

## **CPSA 2014 Submission**

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**Title:**  
“A devolved Scottish oil & gas sector:  
regulatory lessons from the relationship between  
Newfoundland & Labrador and the federal government of Canada.”

### REFERENCE NOTE

This paper considers legal implications of Scottish devolution /  
independence on the oil & gas sector by comparison with  
Newfoundland & Labrador.

No political standpoint is intended.

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## **ABSTRACT**

Opinion polls indicate that whilst the 2014 Scottish independence referendum is unlikely to result in a ‘yes’, significant interest exists in further devolution of powers to the Scottish parliament in Edinburgh (Holyrood) within a UK context. The UK’s oil sector, located chiefly offshore in waters adjacent to Scotland, is administered and taxed on a UK-wide basis by the UK parliament in London (Westminster). This paper assumes a ‘no’ to independence at the referendum but subsequent formation of a jointly-administered (Westminster-Holyrood) Scottish offshore sector. An oil price fall, sufficient for operators to curtail investment and consider divestment or decommissioning, is assumed to follow with state intervention (via equity acquisition) in response. Joint administration and state participation in an offshore sector are comparable to the situation in the Canadian province of Newfoundland and Labrador, hence the choice of comparison. Further lessons for Scotland are obtained from the UK sector’s own history and Denmark’s current situation. For the formation of a jointly-administered sector, legislation (external and internal) and maritime boundaries (internal) are critically analysed. For the sector’s operation, administrative arrangements, taxation revenue management (including an oil fund) and wider energy policy are considered.

## **KEYWORDS**

Canada, devolution, devo max, independence referendum, joint administration, maritime boundaries, Newfoundland, oil, oil fund, Scotland, Scottish independence, taxation, UKCS

## **WORD COUNT**

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**1. INTRODUCTION**

**A Background**

The UK consists of four countries: England, Scotland, Wales and Northern Ireland. Historically, the UK was governed highly centrally from the UK parliament in London (Westminster), an arrangement not universally popular. In 1999, a new Scottish parliament opened in Edinburgh (Holyrood) with limited powers (e.g. health, education). A key proponent considered such devolution would “kill nationalism stone dead”<sup>2</sup> i.e. finish any independence demands.

Devolution rapidly deviated from any such intent, however. The 2011 election was won by the pro-independence Scottish National Party (SNP) who, as the new Scottish Government, legislated to hold a referendum. On 18 September 2014, therefore, the Scottish electorate will vote on the question “Should Scotland be an independent country?”<sup>3</sup>

Whilst ‘straight choice’ opinion polls (‘yes’/‘no’) consistently indicate a majority against independence,<sup>4</sup> those offering intermediate options (e.g. ‘Devo Max’)<sup>5</sup> reveal strong interest in further devolution from Westminster to Holyrood within a UK context. Although no major political party<sup>6</sup> has committed beyond the Scotland Act 2012,<sup>7</sup> further devolution remains feasible. Pre-referendum, the ‘no’ campaign could offer it to win undecided voters. Post-referendum, a losing ‘yes’ campaign could accept it either as a final settlement or as a step towards a future independence campaign.

From its discovery to today’s referendum debate,<sup>8</sup> oil remains central to the Scottish economy. Supporting 200,000 jobs<sup>9</sup> and contributing 17% of GDP,<sup>10</sup> long-term opportunities must be maximised whilst addressing potentially conflicting issues. Scotland’s future relies upon its remaining reserves and technical expertise.<sup>11</sup>

Although the Canadian province of Newfoundland exhibits numerous parallels with Scotland,<sup>12</sup> their offshore sectors differ; Newfoundland remains largely undeveloped despite significant potential<sup>13</sup> whilst the UKCS is now largely mature.<sup>14</sup> Canada attempted state participation<sup>15</sup> via the discontinued NEP<sup>16</sup> whilst the Atlantic Accord<sup>17</sup> brought offshore Newfoundland under joint administration (federal-provincial),<sup>18</sup> both governments retaining equity. In contrast, the UKCS is administered solely by Westminster. Once a major participant, the UK state has divested equity.<sup>19</sup>

**B Basis**

The assumed 2014 referendum result is a close ‘no’ followed by further devolution including formation of a Scottish offshore sector administered jointly (Westminster-Holyrood). Whilst Scottish Government projections (to 2018) refer to high oil prices,<sup>20</sup> UKCS forecasts are

highly sensitive to a downturn.<sup>21</sup> This paper assumes a price fall sufficient for operators to curtail investment and to consider divestment or decommissioning. State intervention is assumed, via equity acquisition, to maintain employment and revenue. Joint administration and state participation are comparable to Newfoundland, hence the choice of comparison.

A Scottish sector would contain some 85% of UKCS reserves.<sup>22</sup> Unless stated otherwise, it can be considered analogous to the present UKCS. 'Oil' is analogous to 'oil & gas'. 'Sector' refers to the offshore oil & gas sector. The province, consisting of Newfoundland (an island) and Labrador (part of the Canadian mainland), was re-named Newfoundland and Labrador (2001).<sup>23</sup> For convenience, it remains referred to as 'Newfoundland' in this paper.

## 2. *COMPARISON: SCOTLAND vs. NEWFOUNDLAND*

### **A Background**

#### (i) Scotland: Greater Prosperity

England and Scotland formed Great Britain in 1707.<sup>24</sup> Scotland's constitutional position remained largely unchanged until the 1997 referendum<sup>25</sup> led to a new parliament.<sup>26</sup> Westminster and Holyrood have recently clashed over oil, mirroring the 1970s when high prices fuelled nationalism. Recovering from 1980s industrial decline,<sup>27</sup> median income<sup>28</sup> and unemployment figures<sup>29</sup> now match the UK average.

Scotland is sufficiently close to the UK market to support sector development. The North Sea is a challenging environment; offshore technology was pioneered there.<sup>30</sup> Population, 5.3 million, forms only 10% of the UK total<sup>31</sup> but is comparable to that of nearby Scandinavian nations.<sup>32</sup>

#### (ii.) Newfoundland: Greater Autonomy

European powers competed over Newfoundland's North Atlantic fishing stocks<sup>33</sup> until Britain prevailed.<sup>34</sup> Newfoundland gained representative government (1832)<sup>35</sup> and responsible government (1855)<sup>36</sup> but reverted to British rule upon economic collapse (1934).<sup>37</sup> Following two, closely-fought referenda (1948),<sup>38</sup> it joined the Canadian confederation (1949)<sup>39</sup> and is now governed jointly by federal and provincial governments.<sup>40</sup> Whilst governments have clashed over oil<sup>41</sup> and regional identity remains strong,<sup>42</sup> independence attracts little support.<sup>43</sup> Over-dependent upon fishing,<sup>44</sup> its median income<sup>45</sup> and unemployment<sup>46</sup> figures remain Canada's worst.

