Scots had come to Orkney, and had come to stay, by 1468, and the Dano-Norwegian king can hardly have believed that the effective reintegration of Orkney into his dominions was any longer practicable. The transaction of 1468 may not have amounted to merely a recognition of a *fait accompli*, but it certainly did not amount to the transfer to Scotland of an integral part of Norway. This would not, however, be true, at least to anything like the same extent, of Shetland, and one could say that 1469 was a more significant date for Shetland than 1468 was for Orkney.

This is not the place to discuss generally whether the transactions of 1468-9 were genuine impignations or were merely a matter of face-saving or window-dressing on the part of Christian I, who, it has been argued, never had any intention of redeeming what he had pledged. From the point of view of the question of sovereignty, or of the survival of Norse law in Shetland after 1469, what matters is that the transactions of 1468-9 were formally impignations, whatever the intentions of the contracting parties may have been, and we must take the documents as meaning what they say.

It is certainly relevant to consider whether what was pledged included the sovereignty of the islands. A strong case can be made for believing that it was not. In the first place, contemporaries were probably thinking not of the abstract concept of sovereignty but of property, of tangible things which were worth 58,000 florins. It is important to make a comparison of the phraseology of the documents of 1468-9 with earlier documents relating to the islands. In the treaty of Perth of 1266 the western isles were ceded in comprehensive terms, and in that treaty an express reservation was made of 'the islands of Orkney and Shetland, which the said king of Norway reserved to his *dominium*, with all their lordships, homages and revenues, services and all their rights and pertinents'. The marriage treaty of 1281 proposed the cession, in a certain contingency, of *totam terrain Orcadiae*, the whole land of Orkney. The draft treaty of 1460, again, proposed to transfer to Scotland 'all right and *dominium*' which the king of Denmark and Norway had in the islands of Orkney and Shetland.

The treaties of 1468-9 are much more guarded, and make no mention of either *dominium* or the whole lands of Orkney and Shetland.⁷ King Christian I pledged only 'our lands of the islands of the Orkneys' and 'our lands of the islands of Shetland'. That may or may not of itself have meant less than 'the Orkney islands' or 'the Shetland islands' would have done, but the treaty of 1468 itself contains a contrast between 'the islands of the Sudreys and Man' and 'our lands of the Orkney islands'. Why the qualifying phrase, 'our lands of? It looks as if Norway was ceding

something less in Orkney and Shetland in 1468-9 than she had ceded in the Hebrides in 1266, and also less in Orkney and Shetland than she had reserved to herself in 1266. That 'something less', whatever else it may have included, did include sovereignty, or so at least it may be strongly argued.

It may be objected that the treaty of Perth was two hundred years old when the impignoration took place, and that a comparison with its terms is unsound. But, though old, it was not forgotten. It had been reissued in 1426, it had often been referred to in 1460, when a draft treaty contained an abridgment of its terms, and it was referred to again in 1468, when the Annual of Norway was finally extinguished. It can hardly be doubted that those who drafted the 1468 treaty, if they did not actually have the treaty of 1266 before them, were fully conversant with its terminology.

In the later attempts by the Danish kings to redeem the islands, it was more than once claimed that sovereignty had not been renounced, and this claim was not, apparently, disputed by the Scots. When King Frederick II raised the question of the redemption of the islands in 1560 he said that the Scots must be aware that the *dominium* of the islands pertained to him. Again that word *dominium*, which in the context must mean sovereignty. The text of Frederick's communication, translated from Latin, reads: 'Of the Orkney islands, which your people have kept for some time, the *dominium* pertains to us and to our kingdom of Norway'.⁸ When the question of redemption was raised again, in 1667, the Danish case was that the islands 'belonged to the kingdom of Norway as an inseparable and inalienable dependency, and still belong to it'; and the representatives of Charles II did no more than protest that they had no instructions in the matter.⁹

In view of all this, it is not unreasonable to maintain that sovereignty was never formally transferred, even in pledge, let alone by complete cession. On the other hand, in practice Scotland, and subsequently the United Kingdom, have long and continuously exercised sovereign rights, to the exclusion of any Scandinavian authority, and it has therefore been concluded that sovereignty has in the course of time been transferred by use and wont, by tacit agreement or acquiescence and without challenge.

At this point we turn to the opinion of an international lawyer, Mr John P Grant, who writes:

Title to territory under International Law is governed by principles and rules of long standing, in some cases deriving, not without modification, from rules of Roman Law. Territory not formerly subject to the sovereignty of a state (*terra nullius*) can be acquired by the process of occupation (*occupatio*); territory formerly subject to the sovereignty of a

State can be acquired by another State through the process of prescription.¹⁰ In practice, it is far from easy to draw a clear distinction between *occupatio* and acquisitive prescription. Thus, in two of the leading cases, the *Island of Palmas Case*¹¹ and the *Eastern Greenland Case*¹² the tribunals avoided using these two categories, and appear to have reached their decisions in each case on the basis of which of two competing sovereigns had the better title.¹³

The conditions that satisfy effective occupation of territory are markedly similar to those for acquisitive prescription. Stated in broad terms, these are that there must be peaceful, open, continuous and effective exercise of sovereignty over the territory, coupled with the clear and unequivocal intention (*animus*) to act as sovereign.¹⁴ The appreciation of whether these conditions are satisfied in relation to a particular piece of territory is difficult, especially where there are competing claimants; and it is made no easier by the requirement that claims are to be judged according to the law contemporaneous with the acts of sovereignty (so-called inter-temporal law).¹⁵

At the present time, and indeed for some considerable time past, the UK has exercised full sovereign powers over Shetland: the islands are under the British Crown, governed by the Government of the UK, bound by the statutes made at Westminster, subject to the Scottish legal system of local government and the UK administrative network. There is no clearer way to demonstrate the completeness of UK sovereignty over Shetland than to pose the question: what sovereign powers are exercised in Scandinavia in respect of the islands?

The Scottish, and later UK, title to Shetland derives from the exercise of a full range of governmental functions over a large number of years without interruption.

It has from time to time been suggested that all possible ambiguity should be removed by a brief treaty between Britain and Norway, perhaps along with Denmark for any interest that country might be thought to have, just to make it clear once and for all that sovereignty over the islands belongs to Britain,¹⁶ but in view of the opinion just quoted this would appear to be quite superfluous. Shetland's link with Britain may resemble a marriage by habit and repute, but it is none the less a legal marriage.

Two further points are worthy of attention: 1. The first is probably quite academic. Despite the *quandocunque* of the document of impignoration relating to Shetland, which of itself gave the Norwegian crown the right to redeem at any time, it can be argued that by this time acquiescence and delay (*ntora*) have now barred Norway from invoking the rights of redemption. Besides, if the right were exercised, it would be impossible to determine precisely the twentieth-century equivalent of the property and

rights which were pledged and which therefore could be redeemed. 2. A less academic point. While British sovereignty by prescription may be accepted, no one has ventured to pronounce on the date at which such sovereignty became effective *de jure*. This introduces an element of uncertainty whether or not Scottish sovereignty obtained in 1707 or if sovereignty was acquired by the United Kingdom at a later date. Mr Grant is of the opinion that Shetland was part of Scotland before the Union, and of course the Scotland Bill implies that Shetland is comprehended within the 'Scotland' which is to be devolved, but in the event of Scotland becoming independent this question might conceivably be reopened.

Mr Grant makes a further observation: 'Whatever the psychological effects of Shetland's "Norwegian connection", and they might very well be great, of far more contemporary relevance to Shetland's political future is the movement within the international community over the past fifty years towards self-determination. This principle of self-determination has already been discussed, and it would seem, from any examination of current practice in International Law and International relations, to be more significant than the historic title to Shetland. Indeed, in the *Western Sahara Opinion* the International Court of Justice expressly stated that its opinion on the question of the historic title to the area should not seem as derogating from the right of the people to determine their political future'.¹⁷

The argument about sovereignty may seem laboured and irrelevant, but it must be considered in relation to the law in the islands. It is quite erroneous to believe that sovereignty has a necessary connection with law to the extent that sovereignty involves uniformity of law. There are plenty of examples to the contrary. The United Kingdom as at present constituted is one example of a political unit without uniformity of law and even without right of appeal in criminal cases from one judicial system (the Scottish) to any British court. Equally, Britain took over French Canada without abrogating French law, and took over the Cape of Good Hope without abrogating Dutch law. On the other hand, appeals can lie to a court in a land which does not possess sovereignty over the land where the appeal originated: the Judicial Committee of the Privy Council is the example of this.

However, when the Inner House of the Court of Session gave judgment in the Case of the St Ninian's Isle Treasure, both Lord Patrick and Lord Mackintosh based their opinions in favour of the Crown partly on their belief that 'the right of sovereignty over the islands has belonged to the kings of Scotland and afterwards of Great Britain'.¹⁸ Professor T B Smith, who presented an argument in the case, accepted that Christian I impignorated the sovereignty of the islands.¹⁹ Unfortunately none of those lawyers explained their grounds for believing that sovereignty had been

transferred, but the fact that their arguments were based on the issue of sovereignty demonstrates that discussion of the question is not merely an academic one.

(It should be noted that the ‘annexation’ of the earldom of Orkney and lordship of Shetland to the Scottish crown in 1471/2²⁰ followed on an excambium between the king and the earl and has no bearing on sovereignty or international law.)

~~The Transition in Law and Legal Institutions as a Result of the Union of 1707~~

aspects of the old unity vanished less perceptibly. The Norse tongue ceased to be used in legal documents in Shetland in the early seventeenth century and ceased to be spoken in the eighteenth. Unity of race was disrupted by the immigration of a considerable number of Scots into the islands from the fifteenth century onwards, and already by 1600 something like a quarter or a third of the inhabitants of Shetland had names which point to a partially Scottish ancestry.

