

## SPICe Briefing

# Further Devolution for Scotland: The Draft Clauses

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### SPICe Research

Two months after the Smith Commission reported with recommendations for further devolution of powers to the Scottish Parliament, the UK Government published a Command Paper - "[Scotland in the United Kingdom: An Enduring Settlement](#)" containing 44 draft clauses intended to form the basis of a Scotland Bill to give effect to these recommendations. The three main UK political parties have agreed that this Bill will be introduced in the first Queen's Speech of the next parliament following the General Election in May this year.

The draft clauses propose devolving to the Scottish Parliament and Scottish Government a range of new powers, including new tax raising powers, welfare powers and powers over Scottish Parliament and local government elections in Scotland.

This briefing provides background to the draft clauses and discusses some of the issues arising from them, including commentary on the clauses by academics and other commentators.



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## EXECUTIVE SUMMARY

On 22 January 2015, the UK Government published Command Paper 8990 containing 44 draft clauses outlining the further legislative and executive powers to be devolved to the Scottish Parliament and Scottish Government.

These clauses are the UK Government's response to the recommendations of the Smith Commission. They propose to devolve new powers to Scotland, including powers over:

- Taxation, including the rates and thresholds of income tax for non-savings and non-dividend income, Air Passenger Duty and Aggregates Levy; Revenues from the first 10 percentage points of the standard rate of VAT and the first 2.5 percentage points of the reduced rate of VAT will be assigned to the Scottish Government
- Certain aspects of welfare, including: the power to vary the frequency of Universal Credit payments, to vary plans for single household payments and to make direct payments to landlords; Attendance Allowance; Carer's Allowance; Disability Living Allowance; Personal Independence Payment Industrial Injuries Disablement Allowance and Severe Disablement Allowance; benefits under the Regulated Social Fund and Discretionary Housing Payments
- Employment programmes
- Management of the Crown Estate's economic assets in Scotland
- Management and operation of all reserved tribunals in Scotland
- Consumer advocacy and advice
- Gender quotas in respect of public bodies in Scotland
- Scottish passenger rail franchises and the
- The functions of the British Transport Police in Scotland
- The operation of the Scottish Parliament including power over the number of MSPs overall and the number of constituency and list MSPs
- Scottish Parliament and local government elections in Scotland
- Supplier obligations in relation to energy efficiency and fuel poverty
- The licensing of onshore oil and gas extraction

In addition, the Command Paper outlines a new fiscal framework for Scotland to be agreed and implemented jointly by the UK and Scottish Governments through the Joint Exchequer Committee.

The UK Government considers that this package provides a "durable settlement" which will give the Scottish Parliament greater financial responsibility and make it more accountable. However, some commentators say that the draft clauses represent a minimalist approach, lack cohesion and question whether the settlement will indeed prove durable.

The three main UK political parties intend that the draft clauses will form the basis of a Scotland Bill to be introduced in the next Queen's Speech following the General Election to the UK Parliament in May this year.

## BACKGROUND

On 16 September 2014, two days before the Referendum on Scottish Independence, the Prime Minister, Deputy Prime Minister and Leader of the Opposition made a joint declaration promising to deliver a package of new powers to the Scottish Parliament in the event of a 'no' vote. This package was to be delivered within a timetable proposed by former Prime Minister, Gordon Brown. The timetable included publishing, by 25 January 2015, draft clauses outlining the further legislative and executive powers to be devolved to the Scottish Parliament and Scottish Government.

On the morning after the referendum, the Prime Minister announced the appointment of Lord Smith of Kelvin to take forward these proposals. Lord Smith was tasked to produce, by 30 November 2014, a report outlining Heads of Agreement with recommendations for further devolution of powers to strengthen the Scottish Parliament within the UK.

The Smith Commission reported with its recommendations on 27 November 2014 (Smith 2014a).

### UK Government White Paper

On 22 January, three days in advance of their deadline, the UK Government published Command Paper 8990 "[Scotland in the United Kingdom: An Enduring Settlement](#)". Annex A to this paper lists 44 draft clauses which represent the UK Government's response to the recommendations contained in the Smith Commission Report (Smith 2014a).

The draft clauses propose devolving to the Scottish Parliament and Scottish Government a range of new powers, including new tax raising powers, welfare powers and powers over Scottish Parliament and local government elections in Scotland. In addition, the Command Paper proposes a new fiscal framework for Scotland, consistent with the overall UK fiscal framework. The new fiscal framework will be agreed and implemented jointly by the UK Government and the Scottish Government through the Joint Exchequer Committee. Both the UK and Scottish Parliaments will have the opportunity to input into the process.

Taken together, the UK Government considers that this package of new powers will provide a "durable settlement" which will give the Scottish Parliament greater financial responsibility and make it more accountable to the people of Scotland. In a Ministerial statement to the House of Commons, David Mundell, Parliamentary Under-Secretary of State for Scotland, said:

"The clauses published today will make it possible quickly to translate the Smith commission agreement into law at the beginning of the next Parliament. The draft clauses provide for an already powerful Scottish Parliament to become further empowered and more accountable to those who elect it. As a result, the Scottish Parliament will become one of the most powerful devolved Parliaments in the world.

... The biggest transfer of powers to the Scottish Parliament and Scottish Ministers since the start of devolution comes with greater flexibility for the Scottish Parliament and the Scottish Government to manage their own arrangements, with statutory recognition of the enduring place of a Scottish Parliament in the UK's constitutional arrangements". (House of Commons 2015)

The Secretary of State for Scotland, Alasdair Carmichael MP, in evidence to the House of Commons Scottish Affairs Committee, said that the draft clauses faithfully replicated the recommendations in Smith and that the Smith recommendations themselves represented, "... a faithful replication of the vow that was made in the course of the referendum". (House of Commons, 2015b)

The Scottish Government is less convinced that the draft clauses fulfil all of the recommendations in the Smith report but conceded that they would, nevertheless, provide important new powers for Scotland. In evidence to the Devolution (Further Powers) Committee, the Deputy First Minister, John Swinney MSP said:

"The Scottish Government does not believe that the Smith provisions go nearly far enough, but they are nevertheless an important step in providing the Parliament with further levers to improve the lives of the people of Scotland". (Devolution (Further Powers) Committee, 2015g)

Asked by the House of Commons Political and Constitutional Reform Committee whether the draft clauses would lead to a more or less enduring settlement than the 1998 and 2012 Scotland Acts, Juliet Swann from the Electoral Society Scotland, said:

"Basically, there is a gap between what is happening now and what either the Scottish people want or what they know is happening already. David mentioned reflecting what the Scottish population think, but we do not really know what they think. We had a referendum on a yes and a no decision and then suddenly we had the Smith commission. Now we have draft legislation and no one has spoken to anybody and asked them what they want or what the purpose of devolving further powers is. We are going about it in such a piecemeal fashion, rather than thinking about the whole of the UK context and where Scotland and the Scottish Parliament fit within that and what the purpose is of devolving more powers, other than political tactics, and it is a bit of a guddle". (House of Commons Hansard 2014b)

The Chairman of the House of Lords Select Committee on the Constitution also questioned whether the circumstances which gave rise to the draft clauses were conducive to a lasting settlement:

"Given the way in which the new clauses have had their conception and birth—against the background of pressure to make commitments during a referendum campaign, a tight timescale being set, a commission outwith Parliament, a parliamentary process being established and now the production of new clauses—do either or both of you think that there is a proper opportunity for a major constitutional change of this kind to be fully debated in Parliament, and might that not jeopardise what is termed in the Command Paper an enduring settlement?" (House of Lords 2015)

Alasdair Carmichael MP gave several reasons why he thought that the process leading up to the draft clauses would not compromise the longevity of the settlement. One related to the work done by the various party commissions set up during the referendum campaign:

"There is an earlier part to the work which, with respect, Lord Chairman, you did not touch on, and that is the extensive work that each of the three parties, the Labour Party, the Conservatives and the Liberal Democrats, did in preparation with their commissions ahead of the referendum and the vow that was made then. Sometimes you have to take a step back to see what you have achieved. I think it was quite remarkable that for the first time ever, we have had all five political parties in Scotland in the room talking about

constitutional change and agreeing a package. That is quite a moment for our constitutional future, and that is the guarantee of stability”.

Alasdair Carmichael further argued that the draft clauses would be the subject of detailed scrutiny which would take place in the lead up to the May General Election and in the parliamentary scrutiny of the Scotland Bill following the election:

“As for Parliament’s role in this, first, we will have been through a general election where the proposals will have been the subject of some debate and where all three parties will have had manifesto commitments in relation to them. Then there will be the normal parliamentary process. This is a Bill that, as a constitutional Bill, will be taken on the Floor of each House. I know enough about the workings of both Houses to know that nothing here will be given anything less than the total scrutiny that it deserves. These are important matters. We do not want the law of unintended consequences to start operating after that. That is why in the Scotland Office we have already undertaken an extensive programme of stakeholder engagement among the different interests in civic Scotland, the voluntary sector and elsewhere, and that process will continue from now until the introduction of the Bill following the Queen’s Speech”.

“I do not believe that the clauses will suffer from a lack of scrutiny. I do believe that some of the issues that required to be addressed were difficult. I think it actually helped that we did it to a tight timetable, because a lot of these difficult issues do not get any easier for being left for another six or nine months”. (House of Lords 2015)

The three main UK political parties intend that the draft clauses will be implemented by way of a new Scotland Bill to be introduced by the next UK Government following the May General Election.

The UK Government intends the draft clauses to be the “next stage” in delivering the commitment for further devolution and recognises that further consultation with the Scottish Government, the public and other stakeholders will be required to “refine” the draft clauses before introduction to the UK Parliament early in the next session (See paragraph 9.4 of the Command Paper).

## RESPONSES TO THE DRAFT CLAUSES

### Constitutional issues

#### *Implementation of the draft clauses*

The ability of the current UK Parliament to guarantee that the next Parliament will implement the draft clauses has been questioned as constitutionally and politically problematic.

Professor Michael Keating, for example, commented:

“... the parties have said that these [powers] will be delivered after the election whatever the outcome of the election. Constitutionally, they cannot bind a future Parliament, and politically we do not know what the future Parliament is going to look like. We imagine the next Parliament will have its own view on these matters and the Scottish Parliament will have their own view on these matters. All I can see is that these clauses are a contribution to debate”. (House of Commons Political and Constitutional Reform Committee, 2015b)

The House of Lords Select Committee on the Constitution raised this point in an evidence session with the Secretary of State for Scotland and the Advocate General for Scotland. Baroness Falkner of Margravine, a member of the Committee, said:

“We know that what parties promise at general elections, whether it is an EU referendum or House of Lords reform, is not necessarily delivered in Parliament. That is a caveat”.

The Secretary of State responded:

“With respect, there is a distinction here. What we are talking about is a proposition that will have been, in terms, in the manifestos of all three parties. With the best will in the world, I do not know that even in Orkney and Shetland, where we are all constitutional enthusiasts, the creation of House of Lords reform came up many times on the doorstep in 2010, whereas this issue will have been front and centre of the debate during the election campaign, and certainly has been during the last two or three years, so woe betide anybody, be they unionist or nationalist, who for any reason wants to thwart the will of the people”. (House of Lords Select Committee on the Constitution, 2015)

#### ***Permanence of the Scottish Parliament***

Similarly, the proposal to make “a Scottish Parliament” and “a Scottish Government” permanent parts of the UK’s constitutional arrangements (draft clause 1) has been criticised on the basis that the UK Parliament is constitutionally incapable of limiting its own sovereign authority, rendering this clause legally meaningless. The draft clauses do not amend or repeal Section 28(7) of the Scotland Act which affirms the continuing power of the UK Parliament to make laws for Scotland.

Dr Mark Elliot from the University of Cambridge, giving evidence to the Political and Constitutional Reform Committee, described clause 1 as “legally vacuous”.

However, Michael Clancy of the Law Society of Scotland, describing draft clause 1 as, “a political statement in legislative form”, challenged this interpretation:

“Remember that Lord Smith was asked immediately after the referendum to produce something by 30 January; he met that deadline. The commission and the political interlocutors did not have the opportunity to sit down and think, “We are drafting instructions to draftsmen when we are preparing this”. The Smith commission report is not instructions to draftsmen. After the commission had reported, there was a very short period of time for the civil service to do their work. Reading Mark’s paper, I think the criticisms about the way in which this is formulated and the distinction between the foreword and the paragraphs in the Smith report can all be explained by the utmost haste with which this piece of work was carried out.