Population centres are distant, hampering oil development. The nearest provinces are Quebec and the Maritimes, although Newfoundland's closest neighbour is the French COM,<sup>47</sup> St Pierre & Miquelon. Ice presence (bergs and sheets) demands unique oil infrastructure. Population, 515,000,<sup>48</sup> is matched by Edinburgh's alone.<sup>49</sup> Newfoundland's population has little Scottish provenance.<sup>50</sup>

### **B Oil & Gas**

#### (i.) Scotland: a Mature Province

From first discoveries (gas: 1965, oil: 1969),<sup>51</sup> UKCS development commenced rapidly. Westminster, keen to access revenues and reduce import dependence, enacted legislation quickly albeit imperfectly.<sup>52</sup> State participation was established by Labour (1970s) but divested by the Conservatives (1980s).<sup>53</sup> Post devolution, Westminster has retained sole authority. HM Treasury has frequently adjusted tax rates but incentivises investment also. Following the Piper Alpha disaster (1988),<sup>54</sup> the HSE introduced the safety case regime.

Although production has halved from its 1999 peak,<sup>55</sup> activity remains strong in both in the mature North Sea and in the frontier WoS region.<sup>56</sup> Licensing innovations,<sup>57</sup>



administered by DECC, attracts numerous operators. WoS-focussed oil majors,<sup>58</sup> have divested older assets to independents.<sup>59</sup> Recent entrants include utilities<sup>60</sup> and NOCs.<sup>61</sup>

(ii.) Newfoundland: a Frontier Province

Offshore Newfoundland exploration commenced in 1966 but technical challenges and exploration failures hampered development.<sup>62</sup> Under the discontinued NEP, the federal government provided support but Western Canadian onshore oil sands remain dominant.<sup>63</sup> Federal grants and equity acquisition, via the CHHC, facilitated the much-delayed first development, Hibernia (1997).<sup>64</sup> Following the Atlantic Accord 1987, joint administration is via the C-NLOPB. Safety was overhauled following the Ocean Ranger disaster (1982).<sup>65</sup>

Only three developments have entered production to date: Hibernia (ExxonMobil), Terra Nova (Suncor) and White Rose (Husky Energy). Another, Hebron (ExxonMobil), is in development. In the high oil price environment post-2000, delays are largely attributable to provincial government disputes with the federal government, other provinces and oil companies.<sup>66</sup> The (Upper) Churchill Falls<sup>67</sup> experience shapes decision-making. In 1969, the province committed (effectively until 2041)<sup>68</sup> to sell power cheaply across its sole land border to Hydro-Quebec.<sup>69</sup> Via “Resource Management Levers”,<sup>70</sup> Newfoundland demands equity share,<sup>71</sup> royalties and local opportunities through large, concrete GBS construction. Infrastructure remains limited; without pipelines, oil is exported from offshore via shuttle tankers<sup>72</sup> whilst gas must be re-injected into reservoirs.<sup>73</sup>

### 3. SECTOR FORMATION

#### A Scenario

Following a close ‘no’ result at the 2014 referendum, a Scottish offshore sector is assumed to be formed subsequently. Joint administration (by Westminster and Holyrood) would meet the UK’s continued interest in a strategic sector and Scotland’s demands for greater devolution.

An oil price fall,<sup>74</sup> sufficient to cause operators to curtail investment and to consider asset divestment or decommissioning, is then assumed. Smaller operators could even find their viability threatened, leaving decommissioning liabilities for the state. To maintain employment and revenue, state intervention is assumed via acquisition of non-operated equity. Whilst arguable that neither government would desire equity risk, intervention could be necessary given the potential impact on the wider economy of sector failure.<sup>75</sup> Such action would not be unprecedented; Westminster intervened to rescue Burmah Oil (1974).<sup>76</sup> This reactive approach is akin to CHHC’s (federal) buy-in to save Hibernia.

Any jointly-administered requirements for ministerial approval<sup>77</sup> would need to be applied whilst avoiding conflicts of interest. Finances for acquisition are assumed to be available via re-assessment of spending priorities or increased borrowing. In a depressed market, distressed operators could surrender equity cheaply, however. With certain licences renewable annually,<sup>78</sup> entry upon expiry is also possible.<sup>79</sup>

#### B Legislation: External

##### (i.) Newfoundland: NAFTA Rulings

Canada is a NAFTA member.<sup>80</sup> Whilst Petro-Canada’s privatisation was legislated pre-entry, Mexico’s vast NOC, PEMEX, retains a monopoly; Annex 602.3 provisions apply.<sup>81</sup> As Article 102 objectives include elimination of barriers and promotion of competition, increased Newfoundland provincial control could provoke controversy. As Article 1102 prevents compulsory foreign relinquishment, any provincial equity acquisition must be negotiated.

The Atlantic Accord 1987 requires a local industrial benefits plan.<sup>82</sup> Although not guaranteeing local participation<sup>83</sup> and having permitted the Terra Nova and White Rose developments via imported FPSOs,<sup>84</sup> Newfoundland has fought for local GBS construction.<sup>85</sup> Preference towards local development (over NAFTA-based suppliers) would breach Article 301, however.

The Atlantic Accord 1987 requirement for local R&D expenditure<sup>86</sup> was successfully challenged by Hibernia participants under Article 1106 (2012).<sup>87</sup> The fine was levied upon the federal government, worsening provincial relations.

Lesson from Newfoundland:

- External legislation could permit state participation but not state protection

## (ii.) Scotland: EU Implications

Since EEC entry,<sup>88</sup> European legislation has created sector concern.<sup>89</sup> As many states retain participation as permitted under Council Directive,<sup>90</sup> UK participation would not be unprecedented. ‘Golden share’ protection at ENI (2000)<sup>91</sup> and Galp (2011)<sup>92</sup> failed against treaty obligations, however. In Hungary’s defence of MOL (from Austria’s OMV, 2008), the EC was concerned over protectionist domestic legislation<sup>93</sup> but noted separate issues regarding competition reduction.<sup>94</sup> The UK earlier retained control over state-owned BNOC’s successor, Britoil (following BP’s acquisition, 1987).<sup>95</sup> Protectionism would now be allowed against non-EU entities only.

With support from the Offshore Supplies Office, first-generation platforms were constructed in sites across Scotland, creating a short-lived employment boom.<sup>96</sup> Although UK Prime Minister, David Cameron stated “our economy had become far too reliant on financial services and banking, rather than actually making things”,<sup>97</sup> EU legislation does not permit national content regulations. The Scottish government recognises the importance of technology in improving oil recovery<sup>98</sup> but cannot impose local R&D targets.

Following the Deepwater Horizon incident,<sup>99</sup> EC proposals to centrally regulate offshore health & safety were opposed by Westminster<sup>100</sup> and the sector<sup>101</sup> resulting in a more flexible Directive. As its economic contribution diminishes, the sector could, like fishing, become of reduced significance to Westminster, however. James Wharton MP’s Private Member’s Bill<sup>102</sup> could lead to an EU membership referendum (2017). Re-negotiation of EU terms or exit from the EU would permit greater autonomy in sector administration.