That general background must be kept in mind in examining the process by which the Scandinavian legal institutions were superseded or eroded in the islands. In Orkney Norse law had been under threat even before 1468. When Bishop Thomas Tulloch was put in charge of the islands by King Erik in 1420 he promised to 'keep law and justice according as the Norse lawbook mentions',²¹ and perhaps it is significant that such a promise had to be exacted. Whether the bishop kept his word does not appear, but David Menzies of Weem, who succeeded him as administrator, did not observe any such undertaking. In 1424 and 1425 the people of Orkney complained that Menzies imprisoned the lawman, deprived him of his seal and of the lawbook, and they petitioned that their judges and governors should be bound to observe the ancient laws approved by King Olaf.²² It would appear, however, that there must have been at least a partial restoration of Norse law and practice, even in Orkney, after that, and it seems unlikely that Norse law was under any threat in Shetland before 1469. Certainly a number of statements in Scottish records in the next century and more show that Orkney and Shetland alike were regarded as areas where the law in use differed from the law of Scotland.

It has often been said that the treaties of 1468-9 expressly preserved the Norse law in the islands. But there was no such clause in the treaties. However, their very silence on the subject may be revealing. Once again there is a contrast with the treaty of 1266 which ceded the Hebrides. It states that 'the men of the said islands, as well lesser as greater, shall be subject to the laws and customs of the realm of Scotland'. The absence of any such clause in 1468-9 suggests that the men of Orkney and Shetland were not intended to be subject to the laws of Scotland.

An admission by the Scottish government that Scots law did not apply, or should not apply, in the islands, is especially clear from the records of the parliament in 1503/4. Originally an act was drafted to read: 'That all our sovereign lord's lieges, both within Orkney, Shetland and the isles, be ruled by our sovereign lord's own laws and the common laws of the realm and by no other laws'. This draft was next strengthened by the addition of the phrase 'and other places' after 'Orkney, Shetland and the Isles'. Then there were second thoughts, and the objection raised that the law of Scotland could not be applied to Orkney and Shetland, at least specifically. The mention of Orkney and Shetland was therefore cut out, and the act amended to read 'All our sovereign

lord's lieges being under his obedience and in special all the Isles'. Finally, 'all' was deleted before 'the Isles'.²³ These changes may have been intended to leave it open to doubt whether the people of Orkney and Shetland were to be regarded as being under the obedience of the king of Scots, in other words whether or not the sovereignty of the islands pertained to him. The phrase 'the Isles', especially with the omission of 'all', may have been designed to introduce a certain ambiguity, and the act was subsequently believed to apply to Orkney and Shetland.²⁴ However, the deletion of the names of Orkney and Shetland and the fact that in normal usage 'the Isles' meant the western isles, makes it likely that the act indicates that Scots law was not intended to apply in the northern isles.

Some sixty years later, in 1567, the question was once again raised in the Scottish parliament. It was asked 'whether Orkney and Shetland shall be subject to the common law of this realm or if they shall enjoy their own laws', and the answer was given: 'Finds they ought to be subject to their own laws'.²⁵ This, however, was only an 'article' with a comment, and there is no evidence that it was the foundation of a statute.

Apart from parliamentary record, there is other evidence of the recognition of a distinct legal system. In 1525/6, when Margaret, Lade Sinclair, agreed to appoint her son, William, Lord Sinclair, as justice- depute of Orkney, he received authority to administer 'according to the common law and approved consuetude of Orkney'.²⁶ Again, in 1557, William, Lord Sinclair, had obtained a commission appointing WT'datr. Hardy as his 'foud and bailie', and 'the sheriff and fouds' had not been informed of it.²⁷ Even in 1565, when Lord Robert Stewart received his charter as feuar of the islands, the Scottish crown granted him the 'foudrie' or office of foud, which meant power to administer the e.d Norse system.²⁸ On the other hand, when Oliver Sinclair of Ihtesi'ns had been appointed sheriff in 1541, his commission was in stand.v.d Scottish form, with no allusion to special law or procedure.²⁴

These facts themselves suggest that there was some confusion, or perhaps duality, and a considerable amount of other evidence can be marshalled to show, on one hand, the continuation of Norse law and procedure and, on the other, the infiltration of Scots law and procedure.

There are some well-known instances of continued reference from Shetland to Norway. In 1485 the lawman of Bergen and the lawman of Shetland, along with the councillors of Bergen and the lawrightman of Shetland, gave a decision relating to land in Shetland.³⁰ In 1583 a decree of the king's court at Bergen confirmed a decree of a court held in Yell, Shetland.³¹ And a deed of sale of land in Shetland, executed at Bergen in 1536, was ratified by the lawman of Bergen in 1544.³² Even so late as 1662 — admittedly in somewhat unusual circumstances — a conveyance of lands in Shetland was confirmed by Frederick III of Denmark and Norway.³³

A number of isolated documents of sixteenth-century date³⁴ illustrate the survival in Shetland of Norse land tenure and methods of conveyancing. Several of them are in the Norse tongue, but even when they are not in Norse they contain phraseology and clauses quite foreign to the practice of Scots law. Property extended from the highest stone in the hill to the lowest stone in the ebb, contrary to the Scottish understanding that private property belonged to the crown; property was divided among heirs (a daughter's share being half a son's), instead of passing to the first-born (who, however, had the right to the 'heid buile' or chief place); the consent of the family had to be obtained before land was sold. Besides, some Norse terms, sometimes in rather corrupt form, are preserved: the phrase 'all aing owthill ryt roith samaing and reversion' incorporated the words *eign*, meaning possession; *odal* or *udal*; *roith* or *raedi*, meaning rule or control; and *sameign*, joint possession — apparently intermingled with Scots terms. We also find in some of those documents that divisions of movables, as well as of land, were still being carried out by what the Scots called 'sheunds' and 'airffs', which represented Norse procedure.

But alongside those usages, there is plenty of evidence of Scottish practice as well. Charters were being granted which conveyed property in the islands in the normal terms of Scottish feudal tenure, which provided that the lands be held of superiors and which sometimes expressly forbade subdivision among heirs.³⁵ Lands were even confirmed 'notwithstanding ony . . . constitutionis of the said cuntre of Zetland . . . that may be objectit or allegit'.³⁶ So far as civil law is concerned, we shall not be certain when the jurisdiction of the Court of Session became effective in the islands, whether in cases in the first instance or in appeals, until someone performs the daunting task of examining perhaps 200 or 300 volumes of Acts and Decrees. However, it is not difficult to examine the Register of Deeds (of which there is a brief Calendar from 1554 to 1595) and discover that that Register does contain deeds to which people in the islands were parties and which were drawn up in the islands and duly recorded in the Books of Council and Session: there is one example in 1562 of a contract between a party in Shetland and a party in Orkney.³⁷ This would seem to make it clear that the jurisdiction of the Court of Session had come to be accepted in the islands. It is also noticeable that the *Court Book of Shetland, 1602-4* contains several allusions to the Court of Session: persons in Shetland were forbidden to raise actions there except in default of justice within Shetland, but one action had been raised before that act was made; several deeds are recorded in the Court Book which contain the usual clauses giving consent to registration in the Books of Council and Session; and the volume contains a copy of letters under the signet which demonstrate the normal operation, within Shetland, of the proceedings of the Court of Session.³⁸ Criminal law is worthy of as much study as civil law, and the evidence equally discloses the exercise of jurisdiction in the

islands by the High Court of Justiciary. Persons guilty of an affray in Kirkwall were tried in that court in Edinburgh in 1562 and the case then remitted to the justice ayre of Orkney.³⁹ In Shetland a crime of slaughter, fire-raising and 'hamesuckin' in 1543 was held to incur the penalties of Scots law, and the guilty persons, after twice receiving a respite from the Scottish crown, obtained a remission in 1564.⁴⁰ A particularly explicit Shetland case arose in 1581: Thomas Boyn was summoned to the High Court of Justiciary in Edinburgh for the murder of Patrick Winram and, on his failure to compare, was put to the horn and escheated.⁴¹ In 1596, when Henry Colville, parson of Orphir, was murdered in Nesting in Shetland, the persons accused of the crime were all tried in the High Court of Justiciary.⁴² There are many instances of the application to Orkney and Shetland of the escheat of movables, a normal Scottish penalty for crime.

There was yet another field in which Scottish practice began to supersede Norse, namely executry and the administration of the estates of persons deceased. In 1549 the General Council of the Scottish Church laid down that the law and practice of Scotland in the administration of the goods of persons deceased should be extended to the diocese of Orkney.⁴³ A commissary (who would normally have dealt with such matters) was operating in Shetland by 1590, but the full extent of his functions is obscure.⁴⁴ The persistence of 'sheunds' and 'airffs' may well have limited his scope, and it was remarked in 1611 that the office of commissary in Orkney and Shetland had been 'these many years bygone very far obscurit, partly by the iniquity of the time

and partly by the usurpation which other judges and magistrates within the said bounds took upon them of a great many of the actions and causes proper and competent to the commissariat jurisdiction'.⁴⁵ The 'usurpation' may in truth have been the survival of Norse practice.