We have to see it through political eyes rather than through constitutional lawyers’ eyes. To that extent, I can’t subscribe to “vacuous” but I think that there are certainly questions, within the current constitution, about what this actually does achieve”. (House of Commons, PCR Committee, 2015a)

Dr Elliot, however, confirmed his position:

“I stand by my view that it is legally vacuous. I didn’t say it is vacuous. I don’t think it is constitutionally vacuous or politically vacuous but I think it is legally vacuous. I don’t think that in law it succeeds in making the Scottish Parliament permanent and I don’t think that it attempts to do that. As a matter of law, it is exceptionally unlikely that that can actually be done at all. As a matter of legal analysis, it does not make the Scottish Parliament permanent. It will not have that effect, but in political terms it is very clearly a quite powerful statement of intent. Is there a risk to doing this? There is a risk in the sense that you might argue that it is disreputable from one point of view to almost try to convey the impression that something is being given legal effect when in fact it is not. A cynic might say that this is trying to pull a fast one”. (House of Commons, PCR Committee, 2015a)

This view that declaring the permanence of the Scottish Parliament and Scottish Government in statute is a clear statement of political intent, making it more difficult for any future UK Parliament to abolish these institutions, is echoed by the Law Society of Scotland (LSS):

“...the conclusion must be that Clause 1 is designed to be, in fact, declaratory of political intention rather than an attempt to re-write the existing theory of the sovereignty of Parliament.

The LSS went on to conclude:

“The Draft Clauses are not designed to reformulate constitutional theory; therefore Clause 1 will have to be amended in order to align it more closely to the views of the Smith Commission”. (LSS Submission to the Devolution (Further Powers) Committee)

### ***Permanence of the Sewell Convention***

For the same reasons of parliamentary sovereignty, it can be argued that placing the Sewell Convention in statute (draft clause 2), while a clear statement of political intent, cannot place a legal restraint on the current or a future UK Parliament from legislating for Scotland on devolved matters should it choose to do so.

Professor Aileen McHarg, in her evidence to the Political and Constitutional Reform Committee, summed up what she saw as the main problems with clause 2:

“There are at least three problems with clause 2 as it is currently drafted. One is the use of the word “recognise[d]” and the lack of any attempt to change the rule. Section 28(7)



remains a problem. It basically restates in statutory form that the unlimited sovereignty of the Westminster Parliament is unchanged. Until that is changed, until that is qualified, then Sewel, the requirement to get the consent of the Scottish Parliament, cannot have any legal effect. The third problem with it is that it does not encapsulate the Sewel convention as it currently operates, because Sewel has two elements to it. It is not entirely clear to me whether both elements are captured there.

One element of Sewel is that when this Parliament wants to legislate on a matter that is devolved to the Scottish Parliament, like health or education, it must have the prior consent. The second element is that when this House is changing the Scotland Act or changing the powers of the Scottish Parliament or the Scottish Ministers, then that also requires the consent of the Scottish Parliament. I am not sure that that bit of it is encapsulated within the wording of clause 2, particularly given that that is going to appear as the new section 28(8).

Section 28 is a provision that deals with the ability of the Scottish Parliament to make law. If you read it in its context, any effect that it has would be limited to this Parliament legislating in devolved areas rather than this Parliament effecting the scope of the devolution settlement, which is also really important. That is an important guarantee of the permanence and so on". (House of Commons, PCR Committee, 2015a)

This issue was also raised in the House of Lords when Lord Cullen of Whitekirk asked:

"Is Clause 2, which deals with the Sewel convention, likewise a clause that, if turned into law, would not have any legally binding effect, because Parliament could think otherwise?"

Lord Wallace of Tankerness, the Advocate General for Scotland, responded:

"I will not look it up immediately, but I think it is to become Section 28(8) of the Scotland Act. Section 28(7) makes it clear that the United Kingdom Parliament can still legislate. But, again, the Smith commission recommended that we should put the Sewel convention on a statutory footing. We have taken that faithfully and discharged it. It does not give rise to justiciable rights, nor do I think that it would be healthy if it did, but it is a very clear signal of the intent of the United Kingdom Government and obviously, if passed, of the United Kingdom Parliament that the Sewel convention, initiated by Lord Sewel when the Scotland Act 1997 was going through your Lordships' House, should be part of our constitutional arrangements". (House of Lords, 2015)

The Law Society of Scotland, in its submission to the Devolution (Further Powers) Committee, argued that a breach of the Sewell Convention, even as formulated in the draft clauses, would probably not be justiciable before the courts. However, the LSS went on to say that:

"The Convention at present has no legal effect in limiting the power of the UK Parliament but a breach of the Convention would have considerable political impact. It would not only be unconstitutional to disregard the Convention but that action could also have significant political and constitutional consequences". (LSS Submission to the Devolution (Further Powers) Committee)

### ***Operation of the Scottish Parliament and Scottish Government***

By amending Schedule 4 of the Scotland Act 1998, clause 3 would give the Scottish Parliament the powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government. These powers include determining the

overall number of MSPs and the number of constituency and list MSPs. The disqualification of MSPs from membership and the rules governing circumstances in which a sitting MSP can be removed will also be devolved.

## Elections

The Calman Commission (2009) considered that there were no strong or practical arguments against devolving responsibility for the administration of Scottish Parliament elections. Therefore, the Commission recommended that:

“The powers of the Secretary of State for Scotland relating to the administration of elections to the Scottish Parliament should be devolved”. (Calman, 2009, Recommendation 5.1)

This was reflected in a recommendation of the Session 4 Scotland Bill Committee which called for powers over all elections, with the exception of elections to Westminster and to the European Parliaments, to be devolved:

“The Committee recommends that the UK Government should amend the Scotland Bill to devolve responsibility and powers for all elections that take place in Scotland, except those to the UK and EU Parliaments”. (Scottish Parliament 2011, Recommendation 24)

These powers were not included in the Scotland Act 2012.

Under the draft clauses, however, the conduct of Scottish Parliament elections will be devolved to the Scottish Government and Parliament. This includes powers over the voting system, timing of elections eligibility of candidates and the nominations process (clause 5); the regulation of campaign expenditure and controlled expenditure in relation to Scottish Parliament elections (clause 7) and legislative competence in relation to the functions of the Boundary Commission for Scotland for Scottish Parliament boundaries (clause 9).

While the conduct of local elections is already devolved, clause 6 will devolve legislative competence for the franchise for elections to both the Scottish Parliament and local government.

The Scottish Parliament will also gain the power to extend the franchise to 16 and 17 year olds in time for Scottish Parliament elections in 2016, and for local government elections in 2017. This will be achieved by means of an Order made under section 30 of the Scotland Act 1998. A draft Section 30 Order has been approved in the UK and Scottish Parliaments. It is expected to be approved at the next Privy Council meeting in March 2015.

Willie Sullivan, Director of the Electoral Reform Society Scotland, responded to a question from the House of Commons Political and Constitutional Reform Committee on the adequacy, balance or necessity in respect of the powers over Scottish Parliament and Scottish local government elections:

“It seems about right to us. As has been said previously, we have different electoral systems, a different political culture, different political parties. It seems right that the Scottish Parliament should have power over its elections and how they are run and the rules of that”. (House of Commons, PCR Committee, 2015a)

## ***Super-majority***

Clause 4 would require that some of the changes mentioned above, including changing the franchise, electoral system or the number of constituency and list MSPs, would require a two thirds majority of the Scottish Parliament - a “super majority”.

Professor Ian Loveland, from the City Law School, was questioned by the House of Commons Political and Constitutional Reform Committee on whether changes to the electoral system and to the number or make-up of Members of the Scottish Parliament should be the only matters requiring a super majority. He said:

“The question that then arises is: is this the only matter within the competence of the Scots Parliament that we should regard as so important that it is protected in this way? I suppose some people might also observe that, given the way that the electoral system is structured in Scotland, a two-thirds majority on anything other than an almost unanimous party basis is going to be essentially unachievable. That may be a good thing, but that is perhaps paralysis rather than simply entrenchment of particular values. (House of Commons, PCR Committee, 2015a)

Professor McHarg responded to this point by stating:

“Except there is quite an easy way around deadlock in the Scottish Parliament or the inability to reach the two-thirds majority, which is to pass it back up to the UK Parliament, which, as Ian has pointed out, is not subject to any kind of super majority requirement. That seems to me a rather problematic loophole in the super majority requirement”. (House of Commons, PCR Committee, 2015a)

## **Clarity and cohesiveness of the draft clauses**

Some commentators have criticised the draft clauses as unclear in certain respects and questioned whether they will achieve what the Smith Commission Report described as, “...a substantial and cohesive package of powers” which will “strengthen the devolution settlement and the Scottish Parliament within the UK” (Smith 2014a). They have argued instead that the new powers could, in fact, produce the opposite result, making the Scottish Parliament more dependent on policies and decisions made in Westminster and Whitehall.

Dr Eve Hepburn, Senior Lecturer in Politics at the University of Edinburgh, giving [evidence](#) to the House of Commons’ Political and Constitutional Reform Committee, said that the draft clauses were:

“... a very incrementalist approach to constitutional change based very much on the minimum level of agreement between the parties in Scotland involved in the Smith Commission”.

She went on to describe the draft clauses as:

“...particularly disappointing as [they haven’t] changed the status of the Scottish Parliament in relation to the UK, it’s still in a hierarchical relationship, subservient to the UK and so there is no radical break, it’s not really creating the Scottish Parliament as an equal partner to the UK”. (House of Commons, PCR Committee, 2015b)

In their written submission to the Devolution (Further Powers) Committee, SCVO, while welcoming the new powers and their potential for alleviating poverty in Scotland, argued that the clauses relating to welfare lacked clarity and cohesiveness. SCVO said:

“The draft clauses appear in the main to be incredibly restrictive: rather than giving the power to the Scottish Parliament to design its own benefits system even within a limited number of welfare areas, the draft clauses circumscribe tight parameters which potentially limit the possibilities and options for real change. This is not really devolving power in a genuine sense.

Clarity now over the interpretation of some of the welfare clauses would also be helpful. There have been some concerns raised by members about how, if political tensions arise between the two Governments, the clauses concerning the agreement of Ministers (draft clauses 20 and 21) could enable political manoeuvring rather than ensuring the timely and smooth transfer of benefits”. (SCVO, 2015)

## **Consultation and timetable**

Professor Michael Keating, also giving evidence to the Political and Constitutional Reform Committee, said that, in his view:

“...the whole thing was done with undue haste for political reasons. [...] This didn't give any time for consultation with Scottish civil society. I know no group in Scottish civil society which say they had adequate consultation over this. It didn't give the chance for the Scottish Parliament to engage in it and it didn't give the chance for the Scottish electorate to engage in it”. (House of Commons, PCR Committee, 2015b)

Professor Keating went on to say that:

“This is particularly unfortunate because these new powers were sprung during the referendum campaign, when at an earlier stage we were told that more powers for Scotland was not part of the referendum debate. It was simply about independence or not, and the extra powers option was not on the ballot paper and therefore not for discussion. Then we were told that whatever the outcome of the next general election, there would be more powers and that a no vote meant more powers.

