



The Scottish Parliament
Pàrlamaid na h-Alba

Scotland Bill Committee

1st Report, 2011 (Session 4)

Report on the Scotland Bill

**Volume 1 - Conclusions and
Recommendations**

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The Scottish Parliament
Pàrlamaid na h-Alba

Scotland Bill Committee

Remit and membership

Remit:

The remit of the Scotland Bill Committee is to consider the Scotland Bill, proposed amendments to the Bill, responses to the report of the Session 3 Scotland Bill Committee, and to report to the Parliament.

Membership:

Richard Baker
Nigel Don
Linda Fabiani (Convener)
Adam Ingram
Alison Johnstone
James Kelly (Deputy Convener)
John Mason
Stewart Maxwell
Joan McAlpine
David McLetchie
Willie Rennie

Committee Clerking Team:

Clerk to the Committee

Stephen Imrie

Senior Researcher

Scherie Nicol

Committee Assistant

Vikki Little

LIST OF RECOMMENDATIONS

Overall conclusion and recommendation on legislative consent

On the basis of all of the evidence that we have heard, the responses from the UK Government to the amendments suggested by our predecessor and by others in this new Parliamentary session, the Committee, therefore is unable to recommend that the Parliament approve a Legislative Consent Motion (LCM) on the Scotland Bill unless it is amended in line with the Committee's conclusions and recommendations.¹

Other recommendations

Recommendation 1 - We recommend that the Bill be amended so that the Scottish Parliament has flexibility over income tax rates for all bands.²

Recommendation 2 - The Committee understands that the final costs of implementing the new Scottish income tax will be dependent on the approach chosen for some of the specific areas, for example, around overall transparency. However, the Committee recommends that a final cost estimate should be provided to the Scottish Parliament before any substantive work begins. The Committee also believes that any cost estimate should be open to challenge and scrutiny by the Scottish Government. The Committee believes that the cost of the introduction of the new Scottish Income Tax powers should be met by the UK Government as initiators of the policy.³

Recommendation 3 - The Committee recommends that HMRC does as much as possible to reduce the costs to individuals, businesses, the public sector and other organisations associated with the administration of the rate of the Scottish rate of income tax.

Recommendation 4 - In terms of the issue of the accountability of HMRC, the Committee recommends that, in relation to the Scottish income tax, the relevant accountable officer at HMRC should be accountable to the Scottish Ministers and should be obliged to attend meetings of committees in the Scottish Parliament if requested.⁴

Recommendation 5 - The Committee believes that the option of a distinctive Scottish tax department within HMRC should be considered by the UK Government.⁵

¹ This paragraph was agreed to by division. For 7 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don and Alison Johnstone), Against 3 (Richard Baker, David McLetchie and Willie Rennie), Abstentions 0.

² David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

³ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴ David McLetchie and Willie Rennie dissented from this paragraph.

⁵ David McLetchie and Willie Rennie dissented from this paragraph.

Recommendation 6 - The Committee recommends that there is a new legislative requirement inserted into the Bill in order that the Scottish Parliament can give its consent before the financial provisions take effect.⁶

Recommendation 7 - The Committee believes that it is important that the effects of the grant adjustment mechanism are monitored on a regular basis and we recommend that the mechanism is reviewed after a number of years and adjustments made to correct for any bias if necessary.

Recommendation 8 - The Committee agrees with its predecessor that the proposed annual and overall limits for short-term borrowing need to be recalculated on a more principled basis than the UK Government has done. We recommend that the required amount should be at least twice the current proposed level of £500 million.⁷

Recommendation 9 - The Committee also recommends the Scottish Government examine the case for establishing its own independent revenue forecasting service similar to the Office for Budget Responsibility.

Recommendation 10 - The Committee also recommends the Scottish Government examine the case for establishing its own independent revenue forecasting service similar to the Office for Budget Responsibility.