Beyond the evidence of isolated deeds and stray reference in various records, the main evidence for the survival of Norse law and practice lies in a Court Book of Shetland for 1602-4 which was edited for the Scottish Record Society. One can see at a glance that it represents much of the old Norwegian laws as they were printed by Laurence Larson.⁴⁶ Professor Robberstad examined the volume in a review in the *Historisk Tidsskrift* and identified the law which was operating in Shetland as the law found in the Lawbook of Magnus the Lawmender (1263-80).⁴⁷

The language of the Court Book is Scots, but there are many survivals of Norse terminology and procedure. A man accused of a crime could clear or quit himself with the aid of compurgators or oathhelpers, two, six or twelve in number, the number depending partly on the nature of the crime and partly on the accused's past record. As in the Norwegian code of law, various degrees of assault and injuries were defined: penalties were more severe when injuries were 'beneath the end' as the Court Book puts it, that is, beneath the breath. It made a difference, too, as in the Norwegian laws, where the assault was committed: attacks in trading places — 'ane frie coupsta' — or on the sea, for instance, were more severely punished. The Court Book also shows that the Law Book of Shetland was still consulted and it confirms that udal practice was at least still partly observed.

Anyone looking in the Court Book for Norse survivals will find them in plenty. But what it reveals is an amalgam of Scottish and Norse terminology and procedure, and represents much the same kind of duality as we have already seen in isolated documents. Two systems had clearly been to some extent merged, presumably over a considerable period.

The very structure of the judicature, or at any rate its designations, reveals the duality. The local headman in a district was still called the foud; but the judge in whose name the central court was held was styled justice general and sheriff principal. By a curious reversal of usage, the local courts were called courts, not *things*, but the central court was officially styled the Lawting Court and was sometimes referred to simply as 'the Lawting'. Similarly, in the local or parochial organisation, the lawrightman and the ranselman had Norse titles, but there was also an 'officer'. And for the jury in each court, whether central or local, there seems to have been no other term than 'assize', a word the Scots had taken over as part of their borrowing from English or Anglo-Norman procedure.

Some of the terminology looks Norse, and indeed is Norse, but is also Scottish and does not necessarily represent Norse survivals. Tirus 'bluidwyt' is identifiable with the Norwegian *blodwite*; but it was also regularly used in Scottish charters and had been taken over at an early date from England.

Equally, 'skayth', meaning damage or harm, can indeed be equated with the Norse *skade*; but it is a term in constant use in Scots law and indeed is still standard English, if a shade archaic, in the form 'scathe'. And there is the term 'fang' in the phrase 'taken with the fang' used of a thief apprehended with stolen goods in his possession; again the term is both Norse and English, and 'infangthief' and 'outfangthief' were standard terms in Scottish charters from the earliest times. These selected illustrations are sufficient to show the general character and the law and its administration in Shetland in 1602-4.

When one reviews the duality or co-existence which the evidence discloses, it becomes evident that it would be totally wrong to believe that the Norse system survived until it was abolished at a stroke in 1611. There was clearly some truth in the Privy Council act which did in that year finally abolish the Norse law when it stated that the rulers of Orkney and Shetland had for some years past 'taken upon them . . . to judge the inhabitants of the said countries by foreign laws, making choice sometimes of foreign laws and sometimes of the proper laws of this kingdom'.⁴⁸ But it was wrong to allege that the rulers — the Stewart earls — had necessarily made an arbitrary choice between the two systems. One reason, probably the main reason, for the act of 1611 was the policy of James VI, determined as he was to make the whole of Scotland a unified country, obedient to him and to a uniform law. But Professor Robberstad did point out that in 1604 there had appeared in Norway a revised code of law, the revision of Christian IV, and it would have been difficult for Orkney and Shetland either to adhere to the now superseded older code or to accept a new code at the hands of someone now regarded as a foreign king.

It has sometimes been suggested that the act of 1611 was beyond the competence of the Privy Council, especially if the Norse law in the islands had previously been safeguarded by acts of the Scottish Parliament. But, even if they had been so safeguarded, the competence of the Privy Council in legislation was in practice so extensive that it would be hard to challenge any of its acts as *ultra vires*, and the fact remains that this act seems never to have been so challenged in a court of law.

The act of 1611, perhaps in conjunction with other events, seems to have had an immediate effect in ending the duality or co-existence of the two legal systems. When next we have a Shetland Court Book, in 1615, its procedure is essentially that of a Scottish sheriff court and it bears little resemblance to the book of 1602-4. Certain unusual administrative and judicial practices long survived at parish level and there were 'Country Acts' with something of the character of by-laws, but any distinction in substantive law had disappeared.

The Transition in Land Tenure

The act of 1611 had said nothing specifically about land law, and there is no evidence that it was thought of as bringing udal tenure to an end. But only six years later, in 1617, there was finally established the Register of Sasines, in

which all transactions relating to heritable property had to be recorded, and this may have had a strong influence in bringing about uniformity in the procedure for the conveyance of land. The Register certainly enables us to examine land tenure in Shetland in the seventeenth century in a way not possible for earlier centuries.

The first volume of the Register of Sasines for Shetland is not extant, and the second begins in 1623. Abstracts of a series of sasines from this volume were printed by the Viking Society.⁴⁹ An examination of those abstracts reveals a somewhat confused situation. There is land called 'udal land' and land called 'feudal land', as well as land not designated as either. One sasine at least expressly limited property to the flood mark, so that it did not include the foreshore, and there is on one instance of the inheritance of udal land by two brothers. On the other hand, supposed 'udal land' was disposed by the 'eldest son and heir' a charter was granted by a man designed as 'udaller and heritable proprietor'; 'udal land' was held of the crown and even held by a feu charter; and a crown precept could be obtained for infeftment in 'udal land'.⁵⁰ On the whole, therefore, the normal rules of succession and the normal methods of conveyancing were being applied to 'udal land'. It fits in with this erosion of udal tenure that in 1624 the Court of Session decided that udal lands 'behoved to be bruiked by some lawful title and that naked kindness and possession were not sufficient to possess them'.⁵¹

The Register of Sasines was examined in detail, at three sample periods throughout the seventeenth century, by Dr Frances Shaw in her Ph.D. Thesis.⁵² She noted, as others have done, the absence of large compact estates in Shetland in the early seventeenth century and the vast numbers of very small proprietors; this was almost certainly the consequence of the udal system of succession, and a sharp reduction in the number of small properties was facilitated as that system was eroded. At the beginning of the century there are many allusions to the sharing of property among heirs, to an udaller obtaining the consent of his kinsmen to the sale of land and to the transmission of land without charters.⁵³ However, changes were soon to come. In 1633 there was a petition to parliament by the 'udallers' craving that none be interposed between them and the crown, but that they should be vassals of the crown until the king should adjust their rights in conformity with the law of Scotland:⁵⁴ this amounted to an acceptance by the udallers of the feudal principle of the crown's ultimate superiority of all lands. In 1664, on the ground that 'udal right' was 'merely a possession and no kind of fundamental right or title by charter or sasine', the Earl of Morton, who then held the crown lands, was authorised to grant feu charters to udallers, and a great many udallers took feu charters at this time.⁵⁵ It is true that in 1690 an Act of Parliament gave a limited measure of protection to a certain class of udal lands, and then only where the value did not exceed £20 Scots,⁵⁶ but by that time the damage was done. Dr Shaw's analysis of sasines shows that by the end of the seventeenth century conveyances by udallers made up only 4 per cent of the

total Shetland sasines.⁵⁷ Legislation and judicial decisions apart, the steady diminution, over the centuries, of the size of udal holdings might well have led to the elimination of udallers as their holdings became uneconomic.

The normal Scottish practice in dealing with movable succession seems to have become fully operative early in the seventeenth century, as the Record of Testaments amply demonstrates. And the normal feudal practice of establishing succession to heritable property by the procedure of service by an inquest was in operation by 1605 and continued thereafter — though not without some protests by claimants who thought they had rights under udal law, as entries in the Sheriff Court Book of Shetland, 1615-1628, demonstrate.

Thus most land in Shetland, even if some of it was still called 'udal', came to be held by feudal and not by allodial tenure and the practice of partition among heirs ceased in general to apply — though it was upheld in law as late as 1893.⁵⁸ With this elimination of these essentials of udal practice, the only significant vestiges of udal law which remained effective related to certain rights which the holders of 'udal land' continued to enjoy within their own property.

Notes:

1. *Acts Pari. Scot.*, 1,420.
2. *Ibid.*, 423.
3. *Diplomatarium Norvegicum*, xx, 764-6.
4. *Diplomatarium Christierni Primi*, 128.
5. Barbara E. Crawford, 'The Pawning of Orkney and Shetland', *Scot. Hist. Rev.*, xlviii, 41-2.
6. *Diplomatarium Norvegicum*, v, No.484.
7. The best text of the Orkney treaty, with a translation, is in John Mooney, *Charters and Other Records of the City and Royal Burgh of Kirkwall*, 96-109; the text of the Shetland treaty is printed as an appendix to the article mentioned in note 5 above.
8. *National MSS. of Scotland*, III, xlv.
9. J. Dumont, *Corps Universal Diplomatique de Droit des Gens* (Amsterdam 1731), VII, i, 56.
10. For an account of *occupatio* and prescription see Brownlie, *Principles of Public International Law*, 2nd ed., 141-154, 156-163; Fitzmaurice, *The Law and Procedure of the I.C.J.*, 1951-4: Points of Substantive Law, Part II (1955-56), 32 B.Y.I.L. 20 and 49-71; Johnson, *Acquisitive Prescription in International Law* (1950), 27 B.Y.I.L., 355.
11. (1928) 2 R.I.A.A. 829.
12. (1933) P.C.I.J., Ser. A/B, No.53
13. Brownlie, *op. cit.*, 142.
14. *Island of Palmas Case*, supra; *Eastern Greenland Case*, supra; *Clipperton Island Case* (1931) 2 R.I.A.A. 1105.
15. *Island of Palmas Case*, supra, 845-6.
16. *Shetland Times*, 9 July 1965.
17. (1975) I.C.J. Rep. 12 and 36.
18. *Court of Session Cases*, 2 August 1963, pp.556, 561.
19. A. Small, C. Thomas and D.M. Wilson, *St. Ninian's Isle and Its Treasure*, 151.
20. *Acts Pari. Scot.*, ii, 102.
21. *Records of the Earldom of Orkney* (Scot. Hist. Soc.), 31-2.
22. *Ibid.*, 36-48.
23. *Acts Pari. Scot.*, ii, 244, 252.
24. Shetland Islands Authority Archives, SC 12/65/3: Information for James Sinclair of Scalloway.
25. *Acts Pari. Scot.*, iii, 41.
26. *Acts of the Lords of Council in Public Affairs*, 240.
27. *Ibid.*, 604, cf. 529.