There are problems with that process from a democratic and participative perspective, but it also meant that there was not time to do all the technical work that is required when you are doing things like calculating the effects of changing the income tax, and the effects of income tax on broader UK and macroeconomic stability, or how you calculate the Barnett formula. The danger then is that if you implement these proposals as they are, we are going to end up with something that will have to be revisited because there have not been the simulations or the homework behind them all”. (House of Commons, PCR Committee, 2015b)

The Royal Society of Scotland and the British Academy, in their Advice Note on the Command Paper and draft clauses, also highlighted concern over what they perceived as a lack of consultation on the proposals:

“Both the RSE and the BA are seriously concerned about the time available for consideration, analysis and comment between publication of the Smith Report and publication of these proposals. Although we are aware that the timetable was proposed by the leaders of the pro-Union parties shortly before the Referendum, the process falls well short of the normal UK Government period for consultations. It compares

unfavourably with the extensive engagement that took place prior to the establishment of the Scottish Parliament through the Constitutional Convention; and also the extent of public consultation and discussion with witnesses and experts that the Calman Commission undertook before making its proposals". (RSE/BA, 2015)

David Torrance, in his evidence to the Political and Constitutional Reform Committee, expressed the view that the draft clauses do not mark a radical change in the devolution settlement. He considers that they offer only what the UK Government thinks it can get away with while the Scottish Government has no interest in making further devolution work. He said:

"The Scottish Government for as long as it is led by the Scottish National Party is fundamentally not interested in making any of these schemes work. Think back to the Calman commission a few years ago. I remember speaking to Scottish Government advisers who said that they tried to pretend it did not exist. When it required a vote in the Commons, of course they took a view and they voted for it, but they did not want to do anything that gave the impression that they thought this was a legitimate exercise or something they approved of or wanted to do anything with.

I think the same applies to the Smith commission. At the end of the day, the party leading the Scottish Government wants independence for Scotland. If they wanted devolution to work better, they would not have been criticising this as stridently as they have, because if this did work and did bed down, the risk from their point of view is that Scottish public opinion will move away from independence and towards the status quo. For obvious political reasons, that is not something they want to happen.

From the UK Government's point of view, this sort of continual process of ad hoc devolution, of piecemeal devolution, in response to electoral pressure from the SNP is subject to the law of diminishing returns. It is very difficult from their point of view to get any political or electoral capital as a result. The SNP, the Scottish Government, has everything to gain from saying this does not go far enough and what little there is will not work". (House of Commons, PCR Committee, 2015b)

## **Welfare Powers**

On the proposed new welfare powers, the UK Government believes that the draft clauses fulfil the recommendations in the Smith Report. In a statement to the House of Commons, the Secretary of State, Alistair Carmichael MP, said:

"The welfare clauses provide for key welfare measures to be designed by and delivered in Scotland. The Scottish Government will be responsible for a number of benefits, including those for disabled people and carers. Issues relating to long-term unemployment will be tackled with specific consideration of local circumstances. As set out by the Smith commission, universal credit will remain reserved, but the Scottish Government will have certain flexibilities, including the power to vary the housing cost element". (House of Commons, 2015)

In evidence to the Devolution (Further Powers) Committee the Deputy First Minister, John Swinney, agreed that some of the draft clauses fulfilled or came close to fulfilling the Smith recommendations. These included the clauses on benefits for carers, disabled people and those who are ill and benefits which currently comprise the Regulated Social Fund. Mr Swinney also believed that the draft clauses properly translated the Smith recommendation (paragraph 51) that the Scottish Parliament should have complete autonomy in determining the structure and value of these benefits.

However, Mr Swinney was also clear about the areas in which he did not think the draft clauses met the expectations of Smith:

“We do not believe that the Smith commission proposals have been properly translated into detailed legislation in relation to clauses 20 and 21 of the draft Scotland bill, on universal credit; nor in relation to the power to create new benefits, under draft clause 18; nor in relation to paragraph 55 of the Smith commission report, which provided for ‘benefits or discretionary payments introduced by the Scottish Parliament’ providing ‘additional income for a recipient’”. (Devolution (Further Powers) Committee, 2015g)

Some commentators agree with Mr Swinney, suggesting that the draft clauses provide for a narrow interpretation of the Smith Commission proposals. John Dickie, from the Child Poverty Action Group, told the Scottish Parliament Devolution (Further Powers) Committee:

“In our mind, there is no question but that the draft clauses interpret the Smith Commission’s recommendations pretty narrowly. With some of the opportunities that we thought would flow from the Smith recommendations, such as the possibility of creating new benefits in Scotland and the topping up benefits, the draft clauses do not give effect to the recommendations in the way that we, and people more widely, understood was to be the case” (Scottish Parliament, 2015b)

However, Mr Dickie, went on to state that even within a narrow interpretation of Smith, the draft clauses present opportunities:

“...there are real opportunities in the powers that are proposed for devolution and in the draft clauses, even as they stand. For example, there are opportunities to improve the delivery of universal credit and, potentially, levels of housing support, given the devolution of the housing element of universal credit. There is the potential to provide support with maternity costs and to improve the adequacy of and access to disability and carers benefits”. (Scottish Parliament, 2015b)

### ***New Benefits***

The Smith Commission proposed that the Scottish Parliament should have, “powers to create new benefits in areas of devolved responsibility” (paragraph 54). The Command Paper says that these powers are conferred by draft clauses 16 (disability and carer’s benefits), 17 (Regulated Social Fund) and 19 (discretionary housing payments). This is different to the general understanding of Smith, i.e. that the Scottish Parliament would have powers to create new benefits in *any* area of devolved responsibility. However the word “any” was not used in Smith.

In a [statement](#) to the Scottish Parliament, John Swinney MSP said:

“...we – and, I think, a wide range of stakeholders – were concerned that Lord Smith’s recommendation of a power to create new benefits in devolved areas does not appear in the command paper or the bill. The clauses would allow this Parliament only to create new benefits in the much narrower areas of welfare that are to be devolved under the bill...That is not a credible interpretation of paragraph 54 of the Smith report...” (Scottish Parliament, 2015).

Citizen’s Advice Scotland issued a press release (22 Jan 2015) on the draft clauses which said that they were “bewildered” by the change between Smith and the draft legislation. Similar concerns were raised by John Dickie of CPAG and Professor Paul Spicker, during evidence to the Devolution (Further Powers) Committee that the power to create new benefits in any area of devolved responsibility does not appear in the draft clauses (Scottish Parliament, 2015b)

On the other hand, [Professor Nicola McEwan](#) had previously stated (in written evidence to the Devolution (Further Powers) Committee) that paragraph 54 was unclear, saying, “I assume it reinforces the Scottish Parliament’s power to replace those benefits which have, or will be, devolved with new alternative benefits aimed at a similar purpose”.

In evidence to the Scottish Affairs Committee inquiry on the Smith Commission report, David Phillips of the Institute for Fiscal Studies said his understanding of the power to create new benefits, was that it would be restricted to areas of welfare that would be devolved:

“My understanding is that it would allow them to create any new benefit they wished in the areas of benefit that have been devolved”. (House of Commons, Scottish Affairs Committee, 2015a)

Following the second meeting of the Ministerial Working Group on Welfare, the Scottish Government said that the UK Government had agreed to consider revised wording on the power to create benefits in devolved areas (Scottish Government, 11 March 2015)

Giving evidence to the Devolution (Further Powers) Committee on 12 March 2015, John Swinney said that the understanding during the Smith Commission discussions, was that the Scottish Parliament would be able to create new benefits in any area of devolved responsibility (Devolution (Further Powers) Committee, 2015g)

### ***Discretionary Payments and Top Up of Reserved Benefits***

The Smith Commission proposed that the Scottish Parliament should have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP. Clause 18 provides for such payments and, as the Command Paper notes:

“These payments can be made in any area of welfare, though the Smith Commission Agreement is clear that they must be discretionary. For this reason, the clause provides for a power to make a payment to meet a short term need to avoid a risk to the well-being of an individual.” (HM Government, Cm 8990, Paragraph 4.3.11)

Some evidence has suggested that the drafting of the clause, in the way it refers to “a short-term need that requires to be met to avoid a risk to the well-being of an individual”, represents a narrow interpretation of the Smith Commission’s recommendations. As Professor Paul Spicker’s written evidence to the Devolution (Further Powers) Committee stated:

“A payment is discretionary, not because it is short term or individual, but because it is in the power of the delegated authority to determine whether or not the payment will be made.” (Scottish Parliament, 2015b)

Similarly, the Scottish Affairs Committee said in its report on the *Implementation of the Smith Agreement*:

“The Smith Agreement does not define what a discretionary payment is and we are not persuaded of the need for the UK Government to do so in clause 18.”(House of Commons, Scottish Affairs Committee, 2015c)

Whether the clauses provide for a “top up” of reserved benefits has also been a matter of debate. In its evidence session on 3 February 2015, the Scottish Affairs Committee questioned the Secretary of State for Scotland on whether, under the draft clauses, the Scottish

Government would have the power to top up any reserved benefit and whether this would be a discretionary power for special cases or a general power which could be applied to everyone claiming that benefit.

The Secretary of State said:

“They would need to define those who were going to receive the discretionary payment, as they would be obliged to do in any event. It is not a straightforward top-up, but I am sure you could achieve the same end without too much creativity”. (House of Commons, Scottish Affairs Committee, 2015b)

In response to further probing as to whether a top-up benefit could apply automatically to all claimants who met a particular set of requirements, Mr Carmichael confirmed that it could not.

Iain Davidson MP, Chair of the Committee questioned this view and said that they took the view that:

“...for those things that were not devolved it [the Scottish Government] had power to make additional payments”.

Mr Carmichael replied:

“Let me illustrate by way of example, because I do not think we are a million miles apart. The state pension is reserved, so that is something the Scottish Government would not be able to top up, but they could, for example, increase every pensioner’s winter fuel allowance to achieve the same end. That would be the way it could work in practice”. (House of Commons, Scottish Affairs Committee, 2015b)

The Committee’s report noted that:

“The UK Government accepts on the one hand that the Scottish Government should be able to increase any reserved benefit yet, on the other, states that the Scottish Government may have to be ‘creative’ to achieve such an outcome, for example by using the winter fuel payment as a means of providing additional support to pensioners rather than via a discretionary payment on top of the pension itself. Not only should such complexity be avoided, but it appears unnecessary, particularly if the UK Government is relaxed about the final outcome—that of the Scottish Government increasing a particular benefit”. (House of Commons, Scottish Affairs Committee, 2015c)

They went on to recommend:

“...that draft clause 18 be amended to give the Scottish Government broader powers over the application of discretionary payments. Such a change will make it clear to the people of Scotland that they have the benefit of the security of the UK welfare state while, at the same time, the Scottish Government has the capacity to provide more generous welfare support should it wish to do so”. (House of Commons, Scottish Affairs Committee, 2015c)

Following the second meeting of the Joint Ministerial Working Group on Welfare, the Scottish Government indicated that the UK Government had agreed to consider revised wording from the Scottish Government on the ability to make discretionary payments in reserved areas (Scottish Government, 11 March 2015).



## ***Universal Credit***

The draft clauses (20 and 21) would provide Scottish Ministers with regulation powers over certain parts of the housing element of Universal Credit. Both clauses 20 and 21 require the Secretary of State to be consulted about, and subsequently agree to, Scottish Government intentions with regard to changes to the housing cost elements of Universal Credit.

The Scottish Government has claimed that these consultation requirements effectively act as a “veto” on the use of Scottish Government powers. As the Deputy First Minister and Finance Secretary, John Swinney, to the Devolution (Further Powers) Committee:

“That is an area of particular difficulty in the command paper and the draft bill. It is not terribly difficult to foresee how what appear to be pretty innocuous requirements to consult the secretary of state and secure his or her agreement could be translated into what is essentially a blocking power, because all sorts of excuses could be used to prevent something from happening. Our concern is that how clauses 20 and 21 are drafted conveys the ability of a UK minister to prevent the Scottish Government from doing something. If that minister has a reasonable explanation for why they are doing that, that passes the test in the clause, which to me therefore gives the UK Government the ability to veto a decision that the Scottish Government and Scottish Parliament have taken”. (Devolution (Further Powers) Committee 2015g)

The Secretary of State for Scotland, Alastair Carmichael MP has insisted that these provisions do not constitute a “veto”. In evidence to the House of Commons’ Scottish Affairs Committee, Mr Carmichael offered an explanation on this point in responding to a question from Mike Crockart MP on whether there were any draft clauses which would allow the UK Government to impose restrictions or to veto decisions made by the Scottish Government:

“In relation to the commencement of any change in that particular regard—universal credit—there is a requirement for the two Governments to agree for practical purposes. The practical purposes envisaged there would be, for example, the turning off of computer services or anything of that sort, and that envisages that the Scottish Government will be using UK systems in any event. Of course, if they choose to set up their own systems, as they have done in some areas of devolution already, that is entirely a matter for them. In relation to the duty to agree, you will see in clause 21(3)(b) “such agreement not to be unreasonably withheld”. That is a term of art designed specifically to bring the actions of Ministers within the ambit of judicial supervision, so it would not be possible for any future Secretary of State to withhold agreement capriciously”. (House of Commons, Scottish Affairs Committee, 2015b)

On the claims that the draft clauses contained twelve vetoes, including a veto around Universal Credit, the Scottish Affairs Committee reported:

“The idea that the draft clauses contain “twelve vetoes” is a ludicrous one and it is disappointing that the UK Government failed adequately to rebut such claims. We hope that a good working relationship between the two Governments will mean that consultation will be routine, agreement a formality, and that dispute will not arise. On such a basis some might question why requirements to consult are included in the draft clauses at all; in the interests of good governance and good legislation it is right that they are there, but we remain of the view that the UK Government should have been better able to explain the clauses and to have avoided the unnecessary conflict and confusion which was used to detract from the real substance of this legislative package. (House of Commons, Scottish Affairs Committee, 2015c)

## ***Employment Support***

The draft clauses will provide Scottish Ministers with powers over employment support programmes for disabled people and for those at risk of long term employment. In the latter case, the programmes must assist the claimant for at least a year. This means that the shorter term employment schemes such as work trials, mandatory work activity and work experience will not be devolved.