Recommendation 11 - The Committee agrees with the Scottish Government that the repayment period proposed by the UK Government would benefit from being extended to five years to increase the likelihood of the Scottish Government being able to repay without undue pressure on finances. We recommend this change to the UK Government.

Recommendation 12 - Furthermore, we welcome the establishment a Scottish cash reserve but, as did our predecessor, the Committee recommends going further to ensure that this includes all Scottish End Year Flexibility money saved in Scotland without the need for Treasury agreement, so that in the future, Scottish ministers will have total discretion over the Scottish budget.

Recommendation 13 - The Committee is concerned at the somewhat arbitrary borrowing limits proposed by the UK Government and we believe that a 'prudential' capital borrowing framework should be in place, based on the Scottish Government's ability to pay. However the Committee recognises that the UK Government has an interest in the control of the overall Public Sector Borrowing Requirement (PSBR) of which borrowing by the Scottish Government would form part. We recommend these changes to the UK Government.

Recommendation 14 - The Committee recommends that there is a need to go further and remove any residual legal and technical obstacles to the ability of the

⁶ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁷ David McLetchie and Willie Rennie dissented from this paragraph.

Scottish Government to have full range of debt instruments to hand in order to decide the best option for Scotland.⁸

Recommendation 15 - In respect of Landfill Tax, we recommend that the Scottish Government gives consideration to retention of the Landfill Communities Fund.

Recommendation 16 - The Committee has received evidence citing frustrations with the way in which the UK Government sets these taxes. We see a strong case for devolving air passenger duty and the aggregates levy to the Scottish Parliament and would see this as an opportunity for the Scottish Government to reform these taxes so that they are more effective environmental taxes and fairer on the industries on which they are levied. We recommend these changes to the UK Government.

Recommendation 17 - The Committee recommends that the revenues from excise duties on alcohol consumed in Scotland are assigned to the Scottish Parliament. As alcohol misuse and duty revenues are more closely related to consumption, the Committee recommends using consumption as the basis to assign revenues to the Scottish Government.⁹

Recommendation 18 - The Committee recommends that all powers associated with corporation tax are devolved to Scotland. This would include the ability to set the rate, decide on reliefs, allowances etc. In short, devolve the totality of corporation tax to the Scottish Parliament. This will provide Scotland with the ability to decide itself how to use this lever as a tool for greater economic growth.¹⁰

Recommendation 19 - This Committee believes that the details on how the financial provisions will work are simply too vague at this stage and are such that agreeing to the Bill is like signing a blank cheque. We therefore recommend that the UK Government should amend the Bill to insert a joint approval process in relation to the financial provisions.¹¹

Recommendation 20 - The Scotland Bill currently proposes the re-reservation of powers to Westminster in the areas of corporate insolvency, regulation of the health professions and Antarctica. As a matter of principle, the Committee does not believe that any powers should be re-reserved and we recommend that legislative consent is not given to these provisions.¹²

⁸ A proposal to remove this paragraph was disagreed to by division. For 3 (Richard Baker, David McLetchie and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don), Abstentions 1 (Alison Johnstone).

⁹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph. James Kelly was absent for the remainder of the Committee's consideration of its conclusions and recommendations.

¹⁰ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

¹¹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹² David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

Recommendation 21 - The Committee welcomes the provision in the Bill to devolve powers to regulate most air weapons. However, the Committee recommends that this be extended to cover the regulation of all firearms.¹³

Recommendation 22 - The Committee recommends that there is a case to be made to extend the current powers in the Scotland Bill and devolve responsibility for the speed of all classes of vehicle, not just the maximum speed of vehicles on roads, which might therefore enable the Scottish Ministers, on a pilot basis, to alter the speed limits on specific roads for other types of vehicles such as HGVs.