## C Legislation: Internal

### (i.) Newfoundland: Inter-Provincial Relationships

Sector administration varies across Canada. Onshore, Alberta, Manitoba and Saskatchewan entered the confederation without control over their resources, gaining it later (1930).<sup>103</sup> Alberta opposed NEP federal interference<sup>104</sup> and has retained revenues.<sup>105</sup> As Quebec and New Brunswick regulate fledgling shale gas sectors,<sup>106</sup> further inconsistencies could emerge.

British Columbia lost its offshore resources claim in the Supreme Court (1967).<sup>107</sup> Newfoundland lost a similar case (1984)<sup>108</sup> but the Atlantic Accord 1987 later created joint sector administration. Disputes persist, however, including Newfoundland’s demand of the federal (CHHC) Hibernia stake.<sup>109</sup> Also jointly-administered,<sup>110</sup> Nova Scotia has seen only three offshore developments.<sup>111</sup>

Controversial equalisation payments<sup>112</sup> from “have” to “have not” provinces strain relationships. Historically a recipient, Newfoundland resisted sharing its new oil revenues.<sup>113</sup>

Lesson from Newfoundland:

- Inconsistent outcomes affect inter-provincial relationships

(ii.) Scotland: Wider UK Impact

To maintain industry certainty, joint administration arrangements should be agreed quickly and smoothly. Once agreed, uncertainty could re-surface following a ‘bail-out’, however. The Westminster-Holyrood power balance could shift dependent upon the source of finances.

Devolution has created a complex constitutional and political situation<sup>114</sup> with inconsistencies across the UK. A jointly-administered sector would add further complexity; to date, matters have been largely reserved or devolved. Onshore exploration has historically been devolved to Northern Ireland;<sup>115</sup> other rUK nations could demand devolution of sector administration also. Without an equivalent English parliament, a conflict of interest could arise in Westminster over its administration of the rUKCS and Scottish sectors. Previously resolved complexities (1960s) relating to revenue share allocation could be re-opened.

An oil-driven wealth gap between Scotland and rUK could lead to tensions whilst introduction of equalisation payments could prove counter-productive. Noting potential difficulties, Devo Plus,<sup>116</sup> whilst promoting greater tax-raising powers for Holyrood, “is not proposing the devolution of North Sea Oil & Gas revenue or duties until there can be widespread agreement across all nations in the UK”.<sup>117</sup> It does, however, consider that the supplementary charge (levied on UKCS profits by the UK government) could be devolved “without breaking up the licensing and legislative regime.”<sup>118</sup>

## **D Maritime Boundaries: Internal**

(i.) Newfoundland: Provincial Disputes

Inter-provincial boundary disputes have delayed eastern Canadian development. Interpretation of the joint statement from the Atlantic provinces (1964) was later disputed by Newfoundland and Nova Scotia. The tribunal decision (2002) referred to ICJ practice of adjustment of an equi-distant line to remove distorting effects<sup>119</sup> in a case complicated by international dimensions.<sup>120</sup> Devolution of offshore jurisdiction to provinces was considered a “terrible precedent for the practice of Canadian federalism”, however.<sup>121</sup>

Newfoundland-Quebec relations remain strained due to the latter’s refusal to recognise the British Privy Council 1927 definition of the land border with Labrador,<sup>122</sup> impacting mineral resources claims. Further disputes could arise over hydrocarbon discoveries,<sup>123</sup> especially were Quebecois autonomy demands to resurface.<sup>124</sup>

Lesson from Newfoundland:

- Internal border disputes can be protracted if means of resolution unclear

(ii.) Scotland: UK Internal Boundaries

Formation of a Scottish sector would lead to the formation of either a single rUKCS sector or separate national sectors, the latter creating potential for multiple disputes. Treaty requirements for fields straddling boundaries would create further complexity. To avoid

uncertainty, internal boundaries and their implications should be agreed quickly. Whilst ICJ practices can be applied, no recourse to the court is possible.

Two existing options are possible for an independent Scottish sector's maritime boundary: the Scottish Adjacent Waters Boundary Order 1999 (a diagonal median line) and the "Scottish Area" Civil and Criminal Jurisdiction Orders 1987<sup>125</sup> (a horizontal line extending from the land border). The latter's greater size offers few additional reserves, however; both scenarios deliver some 85% to Scotland<sup>126</sup> Whilst it is assumed that international boundaries would be unaffected by devolution, future discussions could involve Westminster and Holyrood as foreign counterparts must be confident of a consistent message.

The strategic location<sup>127</sup> of the Northern Isles (Shetland and Orkney) saw them obtain powers<sup>128</sup> and create an oil fund.<sup>129</sup> International maritime boundaries give 'full effect' to the Northern Isles, significantly increasing UKCS size.<sup>130</sup> Should they wish to remain with the UK upon Scottish independence, their EEZ could be similar to those of the Channel Islands (i.e. 12-mile boundary)<sup>131</sup> or could include a high seas corridor, as per St Pierre & Miquelon's controversial arrangement. Noting the Northern Isles's distinct identity and limited interest in Scottish independence, their MSPs propose further autonomy e.g. as Denmark-Faroe Islands.<sup>132</sup> Pre-referendum, Scotland's three island councils,<sup>133</sup> citing Article 174 of the Lisbon Treaty,<sup>134</sup> have requested "special attention" for seabed control and energy resources.

## 4. SECTOR OPERATION

### A Administrative Arrangements

#### (i.) Newfoundland: C-NLOPB

Pre-dating the Atlantic Accord, the Royal Commission on the Ocean Ranger disaster (1982) cited governmental clashes and a lack of overall competence.<sup>135</sup> Presently, the C-NLOPB administers licensing, safety, environment and local opportunities, a wide remit with potential for ‘salesman-policeman’ conflicts of interest. Overseen by a jointly-appointed board reporting to the federal Minister of Natural Resources and the provincial Minister of Mines & Energy, approval from governments with differing priorities has delayed development.

Newfoundland clashed with ExxonMobil over Hebron (2006), demanding super royalties, equity and local opportunities (GBS and refinery).<sup>136</sup> Newfoundland Premier Williams threatened fallow-field legislation<sup>137</sup> whilst labelling Canadian President Harper “a big buddy to big oil”.<sup>138</sup> Provincial equity acquisition can create uncertainty should operators fear bias<sup>139</sup> or intent to ultimately assume control. A positive relationship must be maintained with operators to facilitate both their and third-party future developments.<sup>140</sup>

Lesson from Newfoundland:

- Joint administration must provide a consistent, positive message to industry

#### (ii.) Scotland: New Arrangements

Detailed analysis of licensing, health & safety and environmental issues for a devolved sector is a complex matter<sup>141</sup> outwith the scope of this paper. The transition from Westminster-only administration and the nature of joint administration is considered below. As the sector matures, administrative burdens associated with new entrants, asset integrity and decommissioning are set to increase.