A key concern of the Scottish Government has been the UK Government's extension of the current Work Programme contracts until 2017.

The Smith Commission recommended the devolution of employment programmes on completion of work programme contracts, which were set for spring 2016. When John Swinney gave evidence to the Devolution (Further Powers) Committee on 4 December 2014, he said they had been advised that, "without our consent" that the contract had been extended for a year. (Scottish Parliament, 2014)

In response to a letter from the Bruce Crawford MSP, Convener of the Committee ([10 December 2014](#)), Alistair Carmichael MP said:

"The Smith Commission was notified of the potential extension option for Work Programme contracts in the analysis of party proposals submitted by the UK Government. By the time the Smith Commission announced its recommendations, negotiations with providers were already very advanced and in many cases concluded. Given that it would not be practical to operate a system where there were two contracts in operation, this meant the Department of Work and Pensions (DWP) had no option but to conclude them with all providers. We engaged with the Scottish Government as soon as it became clear that the Work Programme was being considered by the Smith Commission, and DWP officials first met with Scottish Government on 16 October, just weeks after the Prime Minister announced that the Commission was to be set up and they have met regularly since.

To end provision before 2017 would leave the Scottish Government with approximately 8 months to establish a new programme following the beginning of the new Parliament. This is significantly less time than previously attempted to establish a programme and runs contrary to the feedback received by the DWP from the NAO in relation to short commissioning and implementation timetables of the original Work Programme". (Scotland Office, 12 February 2015)

Following a meeting of the Joint Ministerial Working Group on Welfare on 11 March 2015, Roseanna Cunningham MSP, Cabinet Secretary for Fair Work, Skills and Training, said:

"UK Ministers took a conscious decision to extend the Work Programme in Scotland until 2017, despite Smith recommending its devolution on expiry of the current contract. Despite successive requests, vital information on the cost and impact of existing services that would enable us to move forward quickly in re-designing support, has not been provided.

So in order to build more effective, targeted and fairer employment support services in Scotland, I have asked the UK Government to cancel the Work Programme contract extension and for the transfer of the necessary resources and legal powers to deliver an alternative service to meet the needs of unemployed Scots from April next year." (Scottish Government News Release, 11 March 2015)

## Taxation powers

On the proposed new tax powers, concerns have been expressed that some elements of the proposals may introduce new sources of confusion and tension.

Professor Paul Cairney questions whether the Smith principle that the settlement should be “...durable but responsive” (Smith paragraph 7(3)) will be achieved through the draft clauses. He said:

"The rhetoric has been about greater financial responsibility and accountability but, in fact, what they have produced is a confusing system providing a complex interplay between reserved and devolved taxes.

The result is great confusion about what tax and spending decisions we can meaningfully describe as being made by the Scottish Government. The Prime Minister's hope that today's announcement will lead to 'an enduring settlement' may seem forlorn." (Mail online, 23 January 2015)

Concerns have been raised about complexities arising from income tax responsibilities being shared between the UK Government and the Scottish Government. Charlotte Barbour of ICAS explained that, “It is very difficult to pull any one part of UK taxes apart”. This is further explained in a written submission made by ICAS to the Scottish Parliament Devolution (Further Powers) Committee:

“When some elements are devolved such as income tax on non-savings income, this may open the way to greater complexity, wider differentials and increased attempts at planning to avoid increased tax costs.” (ICAS, 2015)

Professor Anton Muscatelli echoed these concerns, stating that the “interaction could create some difficulties for the two Governments in trying to trace exactly who did what and what the impact is on the respective tax bases.” (Scottish Parliament, 2015).

Writing in the Financial Times, John Kay also raised concerns that any increase or decrease in income tax revenues outside Scotland will result in a proportionate increase or decrease in the grant to Scotland. He concluded:

“So even with income tax devolved, the Scottish government will be under fiscal pressure to match changes in tax elsewhere in the UK. Any action by the UK government that has tax or expenditure implications anywhere in the UK, whether related to reserved or devolved functions, will have consequences for tax and expenditure decisions in Scotland through the Barnett formula.” (Financial Times, 10 February 2015)

Charlotte Barbour also highlighted difficulties surrounding the calculation of VAT revenues to the Devolution (Further Powers) Committee, stating:

“I am not quite sure how you would calculate it. If you take a rather general estimation process, that will not marry up with and give you a true reflection of the Scottish economy. However, the better it marries up with the economy, the more difficult it is to calculate. Such elements might run through how you calculate no detriment.” (Scottish Parliament, 2015a)

## **Fiscal framework**

The Smith Commission highlighted the need for an updated fiscal framework for Scotland, "...consistent with the overall UK fiscal framework." (Smith, 2014a, paragraph 94) and outlined the key elements of such a framework.

Taking evidence on this, the Scottish Affairs Committee asked the Secretary of State for Scotland whether the fiscal framework would exert such tight control over the Scottish Government that it would bind them into continuing the UK Government's austerity agenda and limit the policy decisions of the Scottish Government. The Secretary of State responded:

"What limits the Scottish Government is the amount of money available, and that is true across the whole of the United Kingdom. We have an overall fiscal framework in the United Kingdom, and that is what the people of Scotland voted to be part of on 18 September. Inevitably, given the size of the cake, there will be constraints. If you did not have them, you would have independence by the back door, which is not what the people of Scotland wanted". (House of Commons, Scottish Affairs Committee, 2015b)

A number of other concerns have been raised about different aspects of the fiscal framework.

### ***Borrowing***

Some commentators have expressed concerns that there are no draft clauses in relation to borrowing powers. For example, a submission by the Chartered Institute of Public Finance and Accountancy (CIPFA) Scotland to the Devolution (Further Powers) Committee stated:

"The draft clauses contained in Annex A of the 'an enduring settlement document' do not however provide for an extension to the existing borrowing powers contained in the Scotland Act 2012 or any additional clauses. We consider this to be an omission given the recommendations made by the Smith Commission in Paragraph 95(5) of their report." (Scottish Parliament, 2015c)

Don Peebles of CIPFA Scotland stated that without draft clauses, "... we do not have the infrastructure set out to enable us to have a meaningful discussion about borrowing powers" (Scottish Parliament, 2015c).

There has also been some discussion about the nature of Scottish borrowing powers under the updated fiscal framework. For example, Philip Milburn of Investment Association stressed that the current absolute borrowing limits should be replaced with ad valorem limits:

"I think that an ad valorem limit that uses a percentage of gross domestic product or something would—sorry to use dreadful English—future proof the system so that you would not have to go back and renegotiate legislation every five, 10 or 15 years and get into the same problems that the US does with its debt ceiling. An ad valorem limit would be preferable to an absolute limit." (Scottish Parliament, 2015c)

Some concerns have also been expressed about the impact of a prudential borrowing regime on the Scottish Government's capital budget. Professor David Bell told the Devolution (Further Powers) Committee:

"I am afraid that that is another uncertainty: we are not absolutely clear about not only whether Scotland might go to a prudential regime approach but what that might mean for the size of the DEL grant. To take away the £2.3 billion or so would be pretty drastic." (Scottish Parliament, 2015c)

When giving evidence to the Scottish Affairs Committee at the UK Parliament on capital borrowing powers, the Secretary of State for Scotland stated:

“That is now all to be the subject of fresh negotiation between the Treasury and the Scottish Government, and those discussions will go on alongside the introduction of the Scotland Bill. They have already started at an official level.” (House of Commons, Scottish Affairs Committee, 2015b)

### ***Principle of no detriment***

Another principle outlined in the Smith Commission Report was that the exercise of the new powers for Scotland should, “...not cause detriment to the UK as a whole, nor to any of its constituent parts”. (Smith, 2014a, paragraph 7(5)). This principle has two applications:

- that the Scottish Government and UK Government budgets should be unchanged as a result of the decision to devolve further powers to the Scottish Parliament, and
- that there should be no detriment as a result of UK Government or Scottish Government policy decisions post-devolution.

While, arguably, the first application of the no detriment principle is straightforward, in that it applies at the point a power is devolved, the second application is potentially more problematic as it would apply on an on-going basis to all policy decisions which affect tax receipts or expenditure.

Professor Michael Keating highlighted some concerns about the no detriment principle. Writing for the Centre on Constitutional Change, he stated, “While fair in principle, it is a minefield”, explaining that, “Determining what should count as detriment will remain politically contentious and technically complex.” (Keating, M. 2015)

In evidence to a House of Commons Committee, he explained:

“The notion of detriment, which is a novel constitutional idea—the idea that if one Parliament does something that imposes a cost on the other Parliament there should be compensation—potentially could be very wide-ranging indeed. It is nowhere defined and it is nowhere limited”. (House of Commons, PCR Committee, 2015b)

Professor Anton Muscatelli also expressed concern over the lack of understanding of the principle of no detriment. He said:

“The Smith commission set out very clear no-detriment clauses but, as the paper recognises, how they are interpreted in practice is quite complex. The paper gives a couple of examples of how that might work with income taxation and adjustments to the block grant. However, as it recognises, that is likely to be much more complicated in practice, so a clear understanding of how it will all be resolved between the two Governments will be required. That area needs to be looked at.” (Scottish Parliament, 2015)

In their Advice Note on the draft clauses, the Royal Society of Edinburgh and British Academy also called for greater clarity on what the principle of no detriment will mean in practice:

“If the principle of ‘no detriment’ between Scotland and the rest of the UK is to underpin the proposed settlement, then it must be defined”. (RSE/BA, 2015)

In its report on the implementation of the Smith Agreement, the Scottish Affairs Committee specifically recognised that a clear understanding between the UK and Scottish Governments on what no detriment means and on how the principle would be applied, would be essential:

“The potential for grievance over the operation of the no detriment principle is enormous. If the Smith Agreement is to be an enduring settlement both Governments must work together in good faith and agree a mechanism to administer a policy of no detriment that is proportionate, fair and based on independently verified data”. (House of Commons, Scottish Affairs Committee, 2015c)

### ***The Barnett Formula and adjustments to the block grant***

Under the new fiscal framework, the Barnett Formula, the means by which the Scottish Government receives its population share of changes in comparable UK Government spending, will be retained. This is confirmed by paragraph 2.4.2 of the Command Paper, although not contained in the draft clauses. The Scottish block grant will be reduced to reflect the tax revenues that the UK Government will forego as a result of the tax changes proposed in the draft clauses. It is not yet clear, however, how the adjustment to the block grant will take place.

The Royal Society of Edinburgh and British Academy identified a number of issues around Barnett which they considered required clarification, including how reductions in the block grant will be determined:

“It is, in our opinion, essential to the enduring character of the settlement that the future of the block grant is fully resolved. This must take into account the nature and scope of the new devolved powers, the on-going mechanism for calculation of changes to the block grant, related to the ‘no detriment’ proposition, and the way in which decisions by either Government will be reflected in future changes to the grant”. (RSE/BA, 2015)

Also on the future of the Barnett Formula and on clarity around its operation, Professor Michael Keating commented:

“It is difficult to see how you can talk about assigning and devolving taxes to Scotland and then not look at the other side of the equation, which is how the Barnett formula works out. That is a matter of principle, but it is also very important when you work out the details, because there is a lot of money involved there. There are a lot of questions simply unanswered about how Barnett is going to work in the future and how the income tax base is going to be calculated”.