Recommendation 23 - We further recommend that the UK Government should devolve a more extensive set of powers (including limits, penalties and the responsibility for random testing). We see no logic behind a partial devolution and it would make far greater sense to devolve all associated powers.¹⁴

Recommendation 24 - 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.¹⁵

Recommendation 25 - The Committee is content to recommend legislative consent to this clause [misuse of drugs] in the Bill.

Recommendation 26 - The Committee is content to recommend legislative consent to this clause [Scottish Government/Scottish Executive] in the Bill.

Recommendation 27 - The Committee recommends that appointments to the BBC Trust and MG Alba should be devolved to Scottish Ministers.¹⁶

Recommendation 28 - We welcome the proposals of the McCluskey Review Group in relation to the scope of the compatibility review which will continue to be undertaken by the Supreme Court and as noted above [in the report] in relation to its powers of disposal. We welcome the recognition given the Advocate General to the strength of these arguments and recommend that the Bill is amended along these lines.

Recommendation 29 - We recommend that the proposals of the McCluskey Review Group relating to certification should be adopted.¹⁷

Recommendation 30 - We recommend that the Supreme Court's considerations should be limited strictly to the compatibility question, referring the case back to the High Court for disposal. This would preserve a clear distinction between the separate roles of the two courts, with the High Court firmly as the only Court which interprets the miscarriage of justice test, which is an aspect of Scots criminal law.

¹³ David McLetchie, Richard Baker and Willie Rennie dissented from this final sentence.

¹⁴ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁵ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁶ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁷ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

Recommendation 31 - The Committee has serious concerns regarding this provision [Partial suspension of Acts of the Scottish Parliament]. We believe that it has the potential for introducing significant unintended consequences and delay in the enactment of legislation. As such, we do not consider that this should be part of the Scotland Bill and we recommend that the clause is removed.¹⁸

Recommendation 32 - We recommend that the clause [Continued effect of provisions where legislative competence is conferred for a limited period] is removed as we would like to see these powers being conferred on a more permanent basis.¹⁹

Recommendation 33 - As with our predecessor, the Committee is content to recommend legislative consent to this clause [Time limits for human rights actions against the Scottish Ministers] in the Bill.

Recommendation 34 - We recommend that the clause [Implementation of international obligations] should be removed.²⁰

Recommendations 35 - The Committee recommends that there should be further devolution with different outcomes to match the nature and circumstances of the various Crown property, rights and interests involved.

Recommendations 36 and 37 - We recommend that powers be devolved to the Scottish Parliament to regulate Public Service Broadcasters. Furthermore, we recommend that there should be greater involvement of the Scottish Government in future decisions on licence fee matters.²¹

Recommendation 38 - Additionally, we recommend that the Scottish Digital Network should be the focus for local TV in Scotland and we urge there should be greater involvement of the Scottish Government in debates at a UK level on this.²²

Recommendation 39 - We recommend that powers should be devolved to the Scottish Parliament to decide on the content of the Scottish free-to-air list.²³

Recommendation 40 - This Committee is content to recommend the conclusions of the Scottish Government's submission to the UK Government on this matter [statutory right to attend EU meetings] and we agree that the Scotland Bill should be amended to this effect.²⁴

¹⁸ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

²⁰ David McLetchie dissented from this paragraph.

²¹ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

²² An amendment to this paragraph was disagreed to by division. For 4 (Richard Baker, David McLetchie, Alison Johnstone and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don), Abstentions 0.

²³ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

²⁴ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

Recommendation 41 - We recommend that the UK Government gives consideration as to how to amend the Scotland Bill to include enabling provisions which would begin the process of devolving welfare and benefits to the Scottish Parliament and that it works with the Scottish Government on the detail of how and when this would happen.²⁵

Recommendation 42 - The Committee recommends that the UK Government only proceed with the Scotland Bill if it has secured the clear legislative consent of the Scottish Parliament and met any conditions within that legislative consent motion.²⁶

Recommendation 43 - The Committee recommends that the Scotland Bill be amended to devolve the full range of financial powers to the Scottish Parliament.²⁷

