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Convener
Devolution (Further Powers) Committee
The Scottish Parliament
Edinburgh
EH99 1SP



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Thank you for your letter of 10 December. I have answered each of the points in your letter below.

Constitutional matters

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

Paragraph 21 of the Smith Commission Report says: "UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions".

The Scottish Government welcomes this paragraph and looks forward to its implementation. However we agree with Lord Smith's comments that there are significant issues as to whether UK primary legislation can achieve permanency as a matter of law. This is because of the UK's doctrine of parliamentary sovereignty and the associated norm that one Westminster Parliament cannot bind its successors. As the Committee notes this means that it is not clear that a UK Act can fully prevent a future UK Act from amending or repealing earlier Acts.

The Scottish Government believes that the intention of paragraph 21 is to propose the enactment of a statutory statement of the permanence of the Scottish Parliament and Scottish Government. While constitutional entrenchment does not appear possible given the doctrine of Parliamentary sovereignty that exists within the UK, it is worthy of note that the devolved institutions have secured the confidence and respect of the people of Scotland since 1999 and the strongest guarantee of their permanence within the UK constitutional framework is the degree of cross-party political support that the existence of the Scottish Parliament commands.

The Committee specifically asks for the Scottish Government's views on how actual permanency might be achieved, as opposed to the enactment of a statutory statement of permanency, with particular reference to two mechanisms which have been suggested to the Committee.

The first suggested mechanism is that of super-majority requirements. As well as the precedents cited by the Committee, section 2 of the Fixed-term Parliaments Act 2011 makes provision for early UK general elections if the House of Commons resolves so by super-majority. The Scottish Government would be content for the statutory provision enacting paragraph 21 to be subject to a super-majority provision at Westminster in relation to any subsequent attempt to repeal it. It may be, however, that the super-majority provision itself could be removed by a simple majority at Westminster, so this may not provide as much protection as might be envisaged.

The second suggested mechanism is a charter of autonomy or autonomy act with some comparison to the Independence Acts enacted by Westminster in relation to the UK's former colonial territories. The Scottish Government would note that the circumstances of that legislation were very different in that they provided for the independence of a territory. It is difficult to see how any charter or Act made at Westminster in relation to Scotland while it remains part of the UK could be other than subject to the doctrines and rules already identified as problematic by the Committee – parliamentary sovereignty and the inability of one parliament to bind its successors.

Tax related matters

Crown Estate

The Committee has requested clarification of the Scottish Government's understanding of precisely what economic assets it considers are covered by paragraphs 32 to 34 of the Smith Commission's report and refers to the Secretary of State for Scotland's comments 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 Crown Estate comprises not only almost the entire seabed out to 12 nautical miles but also includes the exercise of certain rights to the seabed out to 200 nautical miles and in the full extent of the continental shelf. Having been party to the Smith Commission process I can absolutely confirm that paragraph 32 of the Smith Commission report means 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 and that the transfer to the Scottish Parliament would include responsibility for the management of, and revenue generated from, all assets including those which are beyond the 12 nautical mile limit out to 200 nautical miles.

Extent of devolved control of taxes

I have attached as an annex to this letter a table which analyses the percentage of devolved and assigned tax revenues as a proportion of devolved expenditure and total Scottish tax revenues, as requested by the Committee. This table shows how I arrived at the figures which I provided orally to the Committee on 4 December. I trust this table is helpful but would be happy to provide any further clarification which the Committee requires.

Welfare related

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

On welfare, you have asked about paragraph 55 of the Smith Commission. As I said when I was at Committee, the purpose of paragraph 55 is to provide a guarantee that the benefit of anything we do in the Scottish Parliament should not be undermined or negated in any way as it affects the individual. This is certainly my interpretation and I expect this to be honoured in full by the UK Government. You will understand however that, as with all these things, the detail and negotiations are still to take place with the UK Government. I expect this to be a matter to be discussed at the Joint Ministerial Welfare Group being set up to look at the practical implementation and transitional issues concerning programmes of the Department for Work and Pensions. My Cabinet colleague, Mr Neil, met David Mundell, Parliamentary Under Secretary of State for the Scotland Office, on 8 January to agree the arrangements for this working group.

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JOHN SWINNEY

Annex – Analysis of devolved and assigned tax revenues

	pre-Scotland Act 2012 (2012-13) £m	Scotland Act 2012 (2012-13) £m	Smith proposal (2012-13) £m
Income tax (non-savings, non-dividend income only)		4,299	10,530
Stamp duties (land and buildings)		283	283
Air passenger duty			234
Landfill tax		100	100
Aggregates levy			45
Non-domestic rates	1,981	1,981	1,981
Council tax	2,006	2,006	2,006
Total devolved revenues (estimated 2012-13)	3,987	8,669	15,179
VAT - assignment of first 10 pence of standard rate	0	0	4,674
Total assigned revenues (estimated 2012-13)	0	0	4,674
Total Scottish tax revenues (estimated 2012-13)	53,147	53,147	53,147
Devolved taxes as % of total Scottish tax revenues	8%	16%	29%
Total devolved and assigned revenues (estimated 2012-13)	3,987	8,669	19,853
Devolved and assigned taxes as % of total Scottish tax revenues	8%	16%	37%
Existing devolved expenditure (already includes Housing Benefit)	38,546	38,546	
Devolved taxes as % of existing devolved expenditure	10%	22%	
Devolved and assigned taxes as % of existing devolved expenditure	10%	22%	
Illustrative devolved expenditure post-Smith - existing plus £2.5 billion			41,046
Devolved taxes as % of illustrative devolved expenditure			37%
Devolved and assigned taxes as % of illustrative devolved expenditure			48%

Notes

All figures 2012-13 and sourced from Government Expenditure and Revenue Scotland 2012-13 (Table 3.1, page 28), except:

- Income tax (non-savings, non-dividend income only) - Scotland Act 2012 estimate taken from OBR estimate of revenue which would have been generated from the Scottish rate of income tax in 2012-13 assuming a Scottish rate of 10 pence (per "Scottish tax forecasts", March 2014 at Table 1.3 on page 6); Smith estimate applies GERS share of income tax receipts in Scotland (7.4%) to OBR estimate of UK total non-savings, non-dividend income (£142.3 billion) per "Scottish tax forecasts", March 2014.
- Existing devolved expenditure - Government Expenditure and Revenue Scotland 2012-13 (Table 5.8, page 56). Note this refers to expenditure administered by the Scottish Government and Scottish local authorities and so includes items such as Housing Benefit which are administered by local authorities but which is controlled by DWP.
- Illustrative devolved expenditure - Government Expenditure and Revenue Scotland 2012-13 (Table 5.8, page 56) plus Scottish expenditure figures for 2012-13 published by DWP.

