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Dear Bruce,

Thank you for your letter of 29 June, in which you raised a number of issues which the Committee did not have time to cover when I gave evidence on 25 June and requesting some additional information. I have addressed these points in the order of your letter.

Meetings between the Scottish Government and UK Government

At the evidence session I committed to provide an update to the Committee on the meetings that have taken place between governments to discuss the Scotland Bill proposals. There has been a wide range of contact as the Scottish Government continued to provide comments on the draft clauses and our views on how, in some areas, these could be amended to reflect more accurately the conclusions of the Smith Commission. You will appreciate that the pre-election period and General Election limited the scope for engagement during this period to some degree. As previously, some of this consideration and discussion has taken place as part of routine contact between governments, but I have provided details of meetings that covered Scotland Bill issues in the attached annex.

Negotiations on the fiscal framework are also progressing. I met with the Chancellor of the Exchequer and the Chief Secretary to the Treasury on Monday 8 June to agree next steps in agreeing Scotland's new fiscal framework. Substantive negotiations commenced at a meeting of the Joint Exchequer Committee (JEC) on Tuesday 7 July, which attended along with the Chief Secretary to the Treasury. Regular meetings of the JEC will be held between now and the autumn, by which time we expect the framework to be agreed. Officials from the Scottish Government and HM Treasury are in regular contact between meetings of the JEC, to progress the work plan and produce joint papers for Ministerial consideration.

Meeting with Secretary of State

I met the Secretary of State for Scotland on 25 June and 8 July to discuss the way forward on the Scotland Bill and the Scottish Government's priorities for devolution beyond the Smith Commission recommendations.

On the Bill, we noted that there were different views on whether the current Scotland Bill implemented the Smith report in full. I reiterated the views of the Scottish Government and the Devolution (Further Powers) Committee of the Scottish Parliament that it did not yet deliver the Smith Report. The Secretary of State restated the UK Government belief that the Bill fulfilled the Smith recommendations, but had undertaken to listen to and reflect on the views expressed by the Scottish Government, the Committee, and during the Bill's proceedings at Westminster.

We agreed that officials should meet over the summer to identify areas where there remained disagreements, and how these could be addressed, taking account of the views of stakeholders. In particular we discussed the Scottish Government's desire to consider employment services for Scotland in the round. The Secretary of State and I also agreed to meet later in the summer to consider officials' work and discuss remaining areas of disagreement.

My intention is that the conclusions of this exercise should be available to inform further Parliamentary consideration at both Westminster and Holyrood, recognising the need for proper democratic scrutiny. At Westminster this would be provided by consideration of the governments' proposals by the Commons at the Report Stage, which will be after the Westminster recess. The process should therefore be concluded to allow amendments to be available for Report Stage, and in time to allow the Devolution (Further Powers) Committee to scrutinise any proposals for change.

On devolution beyond the Smith Commission, the Secretary of State undertook to propose a process for considering the Scottish Government's proposals in this area. I emphasised the need for that process to take account of the concerns expressed by stakeholders about the current Bill and the package of Smith recommendations.

Inter-governmental relations

You asked for an update on the Joint Ministerial Committee (JMC) work on a revised Memorandum of Understanding (MoU), as referenced in the UK Government's Command Paper.

At the Plenary Session of the Joint Ministerial Committee held on 15 December 2014 the Prime Minister, First Minister of Scotland, First Minister of Wales and First Minister and deputy First Minister of Northern Ireland commissioned the Joint Secretariat to carry out a review of the Memorandum of Understanding (MoU) and its supplementary agreements. The Secretariat has engaged in a number of meetings and discussions since then, but progress has been delayed considerably during the General Election period. Officials are currently drawing together and refining a range of options for revision of the MoU – to be presented to Ministers for consideration at the next Plenary Session of the Joint Ministerial Committee – that might address the concerns and suggestions of our respective Ministers, Parliamentary Committees and other interested parties.

Benefits for carers, disabled people and those who are ill

The Scottish Government has carefully considered all aspects of the social security-related clauses including whether the proposed definition of "disability" would restrict the ability of the Scottish Parliament to make meaningful changes to social security benefits in future. Our view is that the clause defining a 'disability benefit' met the requirements as set out in Smith and provided a reasonable scope to implement a replacement benefit. The current definition enables the Scottish Government to vary the level and criteria placed on the benefits and it

would be for the Scottish Parliament to legislate on the definitions in relation to any future benefit. This was not the case in relation to the clause on benefits for carers which imports DWP's very specific barriers to defining who is eligible for a benefit. Having reflected on this distinction, on this basis it appeared that greater benefit could be realised from focusing on broadening the definition of carers to avoid those clauses being unnecessarily restrictive and ensuring that the scope of the powers that the Scottish Parliament can exercise is in line with the recommendations of the Smith Commission.

Gender quotas

The report of the Smith Commission made the following recommendation in relation to equal opportunities— "The Equality Act 2010 will remain reserved. The powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland. The Scottish Parliament can legislate in relation to socio-economic rights in devolved areas."

The Scottish Government does not consider that Clause 32 of the Scotland Bill as drafted gives effect to the relevant Smith recommendation. It makes no specific reference to gender quotas. It also requires that devolution of competence over gender quotas be delivered only by a mechanism that prevents relevant provision in the Equality Act 2010 being modified. Given that section 159 of the Act applies to the appointment of a person as a member of a Scottish public body, we consider that it would be extremely difficult to proceed in this way. The alternative clause 32(2) that the Scottish Government has published creates a clear and unambiguous exception to the reservation to cover gender quotas in respect of public bodies in Scotland.