28. *Registrum Secreti Sigilli*, v, 2078.
 29. *Records of the Earldom of Orkney*, 61-3.
 30. *Ibid.*, 72-3.
 31. *Ibid.*, 96-9.
 32. Gilbert Goudie, *Antiquities of Shetland*, 87-8.
 33. *Ibid.*, 97-9.
 34. Many of them printed in Goudie, *op.cit.*
 35. E.G., *Registrum Magni Sigilli*, iv, 2672, 2848, 2850.
 36. *Registrum Secreti Sigilli*, vii, 502.
 37. Register of Deeds, vi, 338b.
 38. *Court Book*, 48, 50, 137-9, 142-3, 148, 152.
 39. Pitcairn, *Criminal Trials*, I, ii, *413.
 40. *Reg. Sec. Sig.*, v, 1794.
 41. *Ibid.*, viii, 37.40.
 42. Pitcairn, I, iii, 386-97.
 43. Patrick, *Statutes of the Scottish Church* (Scot. Hist. Soc.), 115-6.
 44. Donaldson, *Court Book of Shetland 1602-4*, p.vi.
 45. *Reg. Privy Council*, ix, 182.
 46. Laurence M. Larson, *The Earliest Norwegian Laws* (New York, 1935).
 47. *Historisk Tidsskrift*, xli (1961-2), 65-9.
 48. *Reg. Privy Council*, ix, 181-2.
 49. Viking Club, *Orkney and Shetland Records*, ii (*Orkney and Shetland Sasines*).
 50. *Ibid.*, Nos, 1, 10, 11, 17, 42, 83, 121, 167, 174.
 51. Session Cases 1694, citing decision of 1624.
 52. Frances Burton (now Shaw), 'Insular Societies in their Economic Setting' (Edinburgh Ph.D., 1974).
 53. *Ibid.*, 55-6.
 54. *Ibid.*, 59.
 55. *ibid.*, 59-60.
 56. *Acts Pari. Scot.*, ix, 200.
- W. Douglas Simpson (ed.), *The Viking Congress 1950*, 159.

APPENDIX II UDAL LAW

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Lord Hunter observed in the case of *Lord Advocate v. University of Aberdeen & Budge* (better known as the St Ninian's Isle Treasure Case) 'as a practical matter it is probably more accurate to say that the ordinary statute and municipal law of Scotland operates' (in Shetland), 'except in so far as there is some speciality still extant in Orkney and Shetland which modifies it'. This may be regarded as a refinement of Lord Lee's statement in the case of *Bruce v. Smith* in 1890 that 'it is necessary to keep in view that the whole system of law in Shetland is different from the common law of Scotland, excepting in so far as it has been assimilated by legislative enactment or gradual adoption'.

These two judicial statements may differ in the weight they attach to differences existing between the law operating in Orkney and Shetland and that operating throughout the rest of Scotland. Taken together however they indicate clearly that such differences are appreciated. Their existence is of course largely the result of the historical relationship of the Islands with the Norwegian Crown which persisted until their impignoration in 1468-9. (For a full discussion of the circumstances and significance of this impignoration, see Appendix 1).

Udal Law, unlike the feudal law of Scotland, did not proceed upon the legal fiction (*fictio juris*) which presumed that the Crown was the original proprietor of all land. Whereas in Scotland every title to land emanated directly or indirectly from the Crown, in Shetland the title to land did not emanate from the Crown. The Norwegian Crown undoubtedly owned considerable land in Shetland, but the Earls, the Bishops and the Udallers also owned land and each of these groups of proprietors had a right of absolute property in their lands which was akin to *dominium* under Roman Law. The Norwegian Crown continued to possess certain Sovereign rights in Shetland, but it did not maintain any reversionary right of property in land in Shetland as the Scottish Crown did in Scotland. The Crown was entitled to collect an annual payment called Scat from the udal lands in Orkney and Shetland. Tire word 'scat' is Norse in origin and means a tax or tribute and scat was, therefore, an annual Government Tax imposed for the support of

the State. It in no way resembled the annual payment of feuduty which was paid by a vassal to his superior under the feudal land tenure.

According to Bell,¹ there was, at one time, an exemption from payment of scat for land which was enclosed for cultivation, and there was a distinction between the hills or common which were used for grazings and which were known as Scattalds in Shetland and Commonty in Orkney, and land used for cultivation which became known as udal or free land. The rental book of the Lordship of Shetland, prepared by Sir Lawrence Dundas's factor around 1776, contains the following reference to Scat — 'Now there is not a man in Shetland, or in Orkney either, who hath heard of and knows that Scatt was paid to the King or Overlord, who, if he is asked the question, will answer "That Scatt was paid for the hills or commons in Shetland called Scattalds, and here too they sometimes add for the meadows"'.² The rental book goes on to state that the Scatt in Shetland ranges for 2 to 12 pence per merk land and is generally in proportion to the extent and goodness of pasture and other accommodation in the Scattald.² Most of the Scattalds in Shetland are now divided and held in severalty along with the arable land adjoining them, and the distinction between Scattald and Udal land has disappeared as a result of such things as feudalisation, division and improved agricultural methods which have turned poor quality hill ground into arable land. A proprietor of udal land is entitled to apply to the Court for a division and allotment of the Scattald in proportion to the number of merks of land belonging to him and the other proprietors who have an interest in the Scattald.³

It is now necessary for us to examine certain aspects of Udal Law in greater detail, to discover which special areas of Udal Law have survived to the present day. The old Law Court and Parliament have long ago disappeared and Shetland now forms part of the Sheriff Court District of Grampian, Highlands and Islands. Shetland shares a full time Sheriff with Orkney, with the Sheriff commuting each week between Lerwick and Kirkwall. Divorce actions are heard in the Court of Session in Edinburgh, and Appeals in civil matters are taken from the Sheriff Principal to the Inner House of the Court of Session, and the ultimate Court of Appeal in civil matters is the High Court sitting as an Appeal Court in Edinburgh. It can be seen, therefore, that as far as the Courts of Law are concerned, Shetland is no different from any other area on the mainland of Scotland.

There is evidence that, for some considerable time after 1469, the impignoration of the Norse principles of the Law of Succession were observed in Shetland instead of the rule of primogeniture which governed the feudal Law of Succession throughout the rest of Scotland.⁴ Shetland retained the principle of partition of the whole estate amongst all the children equally. This tended to lead to a minute division of land and no land could be sold without the judicial consent of all the heirs. As time passed, therefore, and

Shetland came more and more under the influence of Scotland, we find that the principle of partition was first of all modified to allow one male share to be the equivalent of two female shares and, eventually the Udal Law of Succession fell into desuetude (disuse) and the feudal principle of primogeniture was adopted in Shetland.

There can be little doubt that the most important aspect of Udal Law which has survived is the Udal system of land tenure. Originally, all land in Shetland was udal, as the owners did not receive their title from the Crown, nor did they apply to the Crown for a Charter. On the death of a proprietor of udal land, the land vested in his heir by mere survivance, without service, as would have been the case in other parts of Scotland.⁵ No writing was required for the transfer of land and the owner's title consisted of natural possession, which could be proved by witnesses.⁶ As can be imagined, however, this was not an ideal method of proving a title to a particular area of ground and, after 1469, the existing feudal forms of conveyance were often adopted to provide evidence of ownership. This, however, did not necessarily mean that the lands described in the feudal deeds ceased to be udal lands, and a case in 1832 decided that 'Sasines proceeding on Charters neither granted by the Crown nor by a Subject Superior deriving right from the Crown are not sufficient to establish that lands . . . once held by udal tenure were feudalised so as to prevent them passing from father to son without service'.⁷ The only means by which udal land could be feudalised was to connect with the Crown by obtaining a fresh Charter from the Crown. Bell states that some land in Orkney and Shetland is held feudally of the Crown (i.e. the proprietors had applied to the Crown for a Charter) and some remained subject to Udal tenure, convertible into feu at the option of the proprietor.⁸ Since the granting of the Charter of Crown Lands to the Earl of Morton in 1742, feudal grants may come either from the Crown or from the Earl of Morton or his successors, the Zetland family. In addition, the Act of 1690, c32, provided the owners of kirklands (Church lands) not exceeding £20 Scots in value may possess their lands by udal right.

The two aspects of Udal land tenure which are most frequently highlighted are with regard to the foreshore and salmon fishings. Many titles in Shetland contain a description of property which includes the phrase 'from the lowest of the ebb to the highest of the hili'. This is the conventional terminology of a non-feudal conveyance in Shetland and it gives the owner of the land in question a right to the foreshore *ex adverso* of his land. This can be contrasted with many feudal conveyances used in other parts of Scotland, which have tended to restrict the grant to 'the high water mark of ordinary spring tides' and which, therefore, excludes the foreshore. There are, of course, many exceptions to these general statements and it should not be thought that all conveyances of land adjoining the sea in Shetland include the

foreshore and all such conveyances in other parts of Scotland exclude the foreshore.