Recommendation 44 - The Committee considers that, should the UK Government proceed with the current financial provisions within the Bill, it would be unacceptable for these to be enacted without express agreement of the Scottish Parliament. Therefore, the Committee recommends that the Scotland Bill be amended to include a mechanism for joint approval.²⁸

Recommendation 45 - We recommend that the Bill be amended to provide full fiscal autonomy for the Scottish Parliament and enable the devolution of welfare and benefits.²⁹

NB. The alternative views of a minority group of Members on the Committee to some of the conclusions and recommendations can be found in the Minority Report in Annex A of Volume 2 (Main Report).

²⁵ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

²⁶ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

²⁷ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

²⁸ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

²⁹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.



The Scottish Parliament
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Scotland Bill Committee

1st Report, 2011 (Session 4)

Report on the Scotland Bill

Volume 1 - Conclusions and Recommendations

The Committee reports to the Parliament as follows—

CONCLUSIONS AND RECOMMENDATIONS

Introduction

1. This report is made to the Scottish Parliament by the ad hoc Scotland Bill Committee established to consider the Scotland Bill, any proposed amendments to the Bill, the responses to the report of the former Scotland Bill Committee from Session 3, and to report to the Parliament.

2. This Committee has met on 15 occasions since it was established by the Parliament in June 2011. It has received over 90 written submissions of evidence and heard from numerous witnesses. The Committee has also organised two, more informal sessions, with the business community and with a cross-section of organisations from 'civic Scotland'. The Committee is grateful to all of those who took the time to engage with us and provide their views.

3. This Committee has been supported by a number of eminent advisers (see below) and we are indebted to them for their time and expertise, which has helped shape our final report. A list of our advisers is as follows—

- Graeme Blackett, Director, BiGGAR Economics;
- Maric Glaser, Technical Officer, VAT and Indirect taxes, the Chartered Institute of Taxation Technical;
- Professor Charlie Jeffery, Head of School of Social and Political Science, University of Edinburgh;
- James Wolffe Q.C., member, Axiom Advocates;
- Professor Alan Page, Dean of the School of Law, University of Dundee;

- Professor Stephen Tierney, Professor of Constitutional Theory and Director of the Edinburgh Centre for Constitutional Law;
- Professor Philip Schlesinger, Professor of Cultural Policy and Academic Director of the Centre for Cultural Policy Research at the University of Glasgow; and
- Robin Callander, independent public interest policy adviser.

Legislative consent to the Scotland Bill

4. It is important to understand the significance of any legislative consent motion debated in due course in the Scottish Parliament. The origin of the legislative consent process is the debate held at the time of the consideration of the Scotland Act 1998. This led to the establishment of the Sewel Convention, named after Lord Sewel of Gilcomstoun, the Parliamentary Under-Secretary of State at the Scottish Office from 1997 to 1999. This stated that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. This was extended to include not only devolved matters, but also matters which alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers.

5. This Bill has already been the subject of a legislative consent motion passed by the previous Scottish Parliament.³⁰ It should be noted, however, that this was on a basis which referred to the various amendments, suggestions and proposals that former committee had made. This passing of the then motion was intended to stimulate a further process of dialogue, so that this new Parliament in Session 4 could consider the Bill as amended and decide whether it consents to the changes which have been made, before the Bill can be passed for Royal Assent.³¹

6. On the basis of all of the evidence that we have heard, the responses from the UK Government to the amendments suggested by our predecessor and by others in this new Parliamentary session, the Committee, therefore is unable to recommend that the Parliament approve a Legislative Consent Motion (LCM) on the Scotland Bill unless it is amended in line with the Committee's conclusions and recommendations.³²

General commentary

7. It is worth noting from the outset that devolution has not stood still since the passing of the Scotland Act in 1998. Since then, there have been nearly 170 orders made under the Scotland Act to alter the devolution settlement, update statute law, assign executive responsibility for functions or otherwise alter the

³⁰ Scottish Parliament, motion S3M-8114, 10 March 2011.