Tribunals

The Smith Commission recommendation stated that "all powers over the management and operation of all reserved tribunals.. will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission" (paragraph 63); the underlying substantive law will remain reserved (paragraph 64)".

Clause 33 of the Scotland Bill as currently drafted puts in place a framework which envisages transfer being effected by a separate Order in Council for each tribunal. Each Order will define the specified functions that will transfer to a specified Scottish Tribunal. However, the clause confers wide powers to modify the functions transferred and to impose conditions, restrictions and requirements on their exercise. The Order may also contain any other provision which Her Majesty considers necessary or expedient. Therefore it is not immediately clear from the existing clause exactly what will transfer, as each Order will need to be negotiated separately.

The Scottish Government's alternative clause takes an approach which we consider better reflects the terms of the Smith Commission's conclusions. It sets out our proposal that all functions exercisable in relation to Scottish cases (or a specified category of Scottish case) should transfer. The broad powers contained in clause 33 to qualify what functions transfer and how they are to be exercised are omitted. The alternative clause is also clear that competence over a tribunal's practice, such as the appointment and management of the judiciary and rules of procedure and fees in relation to transferred cases become devolved, as per the Smith Commission recommendation.

Competition Policy

The Scottish Government's alternative clause 55 delivers on the intent of Smith by giving the Scottish Ministers the power to make references to the Competition and Markets Authority (CMA) for a second stage market investigation when they deem it necessary, and without the need to act jointly with the Secretary of State. Accordingly, where they have competition concerns (that is to say, where they have reasonable grounds for suspecting that any feature, or combination of features, of a market in the UK for goods and services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or part of the UK) they can act without the involvement of the Secretary of State.

The Scottish Government is mindful that, while clause 55 (as introduced) would prima facie provide the Scottish Ministers with a power to make references equivalent to the power of a UK Minister of the Crown, this may in practice fail to provide them with true parity with UK Ministers, given that a Secretary of State may be more inclined to act jointly with one of his own Ministers from his own government, than with of a Scottish Minister from another.

The Scottish Government does not believe that Scottish Ministers making any such references would lead to difficulties where markets are of a cross-border nature. When the CMA undertakes a market investigation, it will take a decision on the geographic market in question. Geographic markets may be based on the location of either suppliers or customers. Additionally, the geographic market: may be local, regional, national or wider. Most importantly, the CMA may examine geographic markets at more than one level in the same investigation, e.g. at both national and local levels. As an example, the current CMA investigation on the retail banking market is currently using this approach with Scotland being considered as a separate market within the wider investigation.

I hope that this information is useful to the Committee and I will keep the Committee updated on the progress and content of discussions between the Scottish and UK Government on developments with the Scotland Bill. As I have previously made clear, it is my view that the Committee's role is of the utmost importance in scrutinising the Bill as it passes through the legislative process and will provide any information that will support it in doing so.

JOHN SWINNEY

UKG/SG Meetings

Date	Subject	Scottish Government lead	UK Government lead
25 March	Fiscal framework	Fiscal responsibility	HM Treasury
26 March	Crown Estate	Marine Scotland	HM Treasury
27 April	Energy	Energy and Climate Change	DECC
30 April	Fiscal framework	Fiscal responsibility	HM Treasury
7 May	Social security	Social Security policy & delivery	DWP
20 May	Energy	Energy and Climate Change	Oil and Gas Authority
26 May	Social security	Social Security policy & delivery	DWP
25 March	Fiscal framework	Fiscal responsibility	HM Treasury
29 April	Bill management	Elections and Constitution	Scotland Office
29 May	Energy	Energy and Climate Change	Ofgem
30 April	Fiscal framework	Fiscal responsibility	HM Treasury
2 June	Fuel poverty and Energy Company obligation	Better Homes/Energy	DECC
29 May	Fiscal framework	Fiscal responsibility	HM Treasury
4 June	Consumer protection and competition	Consumer and Competition	BIS
8 June	Fiscal framework	Fiscal responsibility	HM Treasury
8 June	Digital	Digital	DCMS
9 June	Welfare and equal opportunities	Social security/equalities	Scotland Office
16 June	Tribunals	Tribunals	Ministry of Justice
16 June	Ofcom	Digital	DCMS
16 June	Equal opportunities	Equalities	Scotland Office, Government Equalities Office
17 June	Consumer protection and competition	Consumer and Competition	BIS
18 June	Social security	Social Security policy & delivery	DWP
22 June	Broadcasting	Culture and Historic Environment	DCMS
24 June	Energy	Energy and Climate Change	DECC
25 June	Scotland Bill / Employment services	Constitution/Employability	Scotland Office
25 June	Welfare and equal opportunities	Social security/equalities	Scotland Office
1 July	Social security	Social Security policy & delivery	DWP
7 July	Fiscal Framework (Joint Exchequer Committee)	Fiscal responsibility	HM Treasury



Non-legislative provisions

15 April	Welfare foods	Child and Maternal Health	DoH
6 May, 3 June, 2 July	Food levies	Rural Affairs, Food & Environment	DEFRA
27 May, 5 June	Poisons	Pharmacy and Medicines	Home Office
25 March, 1 June, 23 June, 1 July	Medicines	Pharmacy and Medicines	Department of Health
8 April, 20 April	Asylum	Equalities	Home Office
23 April	Human Trafficking	Justice	Home Office
11 meetings between March - July	Health and Safety	Public Health	HSE / DWP