



The Scottish Parliament
Pàrlamaid na h-Alba

Devolution (Further Powers) Committee

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Dear Secretary of State,

Thank you for agreeing to appear at the recent meeting of the Committee. I am grateful to you for the time you made available so soon after the publication of the report of the Smith Commission.

As indicated during the meeting, there were a number of follow-up questions where we would be grateful for a view from the UK Government as many of these matters are complex.

Constitutional matters

1. Charter of autonomy and other mechanisms relating to the permanency of the Scottish Parliament

The report of the Smith Commission states that UK legislation will state that both the Scottish Parliament and the Scottish Government are “permanent” institutions. However, as Lord Smith himself recognised, there are significant issues as to whether the use of primary legislation can achieve this permanency as a matter of law.

The Scottish Parliament is a body established by statute passed by the UK Parliament. The sovereignty of the UK Parliament is a fundamental constitutional principle which means that the UK Parliament can repeal any of its own enactments. Our understanding is that this principle means it is therefore impossible for a UK Act to prevent a future Act from amending or repealing earlier Acts. Furthermore, in terms of constitutional legal principle, it is therefore theoretically possible for the UK Parliament to repeal the Scotland Act 1998 and as a result dissolve the Scottish Parliament and the devolution settlement which that Act provides for.

I would be grateful if you could outline the UK Government's thinking on how permanency can be achieved in the absence of a written constitution and in light of the principle of the sovereignty of the UK Parliament. In particular, I'd be grateful if you could comment on two mechanisms that have been suggested to the Committee.

First, making reference to a "super majority" in the new Scotland Bill so that any future modifications would require to be passed by a specified majority on a vote in each House of the UK Parliament before the Act in question could take effect.

Provisions of this kind requiring a "super-majority" are not unprecedented. The UK Government proposal for a draft Royal Charter on self-regulation of the press contained such a mechanism. It provided that the charter could not be modified without parliamentary approval by a majority of at least two thirds of the members voting in each House of Parliament. Section 3 of the Scotland Act 1998 provides that if agreed to by division a decision of the Scottish Parliament that it be dissolved must be passed by a two thirds majority to have effect.

Second, whilst accepting that the circumstances are very different, it has been suggested to me that consideration could be given to an autonomy act which contained a charter of autonomy, that would reserve certain powers and functions to the UK, similar in form to various post-colonial Independence Acts, the effect of which some have suggested would be to provide that the UK Parliament could no longer exercise its sovereignty over the Scottish Parliament and Government.

2. Drafting of Clauses

In evidence to the Committee, the Deputy First Minister highlighted the co-operative and productive approach via which the Scottish Government, UK Government and Scottish Parliament had worked together in providing secretariat support to the Smith Commission. Given this beneficial approach and the importance attached by Lord Smith to improving inter-governmental working, the Deputy First Minister suggested that this approach should extend to joint working between the Scottish and UK Government's on the drafting of clauses that will give effect to the Smith Commission recommendations. What is the UK Government's view of such an approach to the drafting of clauses?

Tax related matters

1. Crown Estate

The report of the Smith Commission states at paragraphs 32 to 34 that "responsibility for the management of the Crown Estate's economic assets in Scotland and the revenue generated from these assets will be transferred to the Scottish Parliament" and that "the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture".

At the meeting of the Committee attended by you and the Scottish Government's Deputy First Minister, reference was made to whether the above would include assets beyond the 12-mile limit out to 200 miles.

You told the Committee that—

“I believe that Crown Estate ownership of the sea bed goes out to 12 miles. I do not think that it goes out to the 200-mile limit.”

The Deputy First Minister, however, stated that—

“First, my very clear understanding of paragraph 32 is that the provision extends to the management of the Crown Estate’s economic assets in Scotland and the revenue that is generated from those assets. That revenue would be transferred to the Scottish Parliament, and would extend to the 200-mile limit. That is a fundamentally important point that was implicit in the agreement. The Smith commission took a long time to address the question of whether the provision concerned the foreshore or the sea bed. The sea bed goes out to 200 miles.”

The Committee would be grateful for clarity on the UK Government’s understanding of precisely what economic assets it considers are covered by paragraphs 32 to 34 of the Smith Commission’s report.

2. Extent of devolved control of taxes

During the evidence provided by the Deputy First Minister to the Committee, he stated that the figure for devolved and assigned taxes as a percentage of devolved expenditure in a post-Smith environment is 48 per cent. He then stated that, “devolved taxes will be 29 per cent of total Scottish tax revenues and, with assignment, 37 per cent”.

It would therefore be helpful to have the UK Government provide a table and your analysis for the percentage of devolved and assigned taxes compared to devolved expenditure and, separately, to the total Scottish tax revenues for the positions (a) pre-Scotland Act 2012, (b) post-Scotland Act 2012, (c) post-Smith Commission report (including assigned VAT revenues) and (d) post-Smith Commission report (not including assigned VAT revenues).

Welfare related

1. Universal credit and paragraph 55 of the report of the Smith Commission

Paragraph 55 of the Smith Commission’s report states—

“Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment”.

We have provided your officials separately with a copy of a briefing paper that the Parliament’s Research Service (SPICe) provided to me, which I subsequently provided to the Committee members, into what I accept is a complex area and one where greater clarity will be essential.

I would be grateful if the Scottish Government could address the points made in the SPICe paper. In particular, the issue of whether a claimant of Universal Credit in Scotland receiving any of the reserved benefits where these had been increased by the Scottish Parliament, would see a reduction in their Universal Credit award on a pound for pound basis; potentially meaning that the recipient is worse off. I recognise this is part of the existing design of Universal Credit, and that paragraph 55 says the discretionary payments would “not result in an automatic offsetting reduction”, but would welcome clarity on the matter.

2. The Work Programme

In evidence to the Committee, the Deputy First Minister indicated that it was his recollection that members of the Smith Commission were not aware, at the time of agreeing to paragraph 57 of the Smith Commission report, that the Work Programme contract had already been extended.

Can you confirm whether the UK Government had informed the Smith Commission members prior to the publication of the report that the Work Programme contract had already been extended to 2017?

Given the spirit of inter-governmental co-operation which underpins the Smith Commission recommendations, can you indicate what scope there is to devolve the Work Programme before 2017 and what steps you consider would be required to make this happen?

Additional issues

1. Student visas and the HSE

What is the UK Government’s position on holding early discussions, between the UK and Scottish Government’s, on the issues raised by the Smith Commission within the ‘additional issues for consideration’ section of the report with particular regard to the issues of student visas and for a review to be undertaken of the functions and operations of the Health and Safety Executive in Scotland?

I thank you in advance for your assistance and look forward to hearing from you and other UK Government ministers again in the future. I will be writing on similar terms to the Scottish Government and intend to make both these letters and any replies public available via our website; a principle of openness I know you share.

Yours sincerely,

Bruce Crawford MSP
Convener