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The Scottish Government
Riaghaltas na h-Alba

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XX COMMONWEALTH GAMES
SCOTLAND

Bruce Crawford MSP
Convener
Devolution (Further Powers) Committee
c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

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Dear Bruce

On 15 June I sent you the Scottish Government's proposals for further devolution beyond the Smith Commission recommendations. I am now due to meet the Secretary of State for Scotland to discuss those proposals. To inform that meeting, the Scottish Government has produced the attached draft clauses which illustrate how our proposals could be translated into legislative provisions.

I look forward to appearing before the Committee on 25 June to give evidence on the Scotland Bill.

JOHN SWINNEY

FURTHER DEVOLUTION BEYOND THE SMITH COMMISSION

Draft Clauses to implement Scottish Government proposals

1. On 15 June, the Scottish Government published proposals, which build on existing devolved powers and those recommended by the Smith Commission to enable the Scottish Government and Parliament to take an integrated approach to a range of issues. This included proposals both for full fiscal autonomy and for a more limited but coherent package of powers to promote economic growth, create employment, and tackle inequality.

2. The following draft clauses would implement these proposals and are capable of being introduced via the current Scotland Bill. The draft clauses cover policy areas set out in the proposals: the implementation of the financial aspects of full fiscal autonomy, employment policy, health and safety, welfare and equality. There are also alternative clauses on business taxes in the absence of full fiscal autonomy.

LIST OF CLAUSES

Full fiscal autonomy

3. Full fiscal autonomy would mean that all onshore and offshore taxes would be designed and set in Scotland, including tax rates, allowances, thresholds and the tax bases. There would be some exceptions – such as VAT – where EU rules require uniformity across the UK. The Scottish Parliament would also take responsibility for all key elements of domestic expenditure, including welfare, and a direct payment would be made for the services Scotland receives from being part of the UK. These would include agreed amounts for defence, security, foreign policy and servicing of historic debt interest. In addition to a full range of tax powers, it is essential to full fiscal autonomy that the Scottish Parliament has access to other economic levers, such as employment rights and aspects of migration.

4. Full fiscal autonomy also requires a fiscal framework jointly agreed by the two governments. Such a framework would protect monetary stability, facilitate coordination on fiscal policy, oversee economic cooperation and joint responsibilities in areas of mutual interest between the UK and Scotland and safeguard fiscal sustainability. Transition to full fiscal autonomy will take some years to complete, as implementation of the Scotland Act 2012 has demonstrated. During that transition period the Barnett formula will need to be retained to ensure that Scotland's public finances remain predictable and sustainable as the Scottish Parliament assumes responsibility for raising a greater proportion of its own revenues, and begins to benefit from measures to improve Scotland's economic performance.

5. These clauses implement the fiscal and borrowing aspects of Full Fiscal Autonomy. The first clause on full fiscal autonomy gives an overarching strategic view of the proposal. This clause provides that the Scottish Government and UK Government must enter into an Economic Agreement for the implementation of full fiscal autonomy in Scotland and establish a framework within which the two Governments would coordinate their economic and fiscal policies. The clause lists issues that must be covered in that Agreement, and also provides that full fiscal autonomy would be implemented over a period of time, as the Scottish Parliament and Scottish Government acquire capacity to carry out their additional competences.

6. Full fiscal autonomy is also given a broad definition: the Scottish Parliament and Scottish Government having competence for determining revenues and public expenditure in Scotland.

7. This definition is elaborated by the other clauses which give the detailed building blocks for full fiscal autonomy:

- clauses 2, 3 and 4 implement the devolution of national insurance, corporation tax and capital gains tax
- clause 5 implements a number of changes to various finance and taxation sections of the Scotland Act to provide for more autonomy in these sections for the Scottish Parliament and Scottish Government; this clause also amends the main economic reservation in A1 of schedule 5 to the Scotland Act by inserting two new exceptions to the reservation to cover Scotland’s fiscal and economic policy and borrowing and lending by the Scottish Government

- clause 6 adds the finance and tax sections of the Scotland Act to the exemption in the schedule 4 protection against modification; the effect of this is that those sections will be subject to modification and adjustment by the Scottish Parliament (which is prohibited at present); this would mean that the Scottish Parliament would be able to amend these finance and tax provisions of the Scotland Act on its own initiative.