“If you are going to have devolved taxes and devolved tax bases and arguments about funding, there should be some source of knowledge of information about this to do the calculations independent of both Governments, so at least we are arguing on the basis of the same set of figures. That is not in here either, but in a federal system normally you would have some place where there is a trusted source of calculations. You may not agree on the policies, but at least you will agree about the basic facts and the basic statistics”. (House of Commons, PCR Committee, 2015b)

### **Intergovernmental working**

The Smith Commission called for existing inter-governmental machinery to be reformed as a matter of urgency (Smith, 2014a) paragraph 28) to enable more effective collaboration between the Scottish and UK governments.

However, academics have suggested that effective intergovernmental relations require a basic level of equality and status between the participants to be effective. Professor Nicola McEwan, for example, said that:

“Unless such joint working can be conducted on the basis of equality of status and mutual respect, the complexities and interdependencies are likely to create new sources of tension and dissatisfaction, and lead to growing pressure for a further revision of the devolution settlement.” (The Herald, 2015)

In evidence to the House of Lords Select Committee on the Constitution, the Secretary of State, Alistair Carmichael MP, said

“It is not particularly instructive to talk about equality of status, which I think is the term that you used. What does that actually mean? I am more concerned about every constituent part of the structure of government that we now have demonstrating proper respect for the other parts of that government. As a Minister of the United Kingdom Government I fully—and enthusiastically, if you can have such a thing—respect the right of Scottish Ministers to undertake the functions that are given to them in a way that they then have to be accountable to the Scottish people through the ballot box. I think that is a more meaningful approach than talking about equality.

As for the working relations between the different Administrations, because they are different settlements they work in different ways. [...] The relationship between the Scottish Government and the UK Government is not without its tensions. There is no hiding that fact, particularly in the course of the referendum. Politics occasionally gets in the way of good government”. (House of Lords, 2015)

Baroness Dean of Thornton-le-Fylde alluded to written and oral evidence that Joint Ministerial Committees (JMC) are really, “...a place for grandstanding and for airing grievances but not necessarily resolving them, and that it is certainly not for policy-making”.

In response, the Secretary of State, said:

“When I hear talk of grandstanding, I can identify elements that justify that tag. They occasionally generate a bit more heat than light, but let us not forget that when you take a room, fill it with politicians from different parts of the country and from different parties and leave the press at the door, yes you are going to get a bit of politics happening. That is kind of how it works. My observation is that there is a need for a structure that allows formal meeting, discussion and sharing of experience, but that you have to have realistic expectations of exactly how much that will achieve”. (House of Lords, 2015)

## **The Crown Estate**

[The Crown Estate](#) is the Crown property, rights and interests that are managed, but not owned, by the Crown Estate Commissioners in England, Wales, Northern Ireland and Scotland. The Crown Estate is not the personal property of HM the Queen. It is owned by the Sovereign in right of the Crown as an institution, though the Sovereign has no powers of management or control. “The Crown Estate” as a brand, is a term often used to describe the Commissioners together with the Crown property, rights and interests. The Crown Estate Commissioners is a statutory corporation constituted by the Crown Estate Act 1956. Under the Crown Estate Act 1961, Commissioners must follow directions from the Chancellor of the Exchequer and the Secretary of State for Scotland. Scotland is represented by a Scottish Commissioner, currently



Gareth Baird. Crown Estate profits flow direct to HM Treasury. In 2013/14 Crown Estate profits from activities in Scotland were £13.6 million, 3.9% of the UK total.

In Scotland, the Crown Estate Commissioners manage four rural estates, including [Glenlivet Estate](#), mineral rights and salmon fishing rights, about half of the coastal foreshore and almost all seabed to 12 nautical miles. These rights allow the Commissioners to require leases for moorings, aquaculture, some cables and pipelines, and for renewable energy projects. The latter are primarily in the far more extensive Exclusive Economic Zone which extends to 200 nautical miles at its furthest point (though draft clause 23 refers to the “Scottish zone” rather than the Exclusive Economic Zone). Such leases are commercial agreements. The urban estate comprises 39-41 George Street, Edinburgh, and a 50% interest in an English Limited Partnership which owns Fort Kinnaird Retail Park in Edinburgh – the other half is owned by a Jersey based unit trust. Fort Kinnaird is not considered an “economic asset” in Scotland and the draft clause envisages that management of it would not be transferred.

On 29 November 2014, rights to naturally occurring oysters and mussels [transferred](#) to Scotland from the Crown Estate (Scottish Government 2014). The total property value of the Crown Estate in Scotland was £267 million. The Smith Commission agreements and the draft clauses relate not to ownership, but to the management functions of the Crown Estate Commissioners in Scotland.

On the model to be used to transfer the powers, in oral evidence to the Devolution (Further Powers) Committee on 5 March 2015 Andy Wightman said:

“We are talking about a bundle of property rights that have been administered by the Crown Estate Commissioners and their predecessors down south since 1832. We are talking about returning to Scotland the power to administer those rights. As I indicated in my submission, that should be a relatively straightforward matter of repealing a couple of sections in the Scotland Act 1998 that, in effect, reserve management of the Crown Estate; repealing the relevant section of the Scotland Act 2012; repealing a bit of the Crown Estate Act 1961; and amending the Crown Estate Act 1961 to the effect that it would not apply in Scotland. Those are the main legislative proposals. Beyond that, one needs some kind of memorandum of understanding, or whatever, to ensure that the on-going liability and contractual obligations that the Crown Estate Commissioners have entered into in Scotland are smoothly and capably carried forward once responsibility is devolved”. (Scottish Parliament, 2015f)

Later in that same evidence session the Crown Estate stated their view:

“A statutory transfer scheme is a commonly used form of secondary legislation to implement an outline that is identified in primary legislation where there is just too much detail to be included in that primary legislation. That absolutely fits the model of our business, which is very complex. The beauty of a statutory transfer scheme is that it will implement the transfer in one step, it will capture all the detail around the business in one place and it is transparent. It will call for input from us, the Scottish Government and other stakeholders, so everybody will have a chance to input to it, and it minimises the uncertainty. It is also a very public process and customers will be clear before the transfer happens about where they will be after it. Essentially, it gets all our ducks in a row before we make the transfer happen”. (Scottish Parliament, 2015f)

The Deputy First Minister in evidence to the Committee on 12 March 2015 stated:

“Some of the things that the UK Government proposed to put into the scheme would be better undertaken through a memorandum-of-understanding approach, rather than by



statute. We need to go through quite a bit of detail to satisfy ourselves that those issues can properly be addressed". (Scottish Parliament, 2015g)

The Secretary of State for Scotland will have an opportunity to give evidence to the Committee on 25 March 2015.

## **THE SMITH RECOMMENDATIONS AND THE DRAFT CLAUSES**

The remainder of this briefing compares the draft clauses with the relevant recommendations from the Smith Commission Report. The Smith Commission recommendations are listed in column 1 with paragraph references to the Smith Report at column 2. Column 3 provides discussion of the related draft clauses including their intention and effect. References to the draft clauses and, where appropriate, to the Command Paper are given in column 4.

**TABLE 1: RECOMMENDATIONS OF THE SMITH COMMISSION AND THE DRAFT CLAUSES**

Smith Commission Report	Para	Draft Clauses	Clause
<b><i>Pillar 1: Constitutional settlement and governance</i></b>			
<ul style="list-style-type: none"> <li><b><i>Permanence of the Scottish Parliament</i></b> UK legislation to state that the Scottish Parliament and Scottish Government are permanent institutions.</li> </ul>	21	<p>Clause 1 seeks to give effect to the Smith Commission recommendation to state in statute that the Scottish Parliament and Government are permanent institutions. Clause 1 would amend the Scotland Act 1998 to state that:</p> <p style="padding-left: 40px;">“A Scottish Parliament is recognised as a permanent part of the United Kingdom’s constitutional arrangements” and,</p> <p>Section 44 of the 1998 Act would be similarly amended to state that:</p> <p style="padding-left: 40px;">“A Scottish Government is recognised as a permanent part of the United Kingdom’s constitutional arrangements” (new s1A) and</p>	1
<ul style="list-style-type: none"> <li><b><i>The Sewel Convention</i></b> The Sewel Convention to be put on a statutory footing</li> </ul>	22	<p>Clause 2 seeks to give effect to the Smith Commission recommendation to make the Sewel Convention statutory. It would do this by adding a new sub-section to section 28 of the 1998 Act stating:</p> <p style="padding-left: 40px;">“But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament”</p> <p>However, section 28(7) of the 1998 Act, which provides</p>	2

		that this section does not affect the power of Westminster to legislate for Scotland, is not amended or repealed by the draft clauses.	
<ul style="list-style-type: none"> <li>• <b>Operation of the Scottish Parliament and Scottish Administration</b></li> </ul> <p>Scottish Parliament to have powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government, including:</p> <ul style="list-style-type: none"> <li>○ the overall number of MSPs or the number of constituency and list MSPs.</li> <li>○ the disqualification of MSPs from membership and the circumstances in which a sitting MSP can be removed.</li> </ul>	<p>26</p> <p>26(1)</p> <p>26(2)</p>	<p>Clause 3 would provide the Scottish Parliament with the powers over the operation of the Scottish Parliament and Government recommended by Smith by making amendments to paragraph 4 of Schedule 4 of the 1998 Act. These amendments would add further exceptions to the prohibition which prevents the Scottish Parliament from modifying the 1998 Act.</p> <p>The powers set out in this draft clause will require a super majority, as provided for in draft clause 4</p>	3
<ul style="list-style-type: none"> <li>• <b>Elections</b></li> </ul> <p>The Scottish Parliament to have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland (but not in relation to Westminster or European elections), including powers in relation to campaign spending limits and periods and party political broadcasts. The Scottish Parliament already has many of these powers in relation to local government elections in Scotland.</p> <p>The Scottish Parliament to have competence over the functions of the Electoral Commission in relation to Scottish Parliament elections and local government elections in Scotland. The Electoral Commission to report to the UK Parliament in relation to UK and European elections and to the Scottish Parliament in relation to Scottish Parliament and local government elections in Scotland.</p>	<p>23</p> <p>24(2)</p>	<p>Clause 5(2) sets out restrictions on the day on which a general election to the Scottish Parliament can be held, in order to prevent the date coinciding with other elections being held in Scotland.</p> <p>Clause 5(3) would substitute a new Section 12 in the Scotland Act 1998, including the amendment to the Section 12 set out in Section 1 of the Scotland Act 2012 (which is not yet in force). The draft clause gives powers over Scottish Parliament elections to Scottish Ministers, instead of the Secretary of State.</p> <p>This clause maintains the Secretary of State's power to combine Scottish Parliament elections, with the permission of Scottish Ministers, again negating the need to bring Section 2 of the Scotland Act 2012 into force.</p> <p>The proposed new Section 12 includes giving Scottish Ministers responsibility over the limits of election expenses of candidates, but not of registered political parties.</p>	5 - 9