The Scottish Government’s desire to retain separation between licensing and safety would preclude formation of a single body.<sup>142</sup> Retention of powers within UK’s DECC and HSE, whilst simpler, could create an excessive workload and may not meet devolution aspirations. Although multiple new bodies would be required, joint administration must avoid delays whilst transferring data and gathering competence.<sup>143</sup> To maintain investor confidence, continuity is essential; early introduction of major changes could prove disruptive.<sup>144</sup> The current system, a regulatory-contractual hybrid, offers the Secretary of State significant powers of discretion. As joint administration typically requires both parties’ consent, the relationship between Westminster and Holyrood ministers is critical.

The Scottish economy could become over-dependent upon decisions by oil majors balancing global portfolios. Investment must be incentivised whilst avoiding being ‘held to ransom’. Conversely, state involvement must not become excessive; in the 1970s, concerns were expressed over BNO’s remit.<sup>145</sup> Legislation restricting Nordsøfonden to 40% equity and to the Danish continental shelf<sup>146</sup> provides reassurance that the state is not a competitor.

## **B Taxation: Revenue Management**

### **(i.) Newfoundland: Revenue Instability**

Outwith C-NLOPB's remit, federal and provincial governments allocate taxes separately. Federal income tax has declined to 15% whilst Newfoundland's provincial tax is 14%.<sup>147</sup> The 10% Federal Atlantic Investment Tax Credit provides a limited incentive to development.

Heavily oil-dependent,<sup>148</sup> Newfoundland's revenues have fluctuated with oil price and production. Reliant upon just three developments, provincial finances were affected<sup>149</sup> by Terra Nova's delayed start-up and subsequent outages.<sup>150</sup> When revenues arrived (2008), tax cuts and public spending increases followed<sup>151</sup> but a downturn forced major redundancies.<sup>152</sup>

Heavy provincial governmental demands stalled the Hebron development. To accommodate super royalties, Nalcor equity was halved and local refinery plans shelved.<sup>153</sup> Alberta invested in an 'oil fund', focussing on loans to Crown corporations. Poor returns necessitated restructure however.<sup>154</sup>

Lessons from Newfoundland:

- Heavy sector dependence causes revenue fluctuations
- Tax take and equity demands must be balanced
- Oil fund objectives must be clear

### **(ii.) Scotland: Revenue Management inc. Oil Fund**

UKCS profits are taxed by the UK government at 62% via Corporation Tax (30%) and Supplementary Charge (32%).<sup>155</sup> Older fields, also liable for ring-fenced (field-based) Petroleum Revenue Tax (50%), pay 81%.<sup>156</sup>

With the sector contributing heavily to GDP, a devolved Scottish economy would be sensitive to oil price and production fluctuations. Revenues have proven unpredictable historically<sup>157</sup> with key factors outwith Holyrood's control;<sup>158</sup> current predictions range from £31 bn to £57 bn (2012-18).<sup>159</sup> Dependence on major fields<sup>160</sup> and ageing hubs<sup>161</sup> further increases uncertainty.

Denmark's sole concession, the DUC,<sup>162</sup> developed slowly.<sup>163</sup> The North Sea Agreement 2003 increased tax take and ensured state entry (via Nordsøfonden) but with little increase in participant revenue, low investment caused steep production decline.<sup>164</sup> Although depletion control was considered in the 1970s,<sup>165</sup> 80% of UKCS reserves have been produced.<sup>166</sup> Whilst noting missed opportunities,<sup>167</sup> the Scottish Government is conscious of recent fluctuations,<sup>168</sup> valuing incentivisation<sup>169</sup> and stability.<sup>170</sup>

The Scottish Government identifies potential oil fund goals e.g. wealth for future generations, low carbon energy facilitation, short-term stability.<sup>171</sup> Although it notes the challenges involved,<sup>172</sup> funding of required subsidies could prove difficult. Upon independence, funding would be affected by liabilities inherited;<sup>173</sup> upon devolution, it would be affected by reductions in the 'block grant' currently supplied from Westminster.<sup>174</sup> The CPPR asserts that "because government spending per head in Scotland is well above the UK average" no oil fund revenue "would be available... without tax increases or budget cuts".<sup>175</sup>

Revenue could be invested abroad (to maximise returns and to protect other sectors from negative impacts)<sup>176</sup> or domestically to develop other sectors.<sup>177</sup> From first oil (1969) to establishment of its oil fund (1990) to first payments (1996), Norway exemplifies the long-term nature of oil funds.<sup>178</sup> McCrone, having predicted major surpluses in the 1970s, now considers a Scottish fund difficult "for quite some time".<sup>179</sup>

## C Energy Policy

### (i.) Newfoundland: an Energy Warehouse<sup>180</sup>

Energy is prominent in Newfoundland's economy.<sup>181</sup> Its oil contributes little to Canada's comfortable energy security position,<sup>182</sup> however, thus warranting little new federal support. Federal and provincial energy policies retain partial overlap; Ottawa's \$CDN6.4 billion loan guarantee (2012)<sup>183</sup> facilitated Nalcor's new Lower Churchill development.<sup>184</sup> Newfoundland has identified new electricity markets via a subsea connection to Nova Scotia.<sup>185</sup> Nalcor's renewables interests create potential conflicts should oil investment become limited and gas development become dis-incentivised,<sup>186</sup> however.

Following abolition of the NEP (1985), the federal government has found oil sector management challenging. Whilst the USA blocked CNOOC's takeover of Unocal (2005),<sup>187</sup> Canada permitted its acquisition of Nexen (2012).<sup>188</sup> Revenue from prolific Western Canadian oil sands production has diverted attention from environmental considerations,<sup>189</sup> prompting Canadian withdrawal from the Kyoto Protocol (2011). The Keystone XL oil sands pipeline to the USA has encountered resistance although arguments could be reversed by the Lac-Mégantic oil train disaster (2013);<sup>190</sup> a trans-national pipeline is now proposed also.<sup>191</sup>

Lessons from Newfoundland:

- Consistent energy policies are challenging to formulate within a devolved structure
- Dependence upon a single customer hampers development

### (ii.) Scotland: Oil vs. Renewables

Post-devolution policies in the wider energy sector merit consideration in terms of potential impact upon the oil sector. Requirement for consistent national policy proved persuasive in not devolving UKCS regulation and taxation in the 1970s.<sup>192</sup> Since devolution, however, Westminster and Holyrood policies have diverged<sup>193</sup> even though interdependence remains significant; rUK requires energy whilst Scotland requires investment. Security of supply and climate change targets form the basis of future legal issues.<sup>194</sup>

The UK holds, by far, the EU's largest oil reserves<sup>195</sup> but became import-dependent by the mid-2000s.<sup>196</sup> The UKCS continues to comfortably meet Scotland's demands<sup>197</sup> and also most of the UK's (oil: 68%, gas: 58%).<sup>198</sup> As it remains in the entire UK's interest to support Scottish sector production, recent foreign acquisitions are a potential concern for both parliaments.<sup>199</sup> "Scotland has 25% of Europe's tidal power potential, 25% of its offshore wind potential and 10% of its wave power potential"<sup>200</sup> whilst the North Sea is considered a prime location for CCS,<sup>201</sup> as energy security (and climate change) are concerns across the EU,<sup>202</sup>



diversification from fossil fuels is a priority. Significant continental markets exist for Scotland's renewable energy but pending heavy subsidies to establish a subsea electrical connection, the rUK remains its only market.