1 Full fiscal autonomy for Scotland

(1) The Scottish Government and the Government of the United Kingdom must enter into an agreement (the “Economic Agreement”)—

(a) setting out a plan for implementation of full fiscal autonomy for Scotland, and

(b) establishing a framework within which the two Governments are to coordinate their economic and fiscal policies in the context of full fiscal autonomy for Scotland.

(2) Full fiscal autonomy for Scotland means that—

(a) the Scottish Parliament and Scottish Government have competence for determining revenues raised in or as regards Scotland through taxation and borrowing,

(b) the Scottish Parliament and Scottish Government have competence for determining levels of public expenditure in or as regards Scotland,

in accordance with the amendments made by this Act.

(3) The framework mentioned in subsection (1)(b) must in particular include arrangements for—

(a) facilitating fiscal coordination,

(b) overseeing economic cooperation,

(c) joint responsibilities in areas of mutual interest,

(d) safeguarding fiscal sustainability.

(4) In determining the terms of the Economic Agreement the two Governments must seek to ensure—

(a) the maintenance of monetary stability throughout the United Kingdom,

(b) the maintenance and promotion of the single markets in the United Kingdom and the European Union,

(c) that they cooperate in the exercise of their respective functions relating to the administration and collection of taxes,

(d) an equitable and transparent approach to consequences, resources and rewards,

(e) that the Scottish Parliament and the Scottish Government retain the benefits of increased tax revenues delivered by successful policies pursued by them,

(f) that the Scottish Parliament and the Scottish Government have the powers necessary to manage the consequences of full fiscal autonomy for Scotland,

(g) that full fiscal autonomy for Scotland is implemented over a period of time, as the Scottish Parliament and the Scottish Government acquire capacity to carry out their additional competences.

(5) The Economic Agreement is to be entered into as soon as possible and the two Governments must cooperate in good faith with a view to achieving that.

(6) As soon as possible after the Economic Agreement is entered into—

(a) the Scottish Ministers must lay a copy of it before the Scottish Parliament, and

(b) the Secretary of State must lay a copy of it before both Houses of Parliament.

(7) The two Governments must from time to time review the Economic Agreement and make such amendments to its terms as they may agree with a view to ensuring that it continues to meet the requirements of this section.

(8) Subsection (6) applies to the Economic Agreement as amended as it applies to the Agreement as entered into.

(9) The Secretary of State may, with the agreement of the Scottish Ministers, by regulations modify this section.

(10) A statutory instrument containing regulations under subsection (9) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

2 National Insurance

(1) Section F1 of Schedule 5 to the Scotland Act 1998 is amended as follows.

(2) In the illustrations, omit “National Insurance;”.

(3) In the exceptions, at the beginning insert—

“National Insurance.”.

3 Tax on profits of corporations etc.

(1) The Scotland Act 1998 is amended as follows.

(2) In Part 4A (taxation), after Chapter 2 insert—

“**CHAPTER 2A**

TAX ON PROFITS OF CORPORATIONS ETC.

80HB Tax on profits of corporations etc.

(1) A tax charged on the profits of companies carrying on activities in Scotland is a devolved tax.

(2) For the purposes of this section “company” means any body corporate or unincorporated association.

4 Tax on capital gains

(1) The Scotland Act 1998 is amended as follows.

(2) In Part 4A (taxation), after Chapter 2A (as inserted by section (*tax on profits of corporations etc.*)) insert—

“**CHAPTER 2B**

TAX ON CAPITAL GAINS

80HC Tax on capital gains

A tax charged on the gains (or other benefits) accruing to a Scottish taxpayer on the disposal of assets is a devolved tax.”.

5 Finance and taxation: further provision

(1) The Scotland Act 1998 is amended as follows.