<p>The Boundary Commission to report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament. UK Government powers in relation to Scottish Parliament boundaries will transfer to the Scottish Government.</p> <p>Devolve the relevant powers in time to enable the franchise in Scotland to be extended to 16 and 17 year olds for the 2016 SP elections.</p>	<p>24(3)</p> <p>25</p>	<p>Clause 6 devolves the franchise for Scottish Parliament and local elections to the Scottish Parliament. A reservation will be maintained on the digital service, i.e. the Individual Electoral Registration Digital Service (IERDS) and the verification of applications to the system. The Scottish Parliament will gain the power to extend the franchise to 16 and 17 year olds in time for the Scottish Parliament elections in 2016, and for the local government elections in 2017. This will be achieved by means of an Order under section 30 of the Scotland Act 1998. A draft Section 30 Order is currently being scrutinised in the UK and Scottish Parliaments.</p> <p>Clause 7 devolves responsibility for the control of campaign expenditure and expenditure by third parties in relationship to Scottish Parliament and local government elections, except for elections combined with other elections.</p> <p>Clause 8 will devolve powers over Sections of the Political Parties, Elections and Referendums Act 2000 relating to the Electoral Commission, with regard to Scottish Parliament elections, to the Scottish Parliament.</p> <p>Clause 9 would amend Schedule 1 of the Scotland Act 1998 to require reports on reviews of Scottish Parliament constituency boundaries, carried out by the Boundary Commission for Scotland, to be submitted to Scottish Ministers, instead of the Secretary of State. Orders to put in place recommendations from those review reports will no longer need to be approved in the UK Parliament.</p>	
<ul style="list-style-type: none"> <li><b>Supermajority for legislation on the Scottish Parliament franchise etc.</b></li> </ul> <p>Legislation changing the franchise, the electoral</p>	<p>27</p>	<p>This is similar to the requirement in the Scotland Act 1998 and the Fixed Term Parliaments Act 2011, which provide</p>	<p>4</p>

system or the number of constituency and regional members for the Scottish Parliament to be passed by a two-thirds majority of the Scottish Parliament.		that the Scottish and UK Parliaments can only be dissolved by a two-thirds majority in the Scottish Parliament and the Commons respectively.	
<ul style="list-style-type: none"><li><b>Inter-governmental machinery</b></li></ul> Reform and scale-up current inter-governmental machinery, including the Joint Ministerial Committee (JMC) structures.	28	Recommendations in Smith paragraphs 28 to 31 do not require legislation.	Page 82
Develop formal processes for the Scottish and UK Parliaments to collaborate more regularly.	29	A new Joint Ministerial Committee on Welfare has been established.	
Reformed inter-governmental arrangements to:	30		
(1) include the development of a new MoU between the UK Govt. and devolved administrations which would:	30(1)		
o lay out details of the new bilateral governance arrangements needed to oversee the implementation and operation of the tax and welfare powers to be devolved (consistent with the fiscal framework to be developed further to paragraph 95 of this agreement).	30(1)(a)		
o provide for additional sub-committees within the JMC structure which could include: home affairs; rural policy, agriculture & fisheries; or social security/welfare.	30(1)(b)		
(2) be underpinned by stronger and more transparent parliamentary scrutiny, including:	30(2)		
o laying of reports before respective Parliaments on the implementation and effective operation of the revised MoU.	30(2)(a)		
o pro-active reporting to respective Parliaments of, for example, the conclusions of JMC, Joint Exchequer Committee and other inter-administration bilateral meetings	30(2)(b)		

(3) provide for more effective mechanisms to resolve inter-administration disputes with a provision for arbitration processes as a last resort.	30(3)		
<p>• <b>Scottish Government representation of the UK to the EU</b></p> <p>The current Concordat on the Co-ordination of European Union Policy Issues should be improved to:</p> <p>(1) ensure that Scottish Ministers are fully involved in agreeing the UK position in EU negotiations relating to devolved policy matters.</p> <p>(2) ensure that Scottish Ministers are consulted and their views taken into account before final UK negotiating positions relating to devolved policy matters are agreed.</p> <p>(3) allow a devolved administration Minister to speak on behalf of the UK at a meeting of the Council of Ministers according to an agreed UK negotiating line where the devolved administration Minister holds the predominant policy interest across the UK and where the relevant lead UK Government Minister is unable to attend all or part of a meeting.</p>	<p>31</p> <p>31(1)</p> <p>31(2)</p> <p>31(3)</p>	Recommendations in Smith paragraphs 28 to 31 do not require legislation	Page 83
<p>• <b>Crown Estate</b></p> <p>Management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, to be transferred to the Scottish Parliament including the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.</p> <p>Following this transfer, responsibility for the</p>	<p>32</p> <p>33</p>	<p>To Clause 23 would allow, but not require, the UK Treasury to make a scheme, through a statutory instrument, transferring all Scottish functions of the Crown Estate Commissioners to Scottish Ministers. This scheme can only be made with agreement of Scottish Ministers and may be modified "by agreement" (with modifications to be retrospective). The scheme will also transfer responsibility for liabilities e.g. to ensure renewables are decommissioned. "Rights and liabilities" may require some</p>	23

<p>management of those assets to be further devolved to local authority areas who seek such responsibilities. (The definition of economic assets in coastal waters should recognise the foreshore and economic activity such as aquaculture).</p> <p>The Scottish and UK Governments to draw up and agree a MoU to ensure that such devolution is not detrimental to UK-wide critical national infrastructure.</p> <p>Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.</p>	<p>34</p> <p>35</p>	<p>clarification.</p> <p>Clause 23 includes provision as the “Treasury considers necessary or expedient” relating to interests of defence, national security, telecommunications, oil &amp; gas, and electricity. The Command Paper also mentions development of a Memorandum of Understanding on these issues. There is reference to an intention to transfer to the Scottish Parliament competence to legislate on the management of Scottish assets before the transfer scheme, although the detail of this is unclear.</p> <p>Clause 23 makes no reference to further devolution to local authority level, and it is expected this would happen through Scottish Parliament legislation. This would need careful handling as some powers, such as those for aquaculture leases are currently managed as a Scotland-wide concern.</p> <p>Revenues would transfer to the Scottish Consolidated Fund, however the command paper refers to safeguards that taxation of oil and gas receipts will remain reserved. After transfer, the Crown Estate will still be able to invest in Scotland. The Sovereign Grant is not mentioned in the Command Paper – the link between Crown Estate profit and the Sovereign Grant is a proxy, rather than relating to direct funding.</p>	
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<p>• <b>Broadcasting</b></p> <p>The Scottish Government and Scottish Parliament to have a formal consultative role in the process of reviewing the BBC's Charter. BBC to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament on matters relating to Scotland.</p> <p>Scottish Ministers to have sole power to approve Ofcom appointments to the MG Alba board.</p>	<p>36</p> <p>37</p>	<p>To be put into effect by Memorandum of Understanding between the UK Government, Scottish Government, Scottish Parliament and the BBC</p>	<p>Page 58 (paras 5.2.1 to 5.2.3)</p> <p>34</p>
<p>• <b>Regulation of telecommunications and postal services</b></p> <p>The Scottish Government and the Scottish Parliament to have a formal consultative role in setting the strategic priorities for Ofcom's activities in Scotland. Scottish Ministers to have the power to appoint a Scottish member to the Ofcom Board.</p> <p>Ofcom to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>	<p>38</p>	<p>Clause 43 provides that, before appointing or removing a member to the Ofcom board, the Scottish Ministers must consult the Secretary of State. A memorandum of understanding will be put in place between the UK Government, Scottish Government, Scottish Parliament and Ofcom.</p>	<p>43</p> <p>43 44</p>
<p>• <b>Transport - Maritime and Coastguard Agency and Northern Lighthouse Board</b></p> <p>The Scottish Government and the Scottish Parliament to have a formal consultative role in setting the strategic priorities for the Maritime and Coastguard Agency's (MCA) activities in Scotland. Scottish Ministers to appoint a Scottish member to the MCA's Advisory Board who is capable of representing the interests of Scotland. MCA to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>	<p>39</p>	<p>Clause 36 would amend Section 1 of the Coastguard Act 1925 and Section 292 of the Merchant Shipping Act 1995 to require the UK Secretary of State to consult Scottish Ministers about the activities of the Maritime and Coastguard Agency (MCA), including the safety standards of ships and seafarers, in Scotland.</p> <p>A Memorandum of Understanding between Scottish Ministers and the UK Government will set out the Scottish Ministers' ability to appoint a member to the MCA Advisory</p>	<p>36</p>



<p>The Scottish Government and the Scottish Parliament to have a formal consultative role in setting the strategic priorities for the Northern Lighthouse Board's (NLB) activities in Scotland. Scottish Ministers to have the power to appoint a further Scottish Northern Lighthouse commissioner.</p> <p>NLB to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>	40	<p>Board, provide copies of annual accounts to Scottish Ministers to lay before the Scottish Parliament and set out the expectation that MCA staff can appear before the Scottish Parliament.</p> <p>Clause 35 amends Schedule 8 of the Merchant Shipping Act 1995 to allow Scottish Ministers to appoint a Commissioner to the Northern Lighthouse Board (NLB). It also requires the NLB Commissioners to submit accounts and inspection reports to Scottish Ministers, who shall lay any reports received before the Scottish Parliament.</p> <p>Clause 44 adds the Commissioners of Northern Lighthouses to the list of bodies that may be required to attend before the Scottish Parliament</p>	<p>35</p> <p>44</p>
<p>• <b>Energy Market Regulation and Renewables</b></p> <p>The Scottish Government and the Scottish Parliament to have a formal consultative role in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which Ofgem must have due regard.</p> <p>Ofgem to also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>	41	<p>Clause 40 would amend the Scotland Act 1998 to place a duty on the Secretary of State to consult Scottish Ministers when establishing any renewables incentive scheme that would apply in Scotland, or significantly amending any such scheme; including those already established i.e. contracts for difference, feed-in tariffs and the renewables obligation. It does not apply to fossil fuel or nuclear generation. Regarding the Scottish Government's consultative role in the strategic priorities of the Energy Strategy and Policy Statement, this is not included in the draft clauses, and will be subject to discussions between the UK and Scottish Governments.</p> <p>Clauses 42 and 44 would require Ofgem to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>	<p>40</p> <p>42 44</p>

<b>Pillar 2: Economy and Social Justice</b>			
<ul style="list-style-type: none"> <li><b>Universal Credit</b></li> </ul> <p>The Scottish Government to have the administrative power to change the frequency of UC payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland.</p>	44	<p>Clauses 20 and 21 seek to give effect to paragraph 44. The clauses would give Scottish Ministers concurrent regulation making powers under the Social Security Administration Act 1992. Clause 20(4) gives Scottish Ministers powers to make regulations under section 5(1)(p) of the Social Security Administration Act 1992, (payments to another person on behalf of the beneficiary) so far as it relates to a payment of a housing costs element (for rented accommodation) of Universal Credit. This provision would allow direct payments to landlords to be made. Clause 21(2) would give Scottish Ministers powers to make regulations under section 5(1)(i) of the Social Security Administration Act 1992 so far as relating to the person to whom, or the time when, universal credit is to be paid. This would allow Scottish Ministers to vary plans for single household payments and to change the frequency of universal credit payments. The UK Government has set the overarching conditions for Universal Credit in the Welfare Reform Act 2012 and regulations made under that Act. Scottish Ministers will have no powers to alter the 2012 Act or regulations made under that Act unless it relates to the housing cost element (see below).</p>	20 21
<p>The Scottish Parliament to have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependants.</p>	45	<p>Clause 20 seeks to give effect to this recommendation. The clause would give Scottish Ministers regulation making powers under section 11(4) of the Welfare Reform Act 2012 (determination and calculation of housing costs element) where the claimant rents accommodation. The Command Paper at point 4.2.4 states that this power will include the power to vary or remove the under-occupancy charge.</p>	20

<p>Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 to be met by the Scottish Government.</p> <p>Joint arrangements for the oversight of DWP development and delivery of UC, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments.</p>	<p>47</p> <p>48</p>	<p>Both Clauses (at 20(4) and 21(3)) require that Scottish Ministers cannot make regulations unless they have consulted with the Secretary of State about the practicability of implementing regulations and the Secretary of State has given agreement as to when any such change made by the regulations is to have effect, such agreement not to be unreasonably withheld. As noted earlier, the Scottish Government has expressed concern that this would give the UK Government the power to “veto” the use of Scottish Ministers powers, although the UK Government has denied this.</p> <p>Recommendations in paragraphs 47 and 48 of the Smith Report do not require legislation.</p>	
<p>• <b>Benefits devolved outside Universal Credit</b></p> <p>The following benefits to be devolved to the Scottish Parliament:</p> <p>(1) Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance.</p>	<p>49</p>	<p>Clause 16 seeks to give effect to the devolution of benefits for carers and disabled people, as listed in paragraph 49(1) of the Smith Commission report. It does this by amending the current exception to the reservation on social security, thereby giving the Scottish Parliament legislative power for this group of benefits.</p> <p>Clause 16 defines ‘disability benefit’ for people who:</p> <ul style="list-style-type: none"> <li>• have a physical or mental condition that has a significant, long term, adverse effect on their ability to carry out day-to-day activities;</li> <li>• or a significant need arising from impairment to a</li> </ul>	<p>16</p>

