



The Scottish Parliament
Pàrlamaid na h-Alba

Devolution (Further Powers) Committee

Rt. Hon Alistair Carmichael MP
Secretary of State for Scotland
The Scotland Office

By email

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26 March 2015

Dear Secretary of State,

Thank you for the offer, from your private office, that you would be willing to answer any questions the Committee has following your commitments in the House of Commons which resulted in the cancellation of our meeting of 25 March 2015. I am writing to you with the principal questions which the Committee wished to ask you had you been able to attend the Committee meeting.

The Committee needs a response to these questions before the 'purdah' restrictions come into effect. However, the Committee recognises that due to the limited time period before the 'purdah' period comes into effect that if there are any technical issues which can be answered (in writing or in person) by officials during the 'purdah' period that would be acceptable to the Committee. In your reply to the Committee, it would be appreciated if you could indicate any questions which would be answered in this way.

Kind regards,

Duncan McNeil MSP
Deputy Convener

Annex – Committee Questions

Welfare

General

The Deputy First Minister outlined a number of welfare provisions where the Scottish Government considers that the draft clauses do not meet the substance and spirit of the Smith Commission. These included the power to create new benefits, the power to make discretionary payments in any area of welfare, the devolution of benefits for carers, disabled people and those who are ill, and on benefits which currently comprise the Regulated Social Fund. What is your view and what discussions have taken place with the Scottish Government on this issue?

Discretionary Payments

Some witnesses have expressed concern that the clauses relating to discretionary payments dilute existing devolved competence in this sphere. For example, the clauses exempt provision of discretionary payments to people who have been subject to a benefit sanction, unless the need also arises from some exceptional event and the need is immediate as well as short term. What is your view? Isn't this, in effect, similar to the Scottish Welfare Fund, which also operates in exceptional circumstances?

Definition of a carer

The Committee has received a range of evidence which suggests that the definition of a carer contained in the draft clauses would significantly restrict the policy discretion of a future Scottish Government, for example, support could not be provided to a carer in full time education. What is your view on this issue?

Definition of disability

Draft clause 16 includes the provision which seeks to devolve benefits to disabled persons. Elsewhere in the UK Government's proposals, in relation to the devolution of employment support programmes, draft clause 22 defines disability as having the same meaning as that contained in the Equality Act 2010. The Committee has received a range of evidence which has questioned why two differing definitions of disability are being applied in the draft clauses and, in particular, concern has been expressed at what some witnesses have considered to be the narrow definition of disability being applied in draft clause 16.

- Why are two different definitions of disability employed in the draft clauses?
- The Committee has also received evidence which suggests that the draft clauses as currently drafted would not allow for the payment of a DLA/PIP replacement to the terminally ill. Is this your understanding?

Employment Support

The Smith Commission recommended the devolution of employment support programmes currently contracted by DWP. The draft clauses incorporate that recommendation through exceptions to the Employment reservations but only for

those employment programmes providing support to an individual for at least one year (i.e. the long-term unemployed).

- Do you consider that this reflects the intention of the Smith commission recommendation and if so why?

Veto Power

- You will be aware of the Scottish Government's view that clauses 20(4) and 21(3) constitute a veto power for DWP. What discussions have been held on this issue?

Interdependence and IGR with regard to welfare

Concerns have been raised by witnesses, in evidence to this Committee, about the challenges the proposed new division of responsibilities in welfare will have for democratic scrutiny and accountability.

- What mechanisms do you consider should be put in place to ensure this Parliament can scrutinise inter-governmental relations in this area?

Taxation & Borrowing

Scottish Rate of Income Tax

Transparency and accountability between the UK and Scottish governments would appear to be paramount in order to achieve the fiscal objectives of their respective administration(s). The recent scenario whereby the Autumn Budget announced changes to the Stamp Duty regime necessitating a consequential change in the Land and Building Transactions Tax rate and threshold setting is a pertinent example in this regard. Concerns have been raised in evidence with regard to what is being termed the potential for 'gaming' between the two governments.