(2) In section 64 (Scottish consolidated fund)—

(a) in subsection (5), for “The Treasury may, after consulting with the Scottish Ministers” substitute “The Scottish Ministers may, after consulting with the Treasury”,

(b) in subsection (6), omit “, at such times and by such methods as the Treasury may from time to time determine,”.

(3) In section 66(4) (borrowing by the Scottish Ministers), for “any other” substitute “an Act of the Scottish Parliament or an”.

(4) In section 67(3) (lending by the Secretary of State), for “Secretary of State” substitute “Scottish Ministers”.

(5) In section 67A (lending for capital expenditure)—

(a) in subsection (2), for “Secretary of State” substitute “Scottish Ministers”,

(b) omit subsections (5) and (6).

(6) In section 68(2) (borrowing by statutory bodies), omit “given with the approval of the Treasury”.

(7) In section 72 (accounts of loans to the Scottish Minsters)—

(a) the existing provision becomes subsection (1),

(b) in the closing words of that provision, after “Parliament” insert “and send copies of each to the Scottish Ministers”, and

(c) after that provision insert—

“(2) The Scottish Ministers must lay copies of the certified account and the Comptroller and Auditor General’s report before the Scottish Parliament.”.

(8) In section 80B (power to add new devolved taxes)—

(a) in subsection (1)—

(i) for “Her Majesty may by Order in Council” substitute “The Scottish Ministers may by order”,

(ii) in paragraph (b), for “She considers” substitute “they consider”,

(b) in subsection (2)—

(i) for “Order in Council” substitute “order”,

(ii) in the closing words—

(A) for “Her Majesty considers” substitute “the Scottish Ministers consider”,

(B) for “Order” substitute “order”,

(c) after subsection (2) insert—

“(3) Before making an order under this section the Scottish Ministers must consult the Treasury.”.

(9) In section 80G (supplemental powers to modify enactments), in each of subsections (1), (1A), (1B), (2), and (4), for “Treasury” substitute “Scottish Ministers”.

(10) In Section A1 in Part 2 of Schedule 5 (fiscal, economic and monetary policy), in the Exceptions—

(a) at the beginning insert—

“Fiscal and economic policy in connection with anything within the legislative competence of the Scottish Parliament or the executive competence of the Scottish Government.”.

(b) after the entry for local taxes insert—

“Borrowing and lending by the Scottish Ministers.”.

(11) In paragraph 1 of Schedule 7 (procedure for subordinate legislation)—

(a) in the table, in the entry for—

(i) section 64(5), for “Type K” substitute “Type L”,

(ii) section 67(3), for “Type E” substitute “Type L”,

(iii) section 67A(2), for “Type E” substitute “Type L”,

(iv) section 80B, for “Type A” substitute “Type L”,

(v) section 80G, for “Type E” substitute “Type L”,

(b) in the *Notes*, omit the note relating to the entry for section 80G.

6 Scope to modify the Scotland Act 1998

(1) The Scotland Act 1998 is amended as follows.

(2) In paragraph 4 of Schedule 4 (protection of Scotland Act 1998 from modification) for sub-paragraph (2) substitute—

“(2) This paragraph does not apply to modifying—

(a) the following sections in Part 1 (the Scottish Parliament)—

(i) section 1(2) to (5),

(ii) section 2(1), (2) and (2B) to (6),

(iii) sections 3 to 12,

(iv) sections 13 to 27,

(v) section 28(1) to (6),

(vi) section 29(2)(e),

(vii) section 31,

(viii) section 32(1) to (3),

(ix) section 36, and

(x) sections 38 to 42,

(b) the following sections in Part 2 (the Scottish Administration)—

(i) section 44(1C), (2) and (4),

(ii) sections 45 to 50,

(iii) section 51(1), (2) and (5) to (8),

(iv) section 52,

(v) section 59, and

(vi) section 61,

(c) Part 3 (financial provisions),

(d) Part 4A (taxation),

(e) in Part 5 (miscellaneous and general)—

(i) sections 81 to 85,

(ii) sections 91 to 95, and

(iii) section 97,

(f) the following provisions in Part 6 (supplementary)—

(i) sections 112, 113 and 115, and Schedule 7 (insofar as those sections and that Schedule apply to any power in this Act of the Scottish Ministers to make subordinate legislation),