<p>(2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and</p>		<p>person's physical or mental condition (eg for attention or for supervision to avoid substantial danger to anyone).</p> <p>Clause 16 appears to encompass the legislative definitions for DLA/PIP/AA. The new definition appears no wider than that. Scrutiny will be required to ensure the existing definitions for these benefits have been captured.</p> <p>The definition for carer's benefit includes being aged 16 or over, not in full-time education, not gainfully employed, and looking after a disabled person in receipt of a disability benefit. This looks similar to the existing criteria for Carer's Allowance.</p> <p>SDA is payable to those incapable of work. The Scottish Parliament will have legislative competence over the provision of SDA, or a like benefit, for those claimants who remain eligible for the benefit at the point of devolution. This is because SDA was closed to new claimants in 2001, and existing claimants below state pension age have been, or are in the process of being, reassessed for eligibility to Employment and Support Allowance, which remains reserved.</p> <p>Industrial Injuries Benefit – for those who have suffered an injury or developed a disease at work. The Command Paper (para 4.3.1) clarifies that the correct term for Industrial Injuries Disablement Allowance is Industrial Injuries Benefit (IIB), which is the term used to describe benefits “paid as a consequence of workplace prescribed disease or injury”.</p> <p>Clause 17 seeks to give effect to the devolution of the Regulated Social Fund to the Scottish Parliament. It does this by amending the current exception to the reservation</p>	<p>17</p>
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Winter Fuel Payment.		on social security.	
(3) Discretionary Housing Payments.		Clause 19 seeks to give effect to the recommendation to devolve responsibility for discretionary housing payments (Smith paragraph 49(3). The clause roughly follows the framework of regs 2, 3 and 4 of the Discretionary Financial Assistance Regulations 2001 which provide the current framework for discretionary housing payments. The Command Paper says, "The clause will devolve legislative competence in relation to Discretionary Housing Payments (DHP), subject to certain restrictions similar to those that already exist in respect of DHPs".	19
New arrangements for how Motability will operate in Scotland for DLA/PIP claimants to be agreed between the Scottish and UK Governments.	50	The recommendations on Motability (Smith paragraph 50) do not require legislation	
The Scottish Parliament to have complete autonomy in determining the structure and value of the benefits at paragraph 49 or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.	51	Recommendation (Smith paragraph 51) does not require legislation. While the Scottish Parliament will have autonomy to determine the structure and value of disability benefits, the Regulated Social Fund and DHPs, this power will be based on the defined criteria of draft clauses 16, 17 and 19.	
In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied set out by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland to be transferred to the Scottish Government.	52	This recommendation (Smith paragraph 52) does not require legislation.	
• <b>Powers to create new benefits and top-up reserved benefits</b>	54	Paragraph 4.3.10 of the Command Paper says that the	16

<p>The Scottish Parliament to have powers to create new benefits in areas of devolved responsibility, in line with the funding principles set out in paragraph 95.</p>		<p>powers to create new benefits in areas of devolved responsibility are conferred by draft clauses 16, 17 and 19. These clauses relate to benefits for carers and disabled people, the Regulated Social Fund and DHPs. The power to create new benefits will only apply to areas of welfare responsibility that are devolved.</p>	<p>17 19</p>
<p>The Scottish Parliament to have powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP.</p>	<p>54</p>	<p>This is somewhat different to what many understood by paragraph 54. See pages 14-15 for further information.</p> <p>Clause 18 seeks to give effect to paragraph 54 of the Smith Commission Agreement regarding discretionary payments. The Command Paper says (at 4.3.11) that the clause “broadens the provisions in the Scotland Act that allow for the Scottish Welfare Fund”. The clause substitutes text in section F1 of Part 2 of Schedule 5 of the 1998 Act. The existing section F1 gives Scottish Ministers powers over:</p> <p>“providing occasional financial or other assistance to or in respect of individuals for the purposes of</p> <ul style="list-style-type: none"> <li>a) meeting, or helping to meet, an immediate short term need <ul style="list-style-type: none"> <li>i) arising out of an exceptional event or circumstances, and;</li> <li>ii) that requires to be met to avoid a risk to the well-being of an individual”.</li> </ul> </li> </ul> <p>This has allowed the provision of crisis grants. The proposed new text removes the general references to “immediate” short term need and to the need “arising out of an exceptional event or circumstances”. Instead, payments can be made to meet a short term need that requires to be met to avoid a risk to the well-being of an individual. Thus, payments are not linked to an exceptional event (ie a crisis) situation, and in this respect the provision seems</p>	<p>18</p>

		<p>wider.</p> <p>However, the second paragraph of clause 18 does propose that, in the case of benefit claimants who have been sanctioned, discretionary payments can only be made where the need for it also arises from some exceptional event and the need is immediate and short term. In effect, this appears to replicate existing practice i.e. a claimant who has been sanctioned can receive a payment from the Scottish Welfare Fund and payments from the Scottish Welfare Fund are made within the existing context of “immediate” needs arising out of “exceptional” circumstances.</p> <p>There is no mention of “top-ups”. In what might be a reference to “top-ups” the Command Paper says the Scottish Government will not have the power to create permanent entitlement to any new payments beyond the scope of the devolved benefits” (para 4.3.11)</p> <p>As noted in the text above there has been debate on the meaning of ‘discretionary’, whether it should be limited to those who have short term needs, and the lack of any provision to make “top-ups”</p>	
<p>The Scottish Parliament may seek agreement from DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government. All administration and programme costs directly associated with the exercise of this power (either as a result of changes to existing systems or the introduction of new systems) to be met by the Scottish Government in line with the funding principles set out in paragraph 95.</p>	54	<p>The recommendation on the Scottish Parliament seeking agreement from DWP for the Department to deliver discretionary payments on behalf of the Scottish Government (Smith paragraph 54) does not require legislation.</p>	
<p>Any new benefits or discretionary payments</p>	55	<p>The recommendation on provision of additional income</p>	

<p>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.</p> <p>The UK Government's Benefit Cap to also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides.</p>	56	<p>from discretionary payments (Smith paragraph 55) does not require legislation.</p> <p>The recommendation on adjustment of the benefit cap (Smith paragraph 56) does not require legislation. The Command Paper (paragraph 4.3.12) says that the "UK Government will ensure that if Scottish Ministers were to increase the amount of a payment in relation to any benefit included within the cap, then the additional amount provided by the Scottish Government would be disregarded for the purposes of the cap, and only the amount of the payment equivalent to that provided by the UK Government would be subject to the cap."</p> <p>There is a cap on total household benefits at £500 per week for a family and £350 per week for a single person.</p> <p>Carer's Allowance and SDA, which are to be devolved, are included in the benefit cap. If the Scottish Government were to increase the rate of Carer's Allowance, then this additional amount would be disregarded by the UK Government in calculating the cap. This may require a legislative change by the UK Government to the Benefit Cap regulations.</p>	
<p>• <b>Employment provision</b></p> <p>The Scottish Parliament to have all powers over support for unemployed people through the employment programmes currently contracted by DWP on expiry of the current commercial arrangements. The Scottish Parliament to have the power to decide how it operates these core employment support services. Funding for these services to be transferred from the UK Parliament in</p>	57	<p>Clause 22 would insert an exception to paragraph H3 of Schedule 5 to the Scotland Act to give the Scottish Parliament legislative competence for employment schemes in relation to disabled people and those at risk of long-term unemployment who are claiming reserved benefits. The main scheme is the Work Programme. The conditionality and sanctions regime which governs referrals to the Work Programme will remain reserved.</p>	22



line with the principles set out in paragraph 95.		<p>Schemes in relation to unemployment must last at least a year. This is slightly different to the interpretation which some had of the Smith Commission recommendations, in that it does not include short term schemes for unemployed people. (See for example John Swinney's remarks in the Parliament on 27th January 2015).</p> <p>Clause 22 also seeks to extend the existing shared ministerial competence for employment and training under the Employment and Training Act 1973 to include provision made under s.17B of the Jobseekers Act 1995. This means that power would be shared between Ministers of the Crown and Scottish Ministers.</p> <p>There have been calls to devolve employment programmes sooner and complaints about the extension of existing contracts (See page 18).</p>	
<ul style="list-style-type: none"> <li>• <b>Delivery and Administration</b></li> </ul> <p>As the single face-to-face channel for citizens to access all benefits delivered by DWP, Jobcentre Plus will remain reserved. However, the UK and Scottish Government to identify ways to further link services through methods such as co-location wherever possible and establish more formal mechanisms to govern the Jobcentre Plus network in Scotland.</p>	58	This recommendation does not require legislation	Page 84
<ul style="list-style-type: none"> <li>• <b>Equalities</b></li> </ul> <p>The Scottish Parliament to have powers to legislate on equalities in respect of public bodies in Scotland, including the introduction of gender quotas. The Scottish Parliament also to have powers to legislate in relation to socio-economic rights in devolved areas.</p>	60	Clause 24 seeks to give effect to the power to legislate on equalities in respect of public bodies, including the introduction of gender quotas. Clause 24 (4) includes an exception under the reservation of Equal Opportunities in the Scotland Act 1998, in relation to public bodies. The Command Paper say that "this power will enable the Scottish Parliament, by imposing new requirements on public bodies in Scotland, to introduce new protections for	24

		<p>employees and customers of those bodies with regards to their devolved functions.” It is unclear at this stage how Clause 24(4) might allow for the introduction of gender quotas on public boards.</p> <p>John Swinney said in a statement to the Scottish Parliament, “We will consider carefully the equalities provision to ensure that it meets the Smith report recommendation...”</p> <p>Clause 24(3) seeks to give effect to the power to legislate in relation to socio-economic rights in devolved areas. It does this by amending the current exception to the reservation on equal opportunities, and includes Part 1 of the Equality Act 2010 as an exception. Part 1 of the Act was a public sector duty regarding socio-economic inequalities. The provision was <u>‘scrapped’</u> by the UK Government in 2010, and was never commenced.</p> <p>The exception in clause 24 (3) refers to the ‘subject matter’ of Part 1 of the 2010 Act. The device of reserving ‘the subject matter of’ an Act is used throughout Schedule 5 of the 1998 Act. It provides flexibility in that it is that <i>area</i> of the law that is reserved. The reservation is not confined to the actual provisions of that Act and means that new legislation that is made in the same area may be accommodated within the reservation. Therefore the Scottish Parliament will have the power to legislate on the subject of socio-economic inequality in devolved areas.</p>	
<ul style="list-style-type: none"> <li>• <b>Health and social affairs</b></li> </ul> <p>The parties agree that further serious consideration should be given to the devolution of abortion as an anomalous health reservation and a process should be established immediately to consider the matter further.</p>	61	<p>Not included in the draft clauses – to be subject to discussions between the UK and Scottish Governments</p>	Page 84

The devolution of xenotransplantation; embryology, surrogacy and genetics; medicines, medical supplies and poisons; and welfare foods.	62	Not included in the draft clauses – to be subject to discussions between the UK and Scottish Governments	Page 84
<p>• <b>Tribunals</b></p> <p>All powers over the management and operation of all reserved tribunals (including administrative, judicial and legislative powers) to be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.</p> <p>Despite paragraph 63, the laws providing for the underlying reserved substantive rights and duties will continue to remain reserved (although they may be applied by the newly devolved tribunals).</p>	63	Clause 25 allows the functions of a reserved tribunal to be transferred to a Scottish tribunal on a case by case basis by an Order in Council laid before and approved by the UK and Scottish Parliaments. In addition to the tribunals mentioned in the Smith Commission Report, clause 25 also exempts: the Pathogens Access Appeals Commission; the Investigatory Powers Tribunal; and any tribunal dealing with matters under section B8 of Part 2 of Schedule 5 of the Scotland Act 1998 (i.e. national security, interception of communications, official secrets and terrorism). It appears that the clause will generally also not be used to transfer the appellate functions of reserved tribunals (Explanatory Memorandum, paragraph 6.3.6)	25
	64	The underlying substantive law will remain reserved. However, the scope of the functions transferred will depend on the specific Order in Council. Orders in Council can, in particular, include provisions aimed at securing consistency between Scottish tribunals and other tribunals or conditions relating to rules of procedure (clause 25(6)). The transfer of tribunal functions will normally involve an appropriate transfer of existing resources (Explanatory Memorandum, para 6.3.6)	
<p>• <b>Transport</b></p> <p>Devolve power to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers.</p>	65	Draft clause 37 would remove the application of Section 25 of the Railways Act 1993, which prevents public sector organisations from bidding for rail franchises, to bidders for Scottish rail franchises.	37
Remaining powers to change speed limits to be	66	Draft clause 26 would amend Section E1, Schedule 5 of	26 to 29