³¹ Scotland Bill Committee, *Report on the Scotland Bill and relevant legislative consent memoranda*, 1st Report, 2011, paragraph 224.

³² This paragraph was agreed to by division. For 7 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don and Alison Johnstone), Against 3 (Richard Baker, David McLetchie and Willie Rennie), Abstentions 0.

competence of the Scottish Parliament.³³ To date, there have been no Orders to re-reserve powers to Westminster.

8. The Commission on Scottish Devolution (the Calman Commission) was of the view that the allocation of functions between the Scottish and the UK Parliaments was broadly right but because there were very limited tax-raising powers, there was not enough financial accountability. The Scotland Bill proposals to devolve new tax-raising powers will mean that, for the first time, a proportion of the spending decisions made in Scotland could have direct consequences for personal taxation in Scotland.³⁴

9. This Committee does recognise that irrespective of any positions that may be taken in the debate on the longer-term constitutional future of Scotland, poll after poll of the Scottish people shows continued support for greater powers to be devolved than currently in the Scotland Bill.³⁵

10. In this respect, there are elements of the Bill which the whole Committee can welcome. However, overall, we believe that the Bill does not go far enough and its provisions, if enacted, represent a significant risk to public finances in Scotland.³⁶

11. The Committee concludes that whilst the Bill delivers a very limited amount of financial accountability or powers, it does not deliver what Scotland needs, which is full fiscal autonomy to deliver the kind of economic control and flexibility all Governments require to respond to the needs of their citizens.³⁷

12. It is the Committee's view that the Scotland Bill as drafted is a missed opportunity and is not yet fit for purpose.³⁸

The package of financial powers in the Bill

13. The financial provisions in the current Scotland Bill are controversial. We outline our views on the detail of these in subsequent sections.

14. At this stage, however, the Committee agrees that as presently drafted, the Bill is flawed and does not yet offer sufficient economic levers to the Scottish Parliament and Government. Additionally, those that are proposed have, in our view, serious deficiencies. Finally, the financial provisions, when implemented, are inadequate to enable the Scottish Government to respond to economic shocks as well as to deal with the problems that will arise through the corresponding reduction in the block grant and from the errors that occur during forecasting.³⁹

³³ Scotland Office. Available at: <http://www.scotlandoffice.gov.uk/scotlandoffice/37.html>

³⁴ The Committee agreed to remove a paragraph of the report subsequent to this paragraph by division. For 7 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don and Alison Johnstone), Against 4 (James Kelly, Richard Baker, David McLetchie and Willie Rennie), Abstentions 0.

³⁵ David McLetchie dissented from this paragraph.

³⁶ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

³⁷ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

³⁸ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

³⁹ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

15. This Committee supports increased financial accountability for the Scottish Parliament. However, as we demonstrate later in our report, at best the Bill could be said to increase the proportion of tax raised by the Scottish Parliament as a proportion of total tax raised in Scotland from 8.5% to 20%. The Scotland Office state that this increases the proportion of revenue raised in relation to expenditure in Scotland from a little under 15% to just over 30%. This level of fiscal devolution is insufficient. We agree with the view expressed by many that there is a fundamental principle that the Scottish Parliament should be responsible for raising what it spends. It is only through this process that you have true accountability of politicians for the decisions they take. As important to us as the principle of accountability is the view that the *raison d'être* of the Scottish Parliament should be to take decisions in the best interest of the Scottish people.⁴⁰

Creation of a Scottish Income Tax

16. The Scotland Bill proposes to abolish the Scottish Variable Rate (the ability of the Scottish Parliament to vary income tax by +/- 3p in the pound) and, from April 2016, the UK rates of income tax will be reduced for Scottish taxpayers by 10p at the basic, higher and additional rates. The Scottish Parliament will then have the flexibility to set different rates of income tax each year for Scottish taxpayers by adding a new amount uniformly to all rates.