(ii) sections 118, 120 and 121,

(iii) section 124 (insofar as that section applies to any power in this Act of the Scottish Ministers to make subordinate legislation),

(iv) section 126(1) and (6) to (8), and

(v) section 127,

(g) Schedule 1 (constituencies, regions and regional members),

(h) paragraphs 1, 2(1) and 3 to 7 of Schedule 2 (Scottish Parliamentary Corporate Body), and

(i) Schedule 3 (standing orders – further provision).”.

(3) In paragraph 4 of Schedule 4, in sub-paragraph (3), for “sections 64(7), 66(2), 71(7) and” substitute “section”.

(4) In paragraph 1 of Schedule 7 (procedure for subordinate legislation) in the entry for section 97 for “Type A” substitute “Type D”.

Priorities for further devolution to the Scottish Parliament

8. The Scottish Government also identified priorities for further devolution to the Scottish Parliament. These would form part of the implementation of full fiscal autonomy but would also , in the absence of full fiscal autonomy, provide opportunities to address economic performance, productivity and social issues through greater powers over employment policy, national insurance and business taxes; welfare and equality policy.

9. The following draft clauses cover employment, health and safety, welfare, equalities. There are also alternative clauses on business taxes in the absence of full fiscal autonomy. They expand the competence of the Scottish Parliament and Scottish Government by removing or adjusting reservations in the Scotland Act.

Employment Policy

10. The Scottish Government's priorities for devolution are:

- Responsibility for the minimum wage in Scotland
- Responsibility for Employment Law, Trade Unions, and Health and Safety
- Responsibility for employment policy in Scotland, including the full transfer of all DWP employment support programmes and Jobcentre Plus in Scotland

Employment legislation (including minimum wage)

7 Employment and industrial relations

In Part 2 of Schedule 5 to the Scotland Act 1998, omit Section H1 (employment and industrial relations).

Health and Safety

8 Health and safety

(1) In Part 2 of Schedule 5 to the Scotland Act 1998 ("the 1998 Act"), omit Section H2 (health and safety).

(2) The Health and Safety Executive is a cross-border public authority for the purposes of the 1998 Act.

(3) The 1998 Act applies in relation to the Health and Safety Executive in the same way as it applies in relation to cross-border public authorities specified in an Order in Council under section 88(5) of the 1998 Act.

Employment Support Programmes

9 Job search and support

In Part 2 of Schedule 5 to the Scotland Act 1998, omit Section H3 (job search and support).

Welfare

11. The Scottish Government's priorities for devolution are:

- Responsibility for working age benefits; or at least further flexibilities in Universal Credit, including the power to vary the Carer's, Child and Childcare Costs elements and the Work Allowance, and conditionality and sanctions.
- Benefits relating to children (Child Benefit & Guardian's Allowance).

<u>Full devolution of working-age benefits</u>

10 Working age benefits

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 9 (see section 23A above) insert—

"**Exception 10**

Benefits entitlement to which, or the purposes of which, are the same as or similar to those of any of the following benefits—

(a) universal credit under Part 1 of the Welfare Reform Act 2012,

(b) jobseeker's allowance (whether contributions-based or income-based) under the Jobseekers Act 1995,

(c) employment and support allowance (whether contributory or income-related) under Part 1 of the Welfare Reform Act 2007,

(d) income support under section 124 of the Social Security and Benefits Act 1992,

(e) housing benefit under section 130 of that Act,

(f) child tax credit and working tax credit under the Tax Credits Act 2002.

The benefits referred to in paragraphs (a) to (f) above are—

(a) in the case of income-based jobseeker's allowance and income-related employment support allowance, those benefits as they existed on 28 April 2013 (the day before their abolition),

(b) in the case of the other benefits, those benefits as they existed on 28 May 2015 (the date of introduction into Parliament of the Bill for the Scotland Act 2015).".