<p>devolved to the Scottish Parliament. Powers over all road traffic signs in Scotland to also be devolved.</p> <p>The functions of the British Transport Police in Scotland to be a devolved matter.</p>	<p>67</p>	<p>the Scotland Act 1998 and Clauses 28 and 29 amend the Road Traffic Regulation Act 1984 to devolve powers over speed limits in Scotland to Scottish Ministers, except the ability to specify the types of vehicle exempt from speed limits on special roads (most special roads are motorways) and the training requirements for drivers of such vehicles.</p> <p>Draft clause 27 would amend the Road Traffic Regulation Act 1984 to devolve all powers over the design and sighting of traffic signs in Scotland to Scottish Ministers.</p> <p>At present, the British Transport Police is responsible under the Railways and Transport Safety Act 2003 for railway policing throughout Great Britain, with oversight provided by the British Transport Police Authority. This clause would devolve legislative competence in relation to railway policing in Scotland. As suggested by the Smith Commission, this will be achieved by amending paragraph E2 of Schedule 5 Part II to the Scotland Act 1998 which reserves the provision and regulation of rail services and rail transport security by including an exception for the policing of the railways and railway property.</p> <p>This change would allow the Scottish Parliament to legislate in relation to the policing of railways in Scotland. The Smith Commission Report stated that further consideration will need to be given to the manner in which executive competence will be transferred and to related organisational and operational aspects of the policing of the railways in Scotland.</p> <p>In March 2015, the BBC published a statement from the Cabinet Secretary for Justice, Michael Matheson MSP, that the functions of the BTP in Scotland would be integrated within Police Scotland. He said:</p>	<p>30</p>
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		"The BTP provide a specialist function that is recognised and valued by the rail industry and its passengers and it is essential that this specialism is maintained within Police Scotland. This will ensure the most efficient and effective delivery of all policing in Scotland, keeping communities safe and strong". (BBC Report 10 March 2015)	
<ul style="list-style-type: none"> <li><b>Energy Efficiency and Fuel Poverty</b></li> </ul> <p>Powers to determine how supplier obligations in relation to energy efficiency and fuel poverty, such as the Energy Company Obligation and Warm Home Discount, are designed and implemented in Scotland to be devolved. This provision to be implemented in a way that is not to the detriment of the rest of the UK or to the UK's international obligations and commitments on energy efficiency and climate change.</p>	68	<p>Draft clauses 38 and 39 would amend the Gas Act 1986, Electricity Act 1989 and Energy Act 2010 to allow Scottish Ministers to design and implement Scottish specific supplier obligations, to better target funding and support.</p> <p>Setting the way the money is raised by these schemes (the scale, costs and apportionment of the obligations as well as the obligated parties) will remain reserved to Westminster.</p>	38 39
<ul style="list-style-type: none"> <li><b>Onshore Oil and Gas Extraction</b></li> </ul> <p>The Scottish Parliament to have devolved power over licensing of onshore oil and gas extraction underlying Scotland</p> <p>Also to have responsibility for mineral access rights for underground onshore extraction of oil and gas in Scotland.</p>	<p>69</p> <p>70</p>	<p>This clause would devolve the process of managing licences to exploit onshore oil and gas resources to the Scottish Government, including powers on licensing hydraulic fracturing operations to extract shale gas. The clause makes it clear that the taxation of oil and gas should remain reserved.</p> <p>The clause would also devolve access rights for onshore oil and gas.</p>	31
<ul style="list-style-type: none"> <li><b>Competition policy</b></li> </ul> <p>Scottish Ministers already have the ability to request that a UK regulatory body carry out a market study of their area of responsibility to examine particular competition issues arising in Scotland. Scottish Ministers to also have the power to require the Competition and Markets Authority to carry out a full second phase investigation (in the same way as UK</p>	71	<p>UK Government Ministers have limited powers under section 132 of the Enterprise Act 2002 (2002 Act) to require the Competition and Markets Authority (CMA) to carry out in-depth investigations into markets. Draft clause 41 will extend these powers to the Scottish Ministers, but only if acting jointly with UK Government Ministers (i.e. the Scottish Ministers would need the agreement of the UK Government to require the CMA to carry out an in-depth</p>	41



		to reduce the current number of terminals. In addition, Scottish Ministers' power would be specifically focused on controlling the number of FOBTs in any particular premises. There is no wider power to tackle the way these machines are used or marketed. Neither are there any additional powers to control the proliferation of gambling premises more generally, even where this might circumvent the proposed FOBT controls	
<b>Pillar 3: Taxation</b>			
<p>• <b>Income Tax</b></p> <p>The Scottish Parliament to have power to set the rates of Income Tax and the thresholds (without limits) at which these are paid for the non-savings and non-dividend income of Scottish taxpayers (as defined in the 2012 Act).</p> <p>There will be a corresponding adjustment in the block grant received from the UK Government, in line with the funding principles set out in paragraph 95.</p> <p>The Scottish Government to reimburse the UK Government for additional costs arising as a result of the implementation and administration of the Income Tax powers described above.</p>	<p>76</p> <p>78</p> <p>79</p>	<p>Draft clauses 10-12 broadly seek to give effect to the extension of income tax powers recommended by the Smith Commission. These would give the Scottish Parliament the power to set rates and bands in relation to non-savings and non-dividend income of Scottish taxpayers, above the UK personal allowance.</p> <p>Draft clause 12 also seeks to deal with the interaction between Income Tax and Capital Gains Tax (CGT). Currently individuals who pay Income Tax at the higher rate also pay CGT at the higher rate. This clause sets out that the rate of CGT that applies to Scottish income taxpayers will continue to be calculated using the UK Income Tax rate limits.</p> <p>There are no draft clauses in relation to the corresponding adjustment in the block grant or the Scottish Government reimbursing the UK Government for costs arising from implementing/administering these powers. These recommendations do not require legislation and it is anticipated that details for these would be outlined in the Command Paper accompanying the Scotland Bill.</p>	<p>10</p> <p>11</p> <p>12</p>
<p>• <b>Value Added Tax</b></p> <p>The receipts raised in Scotland by the first 10 percentage points of the standard rate of Value Added Tax (VAT) to be assigned to the Scottish</p>	<p>84</p>	<p>Draft clause 13 would give effect to the Smith Commission recommendation that the Scottish Government be assigned receipts from the first ten percentage points of</p>	<p>13</p>

Government's budget. Receipts to be calculated on a verified basis, to be agreed between the UK and Scottish Governments, with a corresponding adjustment to the block grant, in line with the principles set out in paragraph 95.		<p>VAT. With the agreement of both governments it also proposes to go slightly further by notionally assigning 2.5 percentage points of the reduced rate of VAT as well (which stands at 5 per cent).</p> <p>The amount of VAT receipts attributable to Scotland is to be the subject of an agreement between the UK Government and the Scottish Government.</p> <p>There are no draft clauses in relation to the corresponding adjustment to the block grant. This does not require legislation and it is anticipated that further details would be outlined in the Command Paper accompanying the Scotland Bill.</p>	
<p>• <b>Air Passenger Duty</b></p> <p>The Scottish Parliament to have the power to charge tax on air passengers leaving Scottish airports</p> <p>The Scottish Government to reimburse the UK Government for any costs incurred in 'switching off' APD in Scotland and a fair and equitable share of associated administrative costs to be transferred to the Scottish Government. The Scottish Government's block grant to be adjusted in line with the principles set out in paragraph 95.</p>	<p>86</p> <p>87</p> <p>88</p>	<p>Draft clause 14 would make this a devolved tax, as recommended by the Smith Commission. It would give HMRC the ability to 'switch off' these UK taxes in Scotland from a date to be set by secondary legislation.</p> <p>There are no draft clauses in relation to the Smith Commission recommendation that a fair share of the administrative costs for this tax should be transferred to the Scottish Government or in relation to the corresponding adjustment to the block grant. These recommendations do not require legislation and it is anticipated that details for these would be outlined in the Command Paper accompanying the Scotland Bill</p>	14
<p>• <b>Aggregates Levy</b></p> <p>The Scottish Parliament to have the power to charge tax on the commercial exploitation of aggregate in Scotland.</p>	89	<p>Draft clause 15 would make this a devolved tax, as recommended by the Smith Commission. It would give HMRC the ability to 'switch off' these UK taxes in Scotland from a date to be set by secondary legislation.</p>	15



<p>The Scottish Government to reimburse the UK Government for any costs incurred in 'switching off' Aggregates Levy in Scotland and a fair and equitable share of associated administrative costs to be transferred to the Scottish Government. The Scottish Government's block grant to be adjusted in line with the principles set out in paragraph 95.</p> <p>The UK and Scottish Governments to work together to avoid double taxation and make administration as simple as possible for taxpayers.</p>	<p>90</p> <p>91</p> <p>93</p>	<p>There are no draft clauses in relation to the Smith Commission recommendations that a fair share of the administrative costs for this tax should be transferred to the Scottish Government or in relation to the corresponding adjustment to the block grant and the avoidance of double taxation.</p> <p>These recommendations do not require legislation and it is anticipated that details for these would be outlined in the Command Paper accompanying the Scotland Bill.</p>	
<b>Pillar 3: Fiscal Framework</b>			
<p>• <b><i>Scotland's Fiscal Framework</i></b></p> <p>The devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.</p> <p>The following aspects should be incorporated into Scotland's fiscal and funding framework.</p> <p>(1) <u>Barnett Formula</u>: the block grant to continue to be determined by the Barnett Formula.</p> <p>(2) <u>Economic Responsibility</u>: Scottish budget should benefit in full from policy decisions by the Scottish Government that increase revenues or reduce expenditure, and bear the full costs of policy decisions that reduce revenues or increase expenditure.</p> <p>(3) <u>No detriment as a result of the decision to devolve further power</u></p> <p>(4) <u>No detriment as a result of UK or Scottish Government policy decisions post-devolution</u></p>	<p>95</p>	<p>Although the UK Government has not published any draft clauses in relation to the fiscal framework, the Command Paper indicates intent to fulfil these Smith Commission recommendations through non-legislative means.</p> <p>Specifically, the UK Government has committed to agreeing a fiscal framework with the Scottish Government through the Joint Exchequer Committee. The intention is to provide this alongside the introduction of the Scotland Bill so that both Parliaments will be able to consider the settlement as a whole from the outset. It may be that there is some legislation required in due course, but this depends on the nature of the new fiscal framework.</p> <p>Note that the UK Government did not publish any draft clauses in relation to borrowing. Whether any changes to Scotland's borrowing powers are needed will depend on a number of other factors likely to be determined by the overall fiscal framework (such as the risks the Scottish Government is exposed to by the method of block grant</p>	

<p>(5) <u>Borrowing Powers</u>: Scotland's fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework. The Scottish Government should also have sufficient borrowing powers to support capital investment, consistent with a sustainable overall UK fiscal framework.</p> <p>(6) <u>Implementable and Sustainable</u>: the arrangements should be reviewed periodically to ensure that they continue to be seen as fair, transparent and effective.</p> <p>(7) <u>Independent Fiscal Scrutiny</u>: the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland's public</p> <p>(8) <u>UK Economic Shocks</u>: the UK Government should continue to manage risks and economic shocks that affect the whole of the UK.</p> <p>(9) <u>Implementation</u>: the two Governments should jointly work via the Joint Exchequer Committee to agree a revised fiscal and funding framework for Scotland based on the above principles.</p>		<p>adjustment). While there is a power in the Scotland Act 2012 to increase borrowing limits by order, there may need to be further primary legislation in due course (e.g. if the circumstances under which the Scottish Government can borrow are changed).</p>	
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