- What principles should underpin the inter-governmental framework that needs to be laid down to avoid the effect of gaming?
- Would a refreshed understanding of inter-governmental protocol, for example, through the Memorandum of Understanding, be adequate as a safeguard or is legislation required?

Calculating Scottish VAT receipts

The concept of assignation is to allocate a share of the receipts based on the assessed percentage of the Scottish economy.

- Have any discussions taken place between the Scottish and UK Governments with regard to how the proportion of VAT to be assigned will be calculated? What is the UK Government's view of how Scottish VAT receipts will be calculated?

Borrowing

- What details do you consider will be required on borrowing powers in the new fiscal framework and will legislation will be required?
- Given that the draft clauses are relatively silent on the form borrowing powers will take. Does the UK Government expect that a prudential framework will be put in place or will there be some form of limit on borrowing such as a fixed financial cap or a % of GDP limit?

Crown Estate

- Is it in the spirit of the Smith Commission agreement that the Crown Estate in the rest of the UK will be able to continue to invest in Scotland after the scheme for transfer has been exercised, and that revenues generated from such activities will flow to the UK Treasury, without any opportunity for shared investments and a share of the revenues?
- Why does draft clause 23 only give the UK Treasury discretion to make a scheme for devolution of the Crown Estate, rather than make it an obligation to do so, including a timescale? Why is a statutory transfer scheme the most appropriate and efficient way for the powers to be devolved to Scotland – what consideration has been given to simply amending the Scotland Act 1998 and developing an appropriate Memorandum of Understanding?
- In evidence to this committee the Crown Estate described economic assets in Scotland as being the Crown Estate's "wholly owned portfolio". Is this the view of the UK Government and is this set out in legislation anywhere? Why would a half ownership of Fort Kinnaird Retail Park not also be considered an economic asset in Scotland?

Inter-Governmental Relations

IGR - General

The Smith Commission considered that bi-lateral relations between the Scottish and UK Governments needed to improve.

- What form do you think those bi-lateral relations should take?
- Are there any lessons that can be learned from the experience of the Joint Exchequer Committee?

The increasing importance of Inter-Governmental Relations in determining policy choices and outcomes means more challenges for parliamentary scrutiny and accountability.

- We recognise the need for some discussions to remain confidential, but is there really any rationale for not engaging more frequently with Parliament before and after intergovernmental meetings such as the JMCs or the Finance quadrilaterals?

No Detriment

The 'no detriment' principle within Smith will be difficult to implement in a way that satisfies both governments.

- Is there a need for some system of arbitration if there are disagreements about whether and how much detriment has occurred, and whether there should be recompense?
- Is the current dispute resolution function within the JMC sufficient to deal with this issue?

Constitutional Issues

Permanency

- Are the permanency provisions intended to have symbolic political value only or are they intended to have legal effects?
- Why does section 1 use the expression "is recognised as a permanent part of the United Kingdom's constitutional arrangements" in relation to the Scottish Parliament and the Scottish Government? Would stronger language, for example, "A Scottish Parliament is a permanent part of the United Kingdom's constitutional arrangements" or "There shall be a Scottish Parliament and it shall be a permanent part of the United Kingdom's constitutional arrangements" be more appropriate?

Sewel Convention / Legislative Consent Memoranda

- What do you understand by the word 'normally' in draft clause 2? What circumstances would justify legislating in devolved areas without the consent of the Scottish Parliament?
- Why does section 2 use the expression "it is recognised" in relation to the Scottish Parliament and the Scottish Government? Would stronger language, for example, "The Parliament of the United Kingdom shall not normally legislate with regard to devolved matters without the consent of the Scottish Parliament" be more appropriate?

Equalities

- Do you consider that the drafting of clause 24 is sufficient to allow the Scottish Parliament to legislate to impose gender quotas?

Additional issues raised by the Smith Commission for consideration

- What is the UK Government's position on those aspects in the Smith Commission report that were raised as additional issues for consideration between the two governments? What discussions have taken place and what progress, if any, is being made on these matters?