Citing Denmark and Abu Dhabi, the Scottish Government contends that oil and renewable energy development are compatible.<sup>203</sup> Should the rUK choose instead to invest in its own renewable projects,<sup>204</sup> however, Holyrood would be forced to provide significant subsidies. Whilst the SNP targets 100% of national electricity demand from renewables by 2020, this appears unachievable without UK-wide subsidy.<sup>205</sup> The situation appears urgent as Scotland's status as an electricity 'exporter' is threatened by imminent closures.<sup>206</sup> Renewable subsidies could require oil sector taxation increases and reduce Holyrood's ability to invest in assets where it holds equity.

In the 1970s, concerns were expressed that UKCS state participation<sup>207</sup> would "risk prejudging an important wider policy issue" around energy supply.<sup>208</sup> Acquisition of state equity could re-introduce conflicts of interest. Shale gas is a key potential Westminster-Holyrood conflict as discoveries in England<sup>209</sup> could cause prices to fall. As the rUK is essentially its sole 'export market',<sup>210</sup> the Scottish offshore sector could be impacted.

## **D Exit Strategy**

State equity acquisition is arguably easier than any subsequent divestment; Westminster and Holyrood are likely to have different viewpoints. Late-life equity sell-offs would be challenging as potential buyers would be offered heavily-depleted reservoirs and aged infrastructure soon requiring decommissioning.

In a rUK context, long-term strategic importance appears minimal. Westminster may wish to divest as soon as investor confidence returns.<sup>211</sup> A key goal is likely to be exit before the sector becomes uneconomic and permanently state-dependent, as occurred in such heavy industries as shipbuilding. From a Scottish perspective, the sector is likely to make a significant GDP contribution for years to come. Holyrood could seek to acquire Westminster's share of equity and liabilities.

Irrespective of ideology, sell-offs may become a necessity. Both Labour and Conservative administrations divested equity in response to economic pressures.<sup>212</sup>

## 5. CONCLUSIONS

### A Comparison: Scotland vs. Newfoundland

Scotland and Newfoundland exhibit similarities in terms of geography (small populations located at a continental extremity) and culture ('regions' seeking greater autonomy within a larger entity). Whilst Scotland's mature offshore sector clearly differs from Newfoundland's frontier province, the latter nevertheless offers valuable lessons upon joint administration (Westminster-Holyrood) and state participation. Denmark's recent experience of 'regaining' its sector following expiry of a lengthy sole concession also offers valuable lessons. Most striking are the parallels from the history of the UKCS itself. "The independence debate introduces a note of uncertainty";<sup>213</sup> the overall conclusion is that whilst legal issues will continue to evolve over sector life, any change in administration must take place quickly and smoothly. Joint administration, whilst feasible, brings additional challenges.

### B Sector Formation

#### (i.) Legislation: External

Lesson from Newfoundland:

- External legislation could permit state participation but not state protection

Many EU states retain participation as permitted under Council Directive 94/22/EC [1994]. UK participation would not therefore be unprecedented. 'Golden share' protection has failed against treaty obligations, however, and EU legislation does not permit national content regulations. The Scottish government recognises the importance of technology in improving oil recovery but cannot impose local R&D targets. Re-negotiation or exit would permit greater autonomy in sector administration.

#### (ii.) Legislation: Internal

Lesson from Newfoundland:

- Inconsistent outcomes affect inter-provincial relationships

A jointly-administered sector would add further complexity; to date, matters have been largely reserved or devolved. Other rUK nations could demand devolution of sector administration also. Without an English parliament, a conflict of interest could arise in Westminster over its administration of the rUKCS and Scottish sectors. Previously resolved complexities (1960s) relating to revenue share allocation could be re-opened. An oil-driven wealth gap, in either direction, between Scotland and rUK could lead to tensions.

(iii.) Maritime Boundaries: Internal

Lesson from Newfoundland:

- Internal border disputes can be protracted if means of resolution unclear

Formation of a Scottish sector would lead to the formation of either a single rUKCS sector or separate national sectors, the latter creating potential for multiple disputes. Whilst ICJ practices (e.g. median line adjustment) can be applied, no recourse to the court is possible. The two options proposed for the Scottish sector's southern maritime boundary differ little in terms of reserves. Noting the Northern Isles's strategic location, distinct identity and limited interest in Scottish independence, joint administration could involve more than Westminster and Holyrood.

## **C Sector Operation**

(i.) Administrative Arrangements

Lesson from Newfoundland:

- Joint administration must provide a consistent, positive message to industry

As the sector matures, administrative burdens associated with new entrants, asset integrity and decommissioning are set to increase. Although multiple new bodies would be required (to retain separation between licensing and safety), joint administration must avoid delays whilst transferring data and gathering competence. As joint administration typically requires both parties' consent, the relationship between Westminster and Holyrood ministers is critical. Investment must be incentivised whilst avoiding being 'held to ransom' by international investors. Conversely, state involvement must not become excessive to the point of threatening other participants.

(ii.) Taxation: Revenue Management

Lessons from Newfoundland:

- Heavy sector dependence causes revenue fluctuations
- Tax take and equity demands must be balanced
- Oil fund objectives must be clear

With the sector contributing heavily to GDP, a devolved Scottish economy would be sensitive to oil price and production fluctuations. Revenues have proven unpredictable historically with key factors outwith Holyrood's control. Dependence on major fields and ageing hubs increases uncertainty.

In Denmark, the North Sea Agreement 2003 increased tax take and ensured Nordsøfonden's state entry but with little increase in participant revenue, low investment caused steep production decline. Whilst noting missed opportunities, the Scottish Government is conscious of recent investment fluctuations, valuing incentivisation and stability.

The Scottish Government identifies potential oil fund goals as wealth for future generations, low carbon energy facilitation, short-term stability. Although it notes the challenges involved, funding could prove difficult given spending commitments. From first oil (1969) to establishment of its oil fund (1990) to first payments (1996), Norway exemplifies the long-term nature of oil funds.