In 1903, it was decided by the First Division of the Court of Session⁹ that the law of udal tenure applied to the foreshore of Shetland as well as to any other piece of land in Shetland, and where a proprietor held a title to certain land 'downwards to the lowest low water mark', and even though his title contained no original conveyance or Charter from the Crown, he was, nonetheless, entitled to have his title confirmed as valid against the Lerwick Harbour Trustees, who had obtained two Crown grants of the land some sixty years after the original udal grant. The reasons given by the Court were, firstly, that the foreshore, like the rest of the *solum* of Shetland, was udal and the Crown had no original right of property in it; secondly, that the title of the Harbour Trustees was based on the erroneous assumption that the foreshore belonged to the Crown and, lastly, that the proprietor of the land in question had a title to the foreshore which had been recorded in the General Register of Sasines (the public register of deeds relating to land in Scotland, established by the Act of 1617 cl6) for more than 80 years without challenge. A different decision however was reached in a more recent Sheriff Court case in 1951.¹⁰ In this case, the Lerwick Harbour Trustees were once again involved. The Trustees had obtained a title from the Crown to an area of reclaimed foreshore, known as the Esplanade, Lerwick. They raised an action against a motor hirer, who insisted on parking his car, without payment, in a parking place which belonged to the Harbour Trustees and which they had let to another person. The motor hirer relied on the earlier decision of the First Division of the Court of Session in 1903, but the Sheriff Substitute took the view that whereas in that 1903 case it was accepted that the proprietors' title was udal, in this case the motor hirer's title was a feudal one and did not include any right of property in the foreshore and, accordingly, he could not compete in an argument with the Harbour Trustees, who had obtained their title from the Crown.

It is important to contrast these decisions relating to the foreshore of Shetland with the position in regard to the foreshore *ex adverso* of the mainland of Scotland. The foreshore is, by reason of the feudal law, presumed in the first instance to belong to the Crown. The Crown may grant a title to the foreshore to any third party and there have been numerous examples of this over the years. More recently, electricity power stations, which have been constructed on sites adjoining the sea, have also required part of the foreshore for their purposes and, on some occasions at least, the title has been granted by the Crown. There are also numerous examples of cases where a proprietor has a title to the foreshore which cannot be traced back to the Crown and, provided the proprietor's title is *ex facie* sufficient to

carry the right to the foreshore, and provided he has had uninterrupted possession of the foreshore for the prescriptive period, his title cannot be challenged.¹¹ Originally the prescriptive period was 40 years,¹² thereafter it was reduced to 20 years.¹³ In 1970 when the period of positive prescription was reduced to 10 years¹⁴ a specific exception was made in relation to claims as against the Crown with regard to the ownership of foreshore or salmon fishings. In these two cases the prescriptive period remained 20 years.

Turning now to salmon fishings, we find that here, too, the original law which applied to Shetland did not allow for the legal fiction that the Crown is the original proprietor of all lands. Salmon fishings in Shetland and Orkney, in the sea and rivers and lochs, belong to the owners of the adjoining lands, unless transferred by contract or prescription. The whole question of salmon fishings under udal law was tested in the Courts early this century and the law is now well settled. In the case of *Lord Advocate v. Balfour*,¹⁵ the Crown brought an action against Colonel Balfour for declarator that all salmon and sea trout fishings in a loch and burn which adjoined Colonel Balfour's lands belonged to the Crown and not to Colonel Balfour. The Crown based their claim on a decision of the Court in 1851,¹⁶ which confirmed that the right of salmon fishing in the shores and open sea round the coasts of Scotland belonged to and remained with the Crown, unless expressly or constructively granted out to a subject. This had been the law in relation to salmon fishings in the rivers of Scotland for some considerable time prior to 1851. It seems to be a peculiarity of the Scottish system of feudal law that salmon fishings are regarded as a separate feudal right capable of being transferred independently of other land rights, for there is no evidence that this separation of rights also applied in other European systems, where feudal law was introduced around the same time. Why this should be so is not clear, but it has been argued that, from a very early date, it was appreciated that salmon fishings in Scotland were of exceptional value and it was, therefore, appropriate that they should continue to belong to the Crown, unless the King granted a conveyance of these rights to one of his subjects. In the Balfour case, Lord Johnston reviewed the history of Orkney and Shetland and came to the conclusion that 'nothing has occurred since 1468 which amounts to general acceptance in Orkney of the Scots feudal system and still less of its customary incidents'. Lord Johnston accepted that a certain degree of feudalisation had taken place in Orkney, but he also took the view that the law applicable to salmon fishings in Scotland applied only to the rivers, shores and sea around the mainland of Scotland, and came into being probably because of their great value. In Orkney and Shetland, however, the arrival of the feudal system of land tenure did not extend to salmon fishings, since these fishings were of little value in Orkney and Shetland compared with elsewhere.

Some recent statutes have also contained specific references to udal law, thus recognising the place of udal law within the law of Scotland as a whole. For example the Conveyancing and Feudal Reform (Scotland) Act 1970¹⁷ provides that an obligation to pay Scat cannot be varied or discharged under Section 1 of the Act. The Land Tenure Reform (Scotland) Act 1974 prohibits the imposition after 1st September 1974 of any Scat in respect of the tenure or use of land¹⁸. Likewise, the same Act gives a proprietor the right to redeem a payment of Scat at any term of Whitsunday or Martinmas¹⁹ and makes such redemption obligatory on a sale²⁰ or Compulsory acquisition of the land in question.²¹

It is particularly interesting to note the reference to udal law in the Prescription Limitation (Scotland) Act 1973. As we have seen already, the period of prescription for interests in land generally is now 10 years. There are however certain exceptions to this rule (e.g. claims against Crown in respect of foreshore and salmon fishings). There is also an exception for allodial land²² which is land held in absolute ownership and not under feudal tenure. Crown property is of course allodial but so is udal land in Shetland. We thus have an interesting situation in Shetland where land held on a udal title requires a 20 year prescriptive period to make it unchallengable, and land which has been feudalised and is held under a feudal title only requires a 10 year prescriptive period.

Notes:

1. Bell's Principles (10th Edition) para.932.
2. Spence v. Earl of Zetland 1839 ID 415.
3. Spence v. Earl of Zetland.
4. Peterkin's Notes on Orkney and Zetland App.92.
5. Beaton v. Gaudie 1832 10s 186.
6. Erskine ii 3, 18; Stair ii 3, II.
7. Beaton v. Gaudie, above.
8. Principles (10th Edition), para 933.
- 9? Smith v. Lerwick Harbour Trustees 1903 5F 680; see also Smith v. Lerwick Harbour Trustees 1897 5SLT 175.
10. Lerwick Harbour Trustees v. Moar 1951 SLT (sh Ct) 46.
11. Young v. North British Railway Company 1887 14R (HL) 53.
12. Act 1617.
13. Conveyancing (Scotland) Act 1874 S34.
14. Conveyancing & Feudal Reform (Scotland) Act 1970 S8.
15. 1907 SC 360.
16. Commissioner of Woods & Forests v. Gammell 1851 13D854.
17. Schedule 1 paragraph.
18. Section 2(1).
19. Section 4.
20. Section 5.

Section 2 (2) (b).

A paper prepared by the Nevis Institute for the Shetlands Islands Council

Introduction

This paper⁶ sets out a number of alternative methods by which Shetland might be administered and governed, assuming:

1. that the Scotland Bill, 4 November 1977, becomes enacted as the Scotland Act, and that it includes Amendments 149⁷ and 150 of Clause 82.
2. that the people of the whole of Scotland vote 'Yes' in the referendum (Clause 82).
3. that the people of Shetland vote 'No' in the referendum (Clause 82).

This would necessitate the Secretary of State laying before Parliament the draft of an Order in Council, providing that in respect of Shetland the Act shall not apply, and providing also for the establishment of a commission to recommend such changes in the government of Shetland as may be desirable.

None of the alternative possibilities described in this paper should be construed as being a recommendation of what should happen in this hypothetical situation. However, when necessary, appropriate means for government and administration can be devised; 'Where there is a will — There is a way' — this would be equally true for the interim period as for the long term.