17. This Committee welcomes the principle of devolving taxes to Scotland. We agree with many of the witnesses from whom we took evidence and our predecessor committee that income tax is a sensible tax to devolve.⁴¹

18. Whilst we agree that income tax should be part of the package of taxes devolved to Scotland, on its own, or even with the addition of two vastly smaller taxes (in revenue terms) – stamp duty land tax and landfill tax – it is insufficient in terms of increasing financial accountability to the levels that we feel are necessary. Additionally, in terms of the detail of what is being proposed and how it will work, the Committee is of the view that there are still significant problems and limitations with the Bill and we outline these below.⁴²

The choice of the 10p rate of income tax

19. The Committee is surprised to learn of the arbitrary way in which the 10p rate was selected. The evidence we took from the chair of the Calman Commission, Sir Kenneth Calman, and from Rt. Hon Michael Moore MP, Secretary of State for Scotland, demonstrated that, as the former told us, "There was no magic formula that said that it had to be 10p"⁴³ and that "Most people know what 10p is; it is easier to measure and easier to calculate with than other figures."⁴⁴ Clarification was received from Sir Kenneth in subsequent written evidence (see paragraph 100 of the Main Report).

⁴⁰ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴¹ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴² David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴³ Scotland Bill Committee, *Official Report*, 13 September, Col 108.

⁴⁴ Scotland Bill Committee, *Official Report*, 13 September, Col 110.

Fiscal drag

20. The Committee is concerned that the proposals do not take into account the extent to which tax changes impact on taxpayers. This inhibits the Scottish Government's ability to adjust income tax in Scotland including the flexibility to apply progressive taxation.⁴⁵

21. The Committee also considers that the proposals will leave the Scottish budget exposed to the effects of fiscal drag, which could reduce the share that the Scottish Government receives of the overall Scottish tax take. This means that if Scottish Government economic policies successfully grow the Scottish economy, and more taxpayers move into the higher bands, the Scottish Budget does not benefit as there is no additional income.^{46, 47}

22. We recommend that the Bill be amended so that the Scottish Parliament has flexibility over income tax rates for all bands [RECOMMENDATION 1].⁴⁸

Deflationary bias

23. The Committee notes that under the Scotland Bill proposals, if UK income tax receipts do not grow at the same pace as overall UK Government expenditure then there will be a deflationary effect on the Scottish Government's budget. The deflationary effect results in Scottish budget, under the Scotland Bill proposals, being lower than it would be under the status quo, using the Barnett formula.⁴⁹

24. The Committee is aware of the risks that could lead to a deflationary bias and a reduction to the Scottish budget under the Scotland Bill proposals.⁵⁰ We are keen to ensure that the grant reduction mechanism which is agreed to does not create such a bias.

Implementation

25. The Committee understands that the final costs of implementing the new Scottish income tax will be dependent on the approach chosen for some of the specific areas, for example, around overall transparency. **However, the Committee recommends that a final cost estimate should be provided to the Scottish Parliament before any substantive work begins [RECOMMENDATION 2]. The Committee also believes that any cost estimate should be open to challenge and scrutiny by the Scottish Government. The Committee believes that the cost of the introduction of the new Scottish**

⁴⁵ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴⁶ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴⁷ A proposed amendment to this paragraph was disagreed to by division. For 4 (James Kelly, Richard Baker, David McLetchie and Willie Rennie), Against 7 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don and Alison Johnstone), Abstentions 0.

⁴⁸ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁴⁹ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁵⁰ A proposed amendment to this paragraph was disagreed to by division. For 4 (James Kelly, Richard Baker, David McLetchie and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram and Nigel Don), Abstentions 1 (Alison Johnstone).