(iii.) Energy Policy

Lessons from Newfoundland:

- Consistent energy policies are challenging to formulate within a devolved structure
- Dependence upon a single customer hampers development

Since devolution, Westminster and Holyrood policies have diverged even though interdependence remains significant; rUK requires energy whilst Scotland requires investment. Scotland's substantial renewables and CCS potential are valuable in the context of energy security (and climate change) concerns across the EU but heavy investment is required to access continental markets. Should the rUK choose instead to invest in its own renewable projects, Holyrood would be forced to provide significant subsidies. These could require oil sector taxation increases and reduce Holyrood's ability to invest in assets where it holds equity. Shale gas is a key potential Westminster-Holyrood conflict: major discoveries in rUK could affect demand in the Scottish offshore sector's sole 'export' market.

## **ABBREVIATIONS**

ANP	<i>Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (Pt.)</i>
BGC	British Gas Corporation
bn	billion
BNOC	British National Oil Company
boe	barrels of oil equivalent
Br.	Brazil
BSC	British Shipbuilders Corporation
Ca.	Canada
CAPP	Canadian Association of Petroleum Producers
CATS	Central Area Transmission System
CBC	Canadian Broadcasting Corporation
CCS	Carbon Capture and Storage
CDP	<i>Cassa Depositi e Prestiti (It.)</i>
CEGB	Central Electricity Generating Board
CGBS	Concrete Gravity Base Structure
CHHC	Canada Hibernia Holding Corporation
COM	<i>collectivité d'outre-mer (Fr.): Overseas Collectivity</i>
CNBC	Consumer News and Business Channel
CNOOC	China National Offshore Oil Corporation
C-NLOPB	Canada-Newfoundland and Labrador Offshore Petroleum Board
C-NSOPB	Canada-Nova Scotia Offshore Petroleum Board
CPPR	Centre for Public Policy for Regions
CPSA	Canadian Political Science Association
DECC	Department of Energy & Climate Change
DHI	David Hume Institute
DK	Denmark
DONG	<i>Dansk Olie og Naturgas (Da.)</i>
DSME	Daewoo Shipbuilding & Marine Engineering
DUC	<i>Dansk Undergrunds Consortium (Da.)</i>
EBN	<i>Energie Beheer Nederland (Nl.)</i>
EC	European Commission
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EJIL	European Journal of International Law
ENI	<i>Ente Nazionale Idrocarburi (It.)</i>
EU	European Union
E&P	Exploration & Production
FPSO	Floating Production Storage & Offloading
GB	Great Britain
GBS	Gravity-Based Structure
GDF	<i>Gaz de France (Fr.)</i>
GDP	Gross Domestic Product
GoM	Gulf of Mexico

HM	Her Majesty's
HMRC	Her Majesty's Revenue & Customs
HSE	Health & Safety Executive
IBRU	International Boundaries Research Unit
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IEG	Independent Expert Group
ILG	Industry Leadership Group
IMO	International Maritime Organisation
JDA	Joint Development Agreement
MOD	Money of the Day
MOL	<i>Magyar Olaj (Hu.)</i>
MP	Member of Parliament
MSP	Member of Scottish Parliament
MUN	Memorial University of Newfoundland
NAFTA	North American Free Trade Agreement
NCB	National Coal Board
NE	North-East
NEP	National Energy Program
NOC	National Oil Company
NOIA	Newfoundland & Labrador Oil & Gas Industries Association
OBR	Office of Budget Responsibility
OGP	International Association of Oil & Gas Producers
OMV	<i>Österreichische Mineralölverwaltung (De.)</i>
ONS	Office for National Statistics
OPEC	Organization of the Petroleum Exporting Countries
OSPAR	Oslo-Paris
O&G	Oil & Gas
ÖIAG	<i>Österreichische Industrieverwaltungs-AG (De.)</i>
PDVSA	<i>Petróleos de Venezuela SA (Es.)</i>
PEI	Prince Edward Island
PEMEX	<i>Petróleos Mexicanos (Es.)</i>
PRT	Petroleum Revenue Tax
Q.C.	Queen's Counsel
rUK	remainder of the United Kingdom
rUKCS	remainder of the United Kingdom Continental Shelf
R&D	Research & Development
SCDI	Scottish Council for Development and Industry
SE	South-East
SEAL	Shearwater Elgin Area Line
SNAP	Scottish National Accounts Project
SNP	Scottish National Party
SW	South-West
S.C.R.	Supreme Court (Canada)
UK	United Kingdom

UKCS	United Kingdom Continental Shelf
UNCLOS	United Nations Convention on the Law of the Sea
WoS	West of Shetland
\$	Dollar (USA)
\$CDN	Dollar (Canada)
€	Euro
£	Pound Sterling (UK)

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<sup>2</sup> George Robertson, former UK cabinet minister (1995).

<sup>3</sup> 'Edinburgh Agreement' (2012) led to SP Bill 25 Scottish Independence Referendum Bill [as introduced] Session (2013).

<sup>4</sup> UK Polling Report, Scottish Independence Referendum.

<sup>5</sup> Ipsos-MORI (2013), 35 years of Scottish attitudes towards independence.

<sup>6</sup> Pro-independence ('yes'): SNP. Pro-union ('no'): Conservative Party, Labour Party, Liberal Democrats.

<sup>7</sup> Act increases Holyrood's taxation powers although "devolution or assignment of oil and gas taxation receipts" was rejected: Commission on Scottish Devolution (2009), s 3.118.

<sup>8</sup> Nicola Sturgeon MSP (Deputy First Minister, SNP): "Well, hear this David Cameron – it was always Scotland's oil. It still is Scotland's oil and it is time the people of Scotland got the benefit of it." The Herald (2011). In contrast, Alistair Darling (Better Together campaign leader, Labour): "It is absolute madness for the SNP to base their case for separation around a commodity that is declining and volatile" The Herald (2013).

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<sup>10</sup> SNAP data in Scottish Government, Oil and Gas Analytical Bulletin – March 2013, 1. Industry Overview.

<sup>11</sup> SCDI, Blueprint for Scotland, Executive Summary (2010): maximise North Sea potential and "establish Aberdeen as the world's leading energy services hub." Supply chain also critical.

<sup>12</sup> Robert Thomsen (2010), Nationalism in Stateless Nations: Selves and Others in Scotland and Newfoundland, Ch 8, p 213. Parallels include distinct identity, resource nationalism and autonomy demands.

<sup>13</sup> Wood Mackenzie, Canada (East Coast) Country Overview, May 2013, Executive Summary, p 1.

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<sup>17</sup> Canada-Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3.

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<sup>19</sup> Alex Kemp's Official History of North Sea Oil and Gas (2012) forms two volumes: The Growing Dominance of the State and Moderating the State's Role.

<sup>20</sup> Scottish Government, Oil and Gas Analytical Bulletin – March 2013, s 5: even lowest estimate exceeds \$90 per barrel.