~~Interim Government of Shetland Commission 1978-1981, 1981-1984, 1984-1987, 1987-1990, 1990-1993, 1993-1996, 1996-1999, 1999-2002, 2002-2005, 2005-2008, 2008-2011, 2011-2014, 2014-2017, 2017-2020, 2020-2023, 2023-2026, 2026-2029, 2029-2032, 2032-2035, 2035-2038, 2038-2041, 2041-2044, 2044-2047, 2047-2050, 2050-2053, 2053-2056, 2056-2059, 2059-2062, 2062-2065, 2065-2068, 2068-2071, 2071-2074, 2074-2077, 2077-2080, 2080-2083, 2083-2086, 2086-2089, 2089-2092, 2092-2095, 2095-2098, 2098-2101, 2101-2104, 2104-2107, 2107-2110, 2110-2113, 2113-2116, 2116-2119, 2119-2122, 2122-2125, 2125-2128, 2128-2131, 2131-2134, 2134-2137, 2137-2140, 2140-2143, 2143-2146, 2146-2149, 2149-2152, 2152-2155, 2155-2158, 2158-2161, 2161-2164, 2164-2167, 2167-2170, 2170-2173, 2173-2176, 2176-2179, 2179-2182, 2182-2185, 2185-2188, 2188-2191, 2191-2194, 2194-2197, 2197-2200, 2200-2203, 2203-2206, 2206-2209, 2209-2212, 2212-2215, 2215-2218, 2218-2221, 2221-2224, 2224-2227, 2227-2230, 2230-2233, 2233-2236, 2236-2239, 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4969-4972, 4972-4975, 4975-4978, 4978-4981, 4981-4984, 4984-4987, 4987-4990, 4990-4993, 4993-4996, 4996-4999, 4999-5002, 5002-5005, 5005-5008, 5008-5011, 5011-5014, 5014-5017, 5017-5020, 5020-5023, 5023-5026, 5026-5029, 5029-5032, 5032-5035, 5035-5038, 5038-5041, 5041-5044, 5044-5047, 5047-5050, 5050-5053, 5053-5056, 5056-5059, 5059-5062, 5062-5065, 5065-5068, 5068-5071, 5071-5074, 5074-5077, 5077-5080, 5080-5083, 5083-5086, 5086-5089, 5089-5092, 5092-5095, 5095-5098, 5098-5101, 5101-5104, 5104-5107, 5107-5110, 5110-5113, 5113-5116, 5116-5119, 5119-5122, 5122-5125, 5125-5128, 5128-5131, 5131-5134, 5134-5137, 5137-5140, 5140-5143, 5143-5146, 5146-5149, 5149-5152, 5152-5155, 5155-5158, 5158-5161, 5161-5164, 5164-5167, 5167-5170, 5170-5173, 5173-5176, 5176-5179, 5179-5182, 5182-5185, 5185-5188, 5188-5191, 5191-5194, 5194-5197, 5197-5200, 5200-5203, 5203-5206, 5206-5209, 5209-5212, 5212-5215,~~

Implementation

This would be implemented by one of the following methods:

1. Legislation (a Shetland Act) to make provision for the government of Shetland.
2. An Order-in-Council under a new Clause of the Scotland Act 1978, giving power to the UK Government to make provision for the government of Shetland.
If this method is chosen, a separate amendment to the Scotland Bill will have to be proposed (to Clause 82) either in the Commons or in the Lords. It may be that Clause 81 (3) Page 37 (Scotland Bill) would be appropriate for this purpose.
3. Under the provision of Clause 33 Scotland Bill, (but doubt has been raised as to whether this Clause is suitable for this purpose).³

In order to speed up the action of the commission, it might well be wise to make this subject to a time limit, six months, open to renewal.

Secretary of State Veto

In order to avoid special administrative machinery being established for the interim period, it might be considered suitable during that period for Shetland to be administered as though it were part of the devolved Scotland and for it to send a representative to the Scottish Assembly, but with the proviso that the Secretary of State would have to give approval to legislation by the Scottish Assembly and the use of delegated legislative powers by the Scottish Executive before they could apply to Shetland.

The Shetland Board

If the method described above was not considered suitable, it would be necessary to establish a body responsible to the UK Government which would exercise the functions relating to Shetland which would otherwise be devolved to the Scottish Government.

These functions might fall within the scope of either the Scottish Assembly and Executive (Schedule 10, Scotland Bill), or within the scope of the Scottish Executive alone (Schedule 11, Scotland Bill).

Broadly, the functions would include:—^{1*}

2. Matters exercised by intermediate bodies responsible to Scotland⁴ (e.g. health boards. General Teaching Council, Scottish Certificate of Education Examination Board).
3. Matters exercised by intermediate bodies responsible to both Scotland and the UK (e.g. Highlands and Islands Development Board, Scottish Development Agency).

4. Supervision and control of matters exercised by local authorities (i.e. present functions of Shetland Islands Council).

For further examples of these functions see 'Functions'.

This body, the Shetland Board, would not be political. It would consist of civil servants or specially recruited officials (e.g. in a similar manner to the SDA or the HIDB). It might follow one of the following forms:

A. A Board established under the aegis of the Scottish Office, and responsible to the Secretary of State for Scotland, consisting of Scottish Office civil servants or specially recruited officials.

B. A Board composed jointly of Scottish Office and Scottish Executive appointees, under the chairmanship of the Scottish Office and responsible to the Secretary of State for Scotland, whose voice would be final.

C. A UK Board, responsible to the Lord President of the Council, with departments other than the Scottish Office represented (e.g. it may be that the DHSS rather than the Scottish Health Department (which would be devolved) should be the appropriate department for health.

The nearest parallels are the units within the Home Office for the Isle of Man and the Channel Isles.

The Government has made it clear⁵ that the Scottish Office, as at present envisaged under the Scotland Bill, would *not* be equipped to perform this task. However, a special Board attached to it might be able to do so.

Functions

The following are examples of what would be the functions of the Shetland Board:

1. Assembly Powers: (see Schedule 10 Scotland Bill)

Legislation covering devolved matters:

The Shetland Board would have *either* to recommend the exclusion of Shetland from such legislation, thus perpetuating the previous legislation, or recommend separate legislation for Shetland (via Parliament, or by Order-in-Council). There would be increasing problems if Shetland did not go 'step-by-step' with Scottish legislation. The alternative would be to take English legislation and relate Shetland to Whitehall departments (hence Model C).

2. Executive Powers (Schedule 10 & 11 Scotland Bill): Administration of devolved functions (e.g. colleges of education and central institutions).

3. Matters exercised by intermediate bodies responsible to Scotland: Health: health board; common services agency; ambulance

service.

Education: General Teaching Council; Scottish Certificate of Education Examination Board; Scottish Teachers' Salaries Committee; Scottish Teachers' Service Conditions Committee; Curriculum.

Land: Crofters Commission; Agricultural Colleges; Countryside Commission for Scotland.

Transport:

Highlands Development: HIDB; Scottish Tourist Board; SSHA; SDA; Scottish Transport Group; (HIDB and SDA Joint Scottish UK control).

Courts Administration.

Ancient Monuments.

4. Matters relating to, or exercised by local authorities, but subject to Scotland's control:

Structure of authority, functions, payment of councillors, elections, etc.

Finance: rate support grant; approval of capital expenditures; borrowing, etc.

Audit of accounts (Commission for Local Authority Accounts in Scotland).

Valuation: rate rebates; rent rebates.

Examples of functions:

primary and secondary education

housing

social work

roads

planning

libraries and museums

water and sewerage

registration of births, deaths and marriages (relates to Registrar-General for Scotland [devolved]).

5. Police and Fire:

Police is a UK function; thus during the interim period it could continue to be administered through the existing Northern Constabulary.

Fire is a Scottish function. At present it is a joint responsibility with the Highland Region; provisionally this arrangement might continue, *or* could become the direct responsibility of the Shetland Board.

6. Legal matters:

The *law* for Scotland in devolved matters will be made by the Scottish Assembly. The Shetland Board must decide whether such law is to apply in Shetland, or whether the previous law will continue to apply, or whether *new* law will be made for Shetland. If the last, the Board will have to go to Parliament to obtain such law, or will recommend the adoption of English law for Shetland, or will recommend new law by Order-in-Council.

Cases in the Shetland court (District Court) or Scottish courts (Sheriff Court, Court of Session, etc.) can continue as before (e.g. Sheriffs are 'UK' judges and Procurators-Fiscal are 'UK' officials) but the law to be applied in Shetland will be the law determined as in the paragraph above, and not necessarily the law relating to Scotland.

7. Finance:

The Shetland Board will be responsible for all finance coming to Shetland or the Shetland Islands Council in devolved matters. The Board will receive its grant from the Treasury, through a vote in Parliament, and this may involve payment to Scotland in respect of services to Shetland.

References;

1. This paper was commissioned by the Shetland Islands Council and is a supplement to 'The Shetland Project; a study of all aspects of government in Shetland', which is currently being conducted by the Nevis Institute for the Shetland Islands Council. The members of the Study Committee for this project are:

Lord Kilbrandon PC (Chairman)
Professor W J M Mackenzie CBE EBA
Professor E M Martin

Sir David Pitblado

The Chairman of the Nevis Institute is Lord Kilbrandon PC, and its Director is Robert Underwood.

2. Amendments 149 and 150 of Clause 82 as presently proposed by Mr Jo Grimond (Lib), Sir John Gilmour (Con), Mr John Parker (Lab) and others. These read:

Amendment 149

Clause 82, page 38, Line 3, at end insert:-

*(2A) If the answers given in the referendum show that the majority of the persons giving valid votes in the Orkney Islands Area or the majority of such persons in the Shetland Islands Area do not wish effect to be given to this Act, the Secretary of State shall lay before Parliament the draft of an Order-in-Council providing that in respect of that Area or, as the case may require, those Areas, the Act shall not apply, and providing also for the establishment of a commission to recommend such changes in the government of that Area or those Areas as may be desirable'.

Amendment 150

Schedule 17, page 89, line 7, leave out 'for the whole of Scotland' and insert: -

- '(a) for the whole of Scotland; and
- (b) for each of the Islands Areas of Orkney and Shetland'.

The latter amendments set out the administrative arrangements for the Scottish referendum, and the effect would be to ensure that when the votes are counted the results will be declared separately for the two Islands Areas. Amendment 149 provides that if the results in either Area show that the voters do not wish the Act to apply to their Area, it shall not so apply, and that a commission shall be established to recommend desirable changes in the government of the Area.