Alternative clause to provide flexibilities in Universal Credit if all working age benefits are not to be devolved

11 ***Universal credit: powers to vary other elements***

(1) *A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.*

(2) *This section applies to—*

(a) *regulations under section 8(3)(a) of the Welfare Reform Act 2012 (amount in respect of earned income) so far relating to the work allowance (that is, the amount of a claimant's earned income that is to be disregarded in calculating the amounts to be deducted from the maximum amount in accordance with section 8(3) of that Act),*

(b) *regulations under section 10 of that Act (amount in respect of responsibility for children and young persons),*

(c) *regulations under section 12 of that Act (amounts in respect of other particular needs or circumstances) so far as relating to—*

(i) *the needs or circumstances referred to in subsection (2)(c) of that section (caring responsibilities for a severely disabled person), or*

(ii) *needs or circumstances of a claimant in paid work relating to childcare costs,*

(d) *regulations under any of sections 14 to 22, 24 and 25 of that Act (work-related requirements), and*

(e) *regulations under any of sections 26 to 28 of that Act (sanctions).*

(3) *The Scottish Ministers may not exercise the function of making regulations to which this section applies unless they have consulted the Secretary of State.*

(4) *The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.*

(5) *Where regulations are made by the Scottish Ministers by virtue of subsection (1)—*

(a) *section 43 of the Welfare Reform Act 2012 (regulations: procedure) does not apply, and*

(b) *the regulations are subject to the negative procedure (see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010).*

Benefits relating to children

12 Benefits relating to children

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 10 (see section (*Working age benefits*) above) insert—

"**Exception 11**

Benefits entitlement to which, or the purposes of which, are the same as or similar to those of any of the following benefits—

(a) guardian's allowance under section 77 of the Social Security Contributions and Benefits Act 1992,

(b) child benefit under Part 9 of that Act.

The benefits referred to in paragraphs (a) and (b) are those benefits as they existed on 28 May 2015 (the date of introduction into Parliament of the Bill for the Scotland Act 2015).".

Equality Policy

12. The Scottish Government proposes that the Scottish Parliament has full devolved responsibility for equal opportunities and equality legislation.

13 **Equal opportunities**

In Part 2 of Schedule 5 to the Scotland Act 1998, omit Section L2 (equal opportunities).

Business Taxes

13. If clauses relating to full fiscal autonomy (clauses 1 – 6 above) were not to be accepted, the Scottish Government's priorities for devolution are:

- *Policy control over Employers' National Insurance Contributions*
- *Full responsibility for corporation tax in order to provide targeted incentives*
- *Full responsibility for capital gains tax*

The following draft clauses would give effect to these priorities. These clauses would be introduced separately if the clause on full fiscal autonomy is not accepted.

Employers' National Insurance Contributions

14 *National Insurance: employers' contributions*

(1) Section F1 of Schedule 5 to the Scotland Act 1998 is amended as follows.

(2) In the illustrations, omit "National Insurance;".

(3) In the Exceptions, after exception 11 (see section (Benefits relating to children)) insert—

*"**Exception 12***

National Insurance so far as relating to contributions payable by employers.".

Tax on profits of corporations etc.

15 *Tax on profits of corporations etc.*

(1) The Scotland Act 1998 is amended as follows.

(2) In Part 4A (taxation), after Chapter 2 insert—

*"**CHAPTER 2A***

TAX ON PROFITS OF CORPORATIONS ETC.

80HB Tax on profits of corporations etc.

(1) A tax charged on the profits of companies carrying on activities in Scotland is a devolved tax.

(2) For the purposes of this section "company" means any body corporate or unincorporated association.

Tax on capital gains

16 *Tax on capital gains*

(1) *The Scotland Act 1998 is amended as follows.*

(2) *In Part 4A (taxation), after Chapter 2A (as inserted by section (tax on profits of corporations etc.)) insert—*

"CHAPTER 2B

TAX ON CAPITAL GAINS

80HC Tax on capital gains

A tax charged on the gains (or other benefits) accruing to a Scottish taxpayer on the disposal of assets is a devolved tax.".