<sup>21</sup> Kemp and Stephen (2008), North Sea Study Occasional Paper No 109: "At prices of \$40 (per barrel, oil), 30 pence (per therm, gas) activity levels fall off very sharply."

<sup>22</sup> Wood Mackenzie, Scottish independence and the North Sea, p 1. Whilst sources differ slightly, it is undisputed that most reserves lie off Scotland. Also refer to Kemp and Stephen (2007), The Hypothetical Scottish Share of Revenues and Expenditures from the UK Continental Shelf 2000 – 2013.

<sup>23</sup> Government of Canada – Privy Council Office (2013): via Constitution Amendment 2001.

<sup>24</sup> via Union with Scotland Act 1706 (Act of the Parliament of England) and Union with England Act 1707 (Act of the Old Scottish Parliament).

<sup>25</sup> via Referendums (Scotland and Wales) Act 1997.

<sup>26</sup> via Scotland Act 1998.

<sup>27</sup> David Torrance (2009), We in Scotland – Thatcherism in a Cold Climate, Ch 7, p 130: "when the British Shipbuilders Act of 1983 privatised the BSC... one by one they (Clyde shipbuilders) slipped away."

<sup>28</sup> ONS, Regional Economic Indicators – March 2013, Fig 14.

<sup>29</sup> ONS, Statistical Bulletin, Labour Market Statistics, July 2013, Table 18(1).

<sup>30</sup> Oil & Gas UK (2013), The Offshore Challenge.

<sup>31</sup> ONS, 2011 Census (million): England 53, Scotland 5.3, Wales 3.1, Northern Ireland 1.8.

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<sup>33</sup> Margaret R. Conrad and James K. Hiller (2010), Atlantic Canada, A History, Ch 3, p 33: Britain, France, Spain and Portugal fished the Grand Banks.

<sup>34</sup> Treaty of Utrecht 1713, Article 13.

<sup>35</sup> Conrad and Hiller, Ch 8, p 121. Limited powers.

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- <sup>37</sup> *Ibid*, Ch 12, p 196.
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- <sup>39</sup> via British North America Act 1949, 1949 Ch 22 12 13 and 14 Geo 6.
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- <sup>53</sup> Torrance, Ch 3, p 28: “Labour’s response was to create a Glasgow-based British National Oil Corporation (BNOC)... Mrs. Thatcher was appalled.” BNOC dissolved via SI 1986/585. BGC privatised via Gas Act 1986. BP privatisation essentially completed by 1987.
- <sup>54</sup> 167 fatalities: explosion and fire.
- <sup>55</sup> Oil & Gas UK Activity Survey 2013, Ch 2, p 4. 2012 production: 1.55 million boe per day.
- <sup>56</sup> *Ibid*, s 3.1, p 6: 2012 investment highest for 30 years.
- <sup>57</sup> e.g. Frontier (WoS).
- <sup>58</sup> e.g. BP Clair Ridge: £4.5 bn investment.
- <sup>59</sup> e.g. BP divestment of Forties to Apache (2003).
- <sup>60</sup> e.g. Centrica (British Gas owner) acquisition of Venture (2005).
- <sup>61</sup> e.g. CNOOC acquisition of Nexen, a Canadian company (2012).
- <sup>62</sup> WoodMac Canada (East Coast), Drilling, p 26.
- <sup>63</sup> CAPP, Statistical Handbook, June 2013, Table 3.1b: Alberta and Saskatchewan contribute 80% of Canadian oil output.
- <sup>64</sup> via Hibernia Development Project Act (S.C. 1990, c. 41).
- <sup>65</sup> 82 fatalities: rig capsize.
- <sup>66</sup> Technical challenges and frontier location are also factors.
- <sup>67</sup> Nalcor Energy, Churchill Falls: North America’s 2<sup>nd</sup> largest underground hydroelectric facility.
- <sup>68</sup> Former Premier Brian Peckford (2012), *Some Day the Sun Will Shine and Have Not Will Be No More*, Ch 7, p 197: re-negotiation (via federal government) failed. Water diversion also failed in Supreme Court of Canada, Reference re Upper Churchill Water Rights Reversion Act, [1984] 1 S.C.R. 297.
- <sup>69</sup> Conrad and Hiller: Ch 14, p 224.
- <sup>70</sup> Government of Newfoundland and Labrador, *Focusing Our Energy*, Newfoundland and Labrador Energy Plan, 2007, Ch 3, p 18.
- <sup>71</sup> via Nalcor.
- <sup>72</sup> WoodMac Canada (East Coast), Oil Infrastructure, p 35.
- <sup>73</sup> *Ibid*, Gas Infrastructure, p 37.
- <sup>74</sup> The Economist (2013), *Yesterday’s fuel*. Potential causes of fall: shale gas substitution and improved vehicle efficiency reducing demand.
- <sup>75</sup> Walter Kickert (2012), *How the UK government responded to the fiscal crisis: an outsider's view*, Public Money & Management, 32:3, pp 169-176: similar concept to bank ‘bail-outs’ (2008).