3. Statement by Mr Smith during the meeting held in the Minister of State's room, Privy Council, 16 November 1977, when those present were: Mr J Smith, MP, Mr H Ewing, MP, Mr S Scott Whyte, Mr J A Paterson, Mr J M Ross, Mr R S Dudding, Rt. Hon. J Grimond, MP, Councillor E Thomason, Councillor Colonel Dainty, Mr E Urquhart.
4. *Scotland* means the Scottish Assembly and/or the Scottish Executive. *UK* means the Westminster Parliament and Ministers of the Crown including the Secretary of State for Scotland.

1978. Presented by Mr J. G. Gordon, Chairman, and Mr D. Hamper, Secretary.

APPENDIX IV A GUIDE TO THE RATE SUPPORT GRANT

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Exchequer support for local government current expenditure comes in two forms: specific grants and the Rate Support Grant (RSG). The former are given in aid of specific services such as Police, Housing Improvement and Sewerage. The bulk of support (93% for 1977/78) is accounted for by RSG which is a block grant.

The total amount the government will contribute to local governments has in the recent past been determined by two factors: (1) the rate of increase (or decrease) in local government expenditure desired by the Government; (2) the average rate of increase in rate poundages considered desirable in terms of current economic policy - e.g. incomes policy. Given planned expenditure and rate income, RSG is a residual. For 1977/78 RSG should account for 64% of relevant expenditure in Scotland (53% for England and Wales).

Once the total amount of RSG has been determined it is divided into three parts: the needs element, the resources element and the domestic element. Quite different principles are used to allocate each of the elements to individual local authorities; the amount of RSG received by a local authority therefore depends on its entitlement to each part. The basis for allocating each part of the Rate Support Grant is outlined below.

The Domestic Element

This is a fiat rate central government subsidy to domestic ratepayers. It is the smallest part of RSG (6%) and for 1977/78 is 31p in the pound. Local authorities are legally prohibited from discriminating between commercial, industrial and domestic ratepayers. The same rate poundage must be charged on all rateable properties. In order to cushion the impact of rates on domestic households, the government pays part of their rate bills. Thus with a combined Regional and District rate poundage of £1.88 in Strathclyde, the government pays 31p in the pound and the domestic ratepayer must find the remaining £1.57.

Occupiers of industrial and commercial properties must pay the full £1.88 on the rateable value of their properties. The amount received by any one local authority is therefore 31p times the rateable value of domestic property.

The Resources Element

This part of the grant is designed to reduce the inequality in *taxable* resources as between local authorities. For 1977/78 it should account for 20% of RSG. The objective is to make the revenues a local authority derives from the rates dependent solely on the rate poundage set by the Council and not on the size of the tax base. If one authority has a rateable value per capita of £300 and another has a tax base of £200, then if each authority levied a rate poundage of £1.50 the first authority would collect revenue of £450 per capita and the second would collect £300. In order to ensure that all authorities levying the same rate poundage collect the same revenue per capita, the central government would step in as a ratepayer on the deficiency between an authority's actual rateable value per capita and that found in the authority with the highest rateable value per capita. In our example, the authority with a tax base of £200 per capita would receive revenues equal to £450 if it levied a rate poundage of £1.50. This revenue would be made up of £300 from the authority's ratepayers and £150 from central government. The payment from the resources element would be:

$$£150 = £1.50 (£300 - £200)$$

In practice, two qualifications must be made to this outline of how an authority's share of the resources element is determined. (1) While the tax base is measured in terms of rateable value per capita in England, in Scotland it is measured in terms of the net penny rate product per capita — the revenue that would be raised from a rate poundage of one penny. This is a purely technical difference designed to take account of things like unoccupied properties that may not be subject to rates. (2) The tax base in each authority is not made up to exactly the level of the wealthiest (in terms of rateable value). Falkirk has the largest tax base relative to population in Scotland; the penny rate product for 1977/78 is £0.81. All other authorities will be given a notional tax base generating a penny rate product of £0.78 for the year. This means that all authorities except Falkirk will receive a part of the resources element determined by their rate poundage and the difference between their penny rate product and the national 'standard of £0.78 per capita. (In England the standard is lower and some twenty local authorities do not receive resources element.)

The Needs Element

The needs element accounts for 76% of RSG in Scotland. The basis for its distribution appears complicated primarily because this part of RSG is itself made up of several parts designed to:

- (1) compensate for cost differences;
- (2) reduce the rates;
- (3) assist with the 'extraordinary expenses' incurred by a few authorities because of off shore oil developments.

The needs element is paid to both Regions and Districts but in this note we will ignore the issues involved in determining a District's share in the Region's allocation. This keeps the exposition reasonably simple.

1. Compensation for Cost Differences

The effect of the resources element is to enable all authorities but one to raise the same amount of revenue per capita if they levy the same tax rate. If there were no differences in the cost of service provision as between authorities, then the per capita cost of providing the 'normal' range of services would be the same. There would be no need for this first part of the needs element. A citizen would expect to pay the same rate poundage for a given standard of local services no matter what local authority he lived in. This was the original objective of RSG. The needs element was introduced because of the presumption that per capita costs of 'normal' services of a 'uniform standard' do vary as between authorities. In an authority where the average family size is above the national average, the per capita expenditure on education may be above average if the same facilities per child are provided as elsewhere; if an authority is sparsely populated, the per capita expenditure on road maintenance may be above average.

The needs element is designed to compensate local authorities for these differences in the cost of providing the 'normal' range of services at a 'uniform standard'. The authority with the lowest per capita costs would receive nothing from this part of the grant. All other authorities would receive an amount equal to the difference between the estimated cost of providing 'normal' services at a 'uniform standard' in their areas and the cost of providing these services in the minimum cost authority.

Selection of criteria for allocating this part of the needs element is the most contentious part of the RSG. This is because it is impossible to identify and measure cost differences based on concepts like normal services or uniform standards. Actual per capital expenditure differs from one authority to another because of differences in cost *and* policy — i.e. priorities and views as to the extensiveness and quality of services to be provided. We cannot say it costs more to provide services in a particular authority just because that Council spends more than other Councils.

We know how cost differences are measured in England but have only a vague impression of how it is done in Scotland. For England and Wales, the Department of the Environment tries to 'explain' differences in per capita

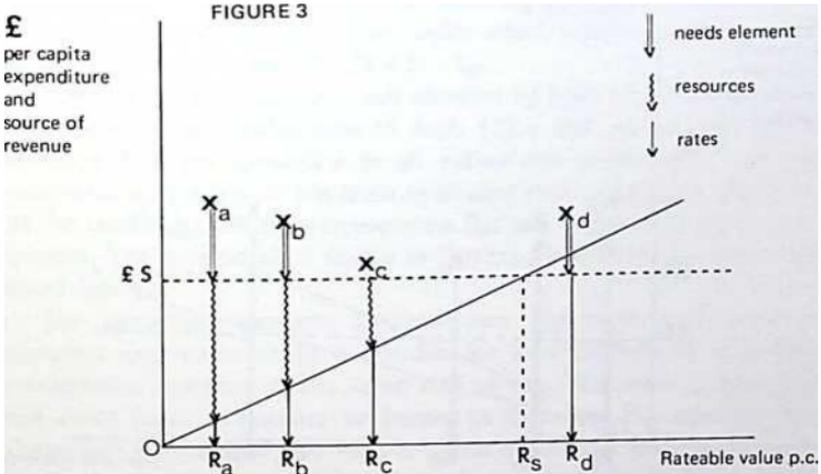
expenditure on services by the use of multiple regression analysis. Per capita expenditure is the dependent variable and the independent variables include things like: proportion of children of different ages; proportion of one parent families; proportion of households living at more than 114 persons per room; population density, etc. These are all factors thought to contribute to differences in the cost of providing services. An authority's entitlement to needs element then becomes $\text{£}Y$ per head of population + $\text{£}Z$ for each one parent family (where Z is the coefficient on this variable obtained from the regression analysis) + etc.

A thorough examination of the derivation of the formula for allocating the English and Welsh needs element would require discussion of the selection of variables, pooling, damping and a number of other topics. However, what has been said is sufficient to bring out the basic principle on which the formula is based: *A local authority's entitlement to the needs element must be independent of its particular level and pattern of expenditure.* The estimate of 'expenditure need' for an authority is based on the average expenditure of similar authorities (similar in terms of the variables density, number of children, etc.). An authority may choose to spend more or less than the estimated 'needed expenditure' but that decision will not affect entitlement to needs element.

We cannot state explicitly how this principle is applied in Scotland since the formula is agreed to in a closed meeting of the Working Party. We know that the statistical procedures used in England are not used in Scotland. There is apparently an attempt to obtain agreement on (1) what characteristics (density, etc.) will be accepted as influences on relative cost, and (2) how important they are - e.g. what weights to apply. This makes the agreed formula an outcome' of a bargaining process and probably accounts for the reduced importance of this part of the needs element in Scotland relative to England. Far fewer factors are accepted in Scotland as contributing to differentials need: proportion of children, proportion of elderly, population decline and density are the only characteristics used (as opposed to the 15-20 variables used in England and Wales).