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- <sup>76</sup> Kemp, Official History, Vol I, Ch 8, p 406, Negotiations with Burmah Oil.
- <sup>77</sup> Presently, Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 require Secretary of State approval.
- <sup>78</sup> Paterson and Gordon, Licenses, p 17.
- <sup>79</sup> e-mail from Nordsøfonden to author (2013): the Danish state, via Nordsøfonden, joined the DUC consortium upon concession expiry (2012).
- <sup>80</sup> Formed 1994. Other members: USA, Mexico. Superseded Canada-United States Free Trade Agreement.
- <sup>81</sup> “exploration and exploitation of crude oil and natural gas” reserved to state.
- <sup>82</sup> s 45(1).
- <sup>83</sup> C-NLOPB, Mandate and Objectives.
- <sup>84</sup> e.g. Husky Energy (2001), White Rose Oilfield Development Application, s 1.3: GBS proven uneconomic.
- <sup>85</sup> Leah Fusco (2006), MUN, Offshore Oil: An Overview of Development in Newfoundland and Labrador, The Projects, pp 3-11.
- <sup>86</sup> s 45(3)(c).
- <sup>87</sup> Mobil Investments Canada Inc. and Murphy Oil Corporation vs. Canada, ICSID Case No. ARB(AF)/07/4.
- <sup>88</sup> via European Communities Act 1972.
- <sup>89</sup> Kemp, Official History, Vol I, Ch 10, p 441, Application of Treaty of Rome to UKCS.
- <sup>90</sup> 94/22/EC [1994] OJ L164/3.
- <sup>91</sup> Case 58/99, Commission v Italian Republic [2000].
- <sup>92</sup> Case 212/09, Commission v Portuguese Republic [2011].
- <sup>93</sup> Eamonn Butler (2011), *The geopolitics of merger and acquisition in the central European energy market*, *Geopolitics*, 16 (3), pp 626-654.
- <sup>94</sup> EC MEMO/08/535.
- <sup>95</sup> Torrance, Ch 8, p 176.
- <sup>96</sup> Pamela L. Baldwin and Malcolm F. Baldwin (1976), Onshore Planning for Offshore Oil – Lessons from Scotland: Ch IV, p 76.
- <sup>97</sup> BBC News (2012), Premier Oil contracts create 350 jobs at Fife firm BiFab.
- <sup>98</sup> O&G ILG, Oil + Gas Strategy 2012-2020 – Maximising Our Future, Ch 3, p 9.
- <sup>99</sup> Macondo oil spill, US Gulf of Mexico (2010).
- <sup>100</sup> House of Commons European Scrutiny Committee, Fifty-first Report of Session 2010-12.
- <sup>101</sup> Oil & Gas UK, Proposed EU Regulation of Offshore Safety.
- <sup>102</sup> European Union (Referendum) HC Bill (2013-14) 11 55/3.
- <sup>103</sup> via Alberta Natural Resources Act 1930, c. 3, Manitoba Natural Resources Transfer Act, S.C. 1930, c. 29, Saskatchewan Natural Resources Act, S.C. 1930, c. 41.
- <sup>104</sup> Keith Brownsey (2007), The New Oil Order, *Canadian Political Science Review* Vol 1(1) p 99: Alberta secured an amendment to constitutional division of powers, strengthening control over natural resources.
- <sup>105</sup> via oil fund: Alberta Heritage Savings Trust Fund.
- <sup>106</sup> WoodMac Canada (East Coast), Executive Summary, p 1.
- <sup>107</sup> Supreme Court of Canada, Reference Re: Offshore Mineral Rights, [1967] S.C.R. 792.
- <sup>108</sup> Supreme Court of Canada, Reference re Newfoundland Continental Shelf, [1984] 1 S.C.R. 86.
- <sup>109</sup> Focusing Our Energy, Newfoundland and Labrador Energy Plan, 2007, Ch 3, p 20.
- <sup>110</sup> Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act S.C. 1988, c. 28 led to formation of C-NSOPB.
- <sup>111</sup> WoodMac Canada (East Coast), Executive Summary, p 1: Cohasset/Panuke, Sable Island, Deep Panuke.
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- <sup>113</sup> James Bickerton (2008), *Equalization, Regional Development, and Political Trust: The Section 36/Atlantic Accords Controversy*, CPSA, p 5: “federal initiatives were perceived by... provinces as breaches of trust”.
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- <sup>125</sup> Civil and Criminal Jurisdiction (Offshore Activities) Orders 1987 under Oil and Gas (Enterprise) Act 1982.
- <sup>126</sup> WoodMac, Scottish independence, The bulk of reserves would lie in Scotland, p 3: “2% of total UK commercial reserves”. Assets in ‘disputed area’ largely Chinese-controlled via Talisman-Sinopec.
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- <sup>131</sup> Mahdi Zahraa (2001), Prospective Anglo-Scottish Boundary Options Revisited, *EJIL*, Vol 12, No 1, p 100.
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- <sup>133</sup> Orkney Islands Council, Shetland Islands Council, *Comhairle nan Eilean Siar (Gd: Western Isles Council)*. Joint position statement: Our Islands, Our Future (2013).
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- <sup>143</sup> Dealing with two sets of bodies during the transition period could lead to industry uncertainty.
- <sup>144</sup> Paterson and Gordon, Executive Summary, p 1.
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- <sup>170</sup> *Ibid*, Box 5, p 39: as Netherlands. Fixed rates prevent response to low or high prices, however.
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- <sup>183</sup> Natural Resources Canada (2012), *Agreement for the Federal Loan Guarantee*.
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- <sup>186</sup> Gas development already hampered by remoteness and shale gas boom in USA.
- <sup>187</sup> via Exon-Florio provision of the Omnibus Trade and Competitiveness Act 1988.
- <sup>188</sup> CNBC (2012), CNOOC’s failed Unocal Bid Paved Way for Nexen Deal.
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- <sup>190</sup> *The Chemical Engineer* (2013), Derailment raises questions over oil transportation.
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- <sup>192</sup> Kemp, *Official History*, Vol I, Ch 13, p 566, Working Group searches for arguments against devolution of oil reserves.

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<sup>193</sup> e.g. Westminster voted in favour of new nuclear power stations in England whilst Holyrood voted against further nuclear power in Scotland.

<sup>194</sup> Alex Kemp, Linda Stephen and Stronachs, John Wils and Ewan Neilson (eds), *The Technical and Legal Guide to the UK Oil and Gas Industry*, 2007, Ch 24.

<sup>195</sup> BP Statistical Review of World Energy 2013, p 6.

<sup>196</sup> DECC, *UK Sector Indicators 2012*, Chart 3.2.

<sup>197</sup> Scottish Government, *Maximising the Return*, s 2.5.

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<sup>199</sup> 13% of UKCS production Chinese-controlled. *Sunday Times* (2013), Oil invaders park their rigs in the North Sea: “Britain’s open-door policy... stands in stark contrast to the protectionist approaches of America”.

<sup>200</sup> SCDI, *Future Scotland, Energy*, April 2013, Electricity, p 13.

<sup>201</sup> Scottish Government, *Maximising the Return*, Box 2, p 31.

<sup>202</sup> Mitrova et al in *Russian and CIS Gas Markets and Their Impact on Europe*, Simon Pirani (ed), 2009, Ch 12, p 409: “the crises in Russian gas sales... were interpreted by the majority of European politicians and media as ‘Russian energy blackmail’, raising urgent questions about whether dependence on Russian gas supplies jeopardises European energy security.”

<sup>203</sup> Scottish Government, *Maximising the Return*, s 4.9.

<sup>204</sup> e.g. Severn Barrage, a proposed major tidal scheme.

<sup>205</sup> David Toke et al (2013), *The Political Quarterly*, Vol 84, pp 61-70, Scotland, Renewable Energy and the Independence Debate: Will Head or Heart Rule the Roost?

<sup>206</sup> SCDI, *Production, Distribution and More Efficient Use of Energy*, 2012: “All of Scotland’s major power stations are scheduled to close by 2025 and schemes under construction or planned do not come near to replacing them.”

<sup>207</sup> via the CEGB and the NCB.

<sup>208</sup> Kemp, *Official History*, Vol I, Ch 3, p 92, Candidates for state participation.

<sup>209</sup> HM Treasury supports shale gas development via tax breaks (2013).

<sup>210</sup> Limited exports to Ireland also.

<sup>211</sup> Similar to anticipated bank equity sell-off.

<sup>212</sup> David Parker (2009), *The Official History of Privatisation Vol. I: The formative years 1970-1987*, Ch 4.

<sup>213</sup> Paterson and Gordon, *Executive Summary*, p 1.