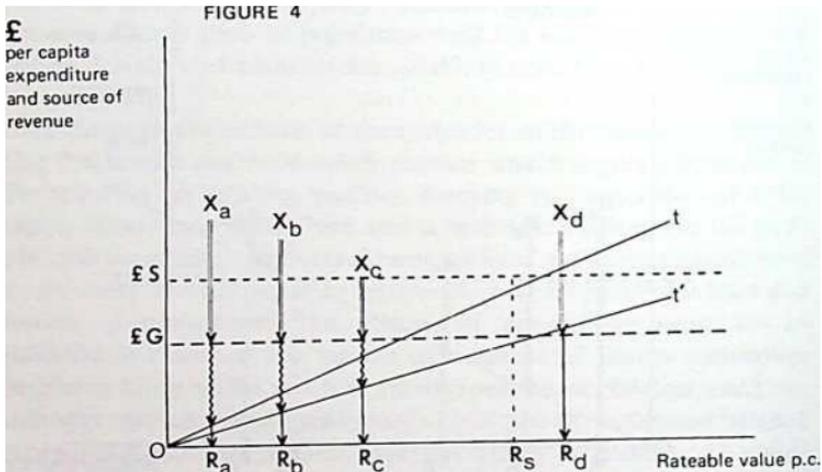
Since this 'Guide' was prompted by our interest in Shetland, it is worth pointing out that rural areas are treated far less favourably in England and Wales than in Scotland. This is partly due to the fact that in estimating the coefficients on the allocation factors, the observations for each local authority are weighted by the population of the authorities. This has the effect of reducing the importance of the factors associated with differences in cost as between rural and urban areas. This has been a source of some complaint from the Welsh.

The original objective of the grant system was to ensure that all authorities (except the riches) would be able to provide the same



standard of services at the same rate of tax. The way in which compensation for differences in cost through the needs element combines with the resources element to reach this objective is illustrated in Figure 3. We take four local authorities (A, B, C and D) and rank them in terms of their rateable value per capita (R_j) along the horizontal axis. The per capita cost of 'normal' services in each authority (expenditure need) is indicated by X_j .

R_s is the standard rateable value per capita; all authorities with a tax base less than R_s are assigned a notional tax base equal to R_s . Authority C has the lowest per capita cost of services (£S). A rate of t pence in the pound applied to the tax base R_s yields revenue of £S per capita. At a rate poundage of t , all authorities (except the richest) are able to raise £S per capita. If an authority 'needs' to spend more than £S per capita to provide services comparable to those elsewhere, the difference is met by the needs element ($X; - S$). For example, Authority B 'needs'



to spend an amount $\text{£}S_b$ which can be covered by revenue from the following sources:

$$(X_{fa} - S) = \text{needs element}$$

$$(S - tR_{fc}) = \text{resources element}$$

$$(tR_b) = \text{income from the rates}$$

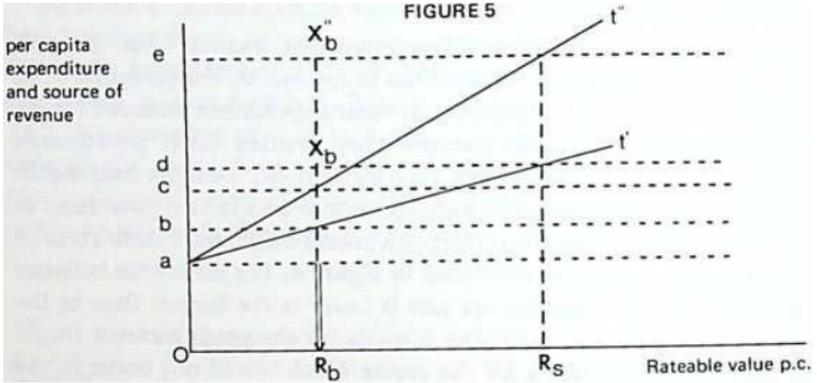
2. Reduction in the Rates

Figure 3 must be modified in one important respect. Over the past ten years or so the needs element has been used by the government to reduce the proportion of local government expenditure financed by the rates. Originally this was because they wanted local government expenditure to grow faster than they thought the local tax base would support; lately it has been to keep down increases in rate poundages as part of incomes policy. The effect of a pound substitution of grant for rate income is illustrated in Figure 4. The difference between Figures 4 and 3 is that the tax rate is lower in the former than in the latter (reduced from t to t'). The formula for the needs element would include a term allocating $\text{£}Y$ per capita which would not occur in the formula implicit in Figure 3. $\text{£}Y = S - G$.

One can thus divide the needs element of RSG into two parts: (1) compensation for differences in cost; (2) a flat amount per capita reducing the rate poundage in all authorities below what it would otherwise have been. It has been estimated that in England about $2/3$ of the needs element now represents a flat rate payment displacing rate income. The proportion is higher in Scotland but I am not sure of the exact figures.

The preceding diagrams illustrate how the needs and resources elements interact to make it *possible* for local authorities to provide 'comparable'

services at the same rate of tax. The grant system does not force local authorities to behave in this way. For example, the Council in Authority B may wish to spend more than the needs formula implies is required to provide comparable services. To do this a higher poundage must be levied. The Council's decision would not affect the Authority's share of the needs element but it would increase its share of the resources element. The effect is illustrated in Figure 5. As before, X_b is the amount Authority B 'needs' to spend, t' is the average rate poundage, R_s is the standard rateable value. X_b'' is the amount Authority B *actually* spends, t'' is the rate poundage levied to finance that expenditure.



3. Extraordinary Expenses

This part of the needs element (1%) is unique to Scotland. After the total amount of RSG has been determined and it has been divided into needs, resources, and domestic elements, the Secretary of State can take as much as he sees fit from the total of the needs element and distribute it to those authorities which he considers are incurring additional local expenditure due to oil development activities. The cash remaining in the needs portion is then distributed by formula to all authorities. The special assistance with 'extraordinary expenses' does not affect an authority's share of the needs element as allocated by formula, but of course it does reduce the total amount

~~of the needs element available to the authority. This is because the total amount of RSG is fixed and the Secretary of State can take as much as he sees fit from the total of the needs element and distribute it to those authorities which he considers are incurring additional local expenditure due to oil development activities.~~

GLOSSARY

Allied Command Europe Airborne Early Warning Agricultural Guidance Fund Anti-submarine Warfare British Broadcasting Corporation British National Oil Company Common Agricultural Policy Common Fisheries Policy Capital Gains Tax

Scotland Bill (as sent from the House of Commons for a first reading in the House of Lords): Clause 33 'Where it appears to the Secretary of State that any information relating to the exercise of functions by a Scottish Secretary is required for the exercise of functions by a Minister of the Crown, he may request the Scottish Secretary to supply the information and the Scottish Secretary shall comply with the request.'

Scotland Bill (as sent from the House of Commons for a first reading in the House of Lords): Clause 80(3) 'If the answers given in the referendum show that the majority of the persons giving valid votes in the Orkney Islands area or the majority of such persons in the Shetland Islands area do not wish effect to be given to this Act, the Secretary of State shall lay before Parliament the draft of an Order in Council providing that in respect of that area or, as the case may require, those areas the Act shall not apply and providing also for the establishment of a commission to recommend such changes in the government of that area or those areas as may be desirable'.

Scotland Bill (as sent from the House of Commons for a first reading in the House of Lords): Clause 81 'If Parliament is dissolved before a referendum has been held in pursuance of section 80 of this

Act, that referendum shall not be held until a period of three months has elapsed after the polling day of the ensuing general election' .

CLAUSE 82

Scotland Bill (as sent from the House of Commons for a first reading in the House of Lords): Clause 82 'This Act may be cited as the Scotland Act 1978.'

COS LA

CSO

CTT

DAFS

Convention of Scottish Local Authorities

Central Statistical Office

Capital Transfer Tax

Department of Agriculture and Fisheries for
Scotland

DE JURE

DHSS DOMINIUM

By Right

Department of Health and Social Security

Term of Roman Law — Lordship, Ownership, Property

DOT

EEC

EFTA

EIB

ERDF

EUA

EX ADVERSO

EX FACIE

FAO

FBI

FEOGA

Department of Trade

European Economic Community

European Free Trade Area

European Investment Bank

European Regional Development Fund

European Units of Account

Beside, At the side of

Plainly, Evidently

Food and Agriculture Organisation

Federal Bureau of Investigation

European Agricultural Guidance and Guarantee

Fund

FIR GATT GNP

HIB

HIDB IBA ICNAF

Flight Information Regions

General Agreement on Tariffs and Trade

Gross National Product

Herring Industries Board

Highlands and Islands Development Board

Independent Broadcasting Authority

International Commission for North West Atlantic Fisheries

IMCO

Intergovernmental Maritime Consultative Organisation

IMPIGNORATION Pledging

ITU

International Telecommunication Union Monetary

MCA

Compensatory Amounts

NADGE	
NATO	NATO Air Defence Ground Environment
NEACF	North Atlantic Treaty Organisation
NHS	North East Atlantic Commission of Fisheries National
NORWAY POUT BOX	Health Service An area of the North Sea in which Industrial Fishing is prohibited. The area is bounded on the south by a line running due east from a point on the coast of Scotland at 56°00' north latitude to the Greenwich meridian; thence due north to the parallel of 60°00' north latitude; thence due west to the meridian of 3°00" west longitude; thence due south to the parallel of 58°30'; thence due west to the coast of Scotland. The prohibition applies to all Community vessels.
OECD	Organisation for Economic Co-operation and Development
QUANDOCUNQUE	Whenever
R&D	Research and Development
RAF	Royal Air Force
RCC	Rescue Co-ordination Centre
RNLI	Royal National Lifeboat Institute
RSG	Rate Support Grant
SACEUR	Supreme Allied Commander Europe
SAR	Search and Rescue
SEPD	Scottish Economic Planning Department
SIC	Shetland Islands Council
SNP	Scottish National Party
SOLUM	Ground, Soil
SOSUS	Sound Surveillance Systems
SSHA	Scottish Special Housing Association
TAC	Total Allowable Catch
UK ADR	United Kingdom Air Defence Region
ULTRA VIRES	Beyond Legal Authority
UN	United Nations
UNCLOS	United Nations Conference of the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WFA	White Fish Authority
WHO	World Health Organisation
WMO	World Meteorological Organisation

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Glossary.

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