Income Tax powers should be met by the UK Government as initiators of the policy.⁵¹

26. The Committee further understands that Her Majesty's Revenue and Customs (HMRC) are consulting representative bodies on the detailed implementation issues for the introduction of the Scottish rate of income tax in order to keep the administrative burden on businesses and individuals across the UK to a minimum.

27. The Committee recommends that HMRC does as much as possible to reduce the costs to individuals, businesses, the public sector and other organisations associated with the administration of the rate of the Scottish rate of income tax [RECOMMENDATION 3].

28. The Committee notes that HMRC are working closely with the members of various technical groups convened to consider the implementation of the Scottish rate of income tax and to ensure that the definition of a Scottish tax payer can be applied efficiently. The Committee encourages HMRC to recognise the importance of a sound definition given its importance as a building block in the Scotland Bill proposals and the costly implications of any errors.

29. In terms of the issue of the accountability of HMRC, the Committee recommends that, in relation to the Scottish income tax, the relevant accountable officer at HMRC should be accountable to the Scottish Ministers and should be obliged to attend meetings of committees in the Scottish Parliament if requested [RECOMMENDATION 4].⁵²

30. The Committee believes that the option of a distinctive Scottish tax department within HMRC should be considered by the UK Government. [RECOMMENDATION 5].⁵³

Block grant adjustment

31. The Committee recognises that the method for calculating the grant adjustment will have a very significant impact on the long-term impact of the Scotland Bill proposals on the Scottish budget. Given that it is such an important decision, the Committee believes that the UK Government must clearly outline its proposals and these should be subject to scrutiny by the Scottish Parliament.

32. The Committee recommends that there is a new legislative requirement inserted into the Bill in order that the Scottish Parliament can give its consent before the financial provisions take effect [RECOMMENDATION 6].⁵⁴
We outline this in more detail in a subsequent section of this report.

33. The Committee agrees with its predecessor that it is important that there is not a simple percentage reduction as this would not protect the Scottish budget from cyclicity or from changes to the UK tax base. We believe that an attractive

⁵¹ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁵² David McLetchie and Willie Rennie dissented from this paragraph.

⁵³ David McLetchie and Willie Rennie dissented from this paragraph.

⁵⁴ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

option is that any adjustment in the portion of the block grant relating to the Scottish Rate of Income Tax is indexed to changes in the UK income tax base.

34. The Committee believes that it is important that the effects of the grant adjustment mechanism are monitored on a regular basis and we recommend that the mechanism is reviewed after a number of years and adjustments made to correct for any bias if necessary [RECOMMENDATION 7].

The no detriment principle

35. The Committee is concerned that the principle of 'no detriment' may not operate smoothly and suggests that more detail has to be provided by the UK Government on the thresholds for adjustments and on the extent to which the Scottish Government will be included in taking decisions on adjustments.

Over-reliance on income tax

36. The Committee believes that the cyclical nature of income tax means that it is best devolved within a wider basket of taxes to reduce the risk of year-to-year revenue volatility. Further taxes must be devolved to provide more stability.⁵⁵

Tax levers to stimulate economic growth

37. Our overall conclusion on the current financial provisions in the Scotland Bill is that they are inadequate and will not significantly enhance Scotland's longer term economic performance and delivery of social and environmental objectives.⁵⁶ Recommendations in relation to enhanced borrowing powers, the devolution of corporation tax and the management and revenues of the Crown Estate to boost economic growth are covered in subsequent paragraphs.

Revenue borrowing

38. The Committee welcomes the proposed amendments tabled by the UK Government in June 2011 in relation to revenue borrowing and the creation of a Scottish cash reserve. In our view, the proposals are insufficient as they do not address concerns about the borrowing limits and the need for a counter-cyclical borrowing facility.⁵⁷

39. Although the OBR has a limited track record in forecasting since it was only recently established, HM Treasury forecasts in the past have tended to be over-optimistic. The largest errors occurred during the recent recession. When considering borrowing limits, the Scottish Government may wish to be aware of whether or not the proposed limit would be sufficient in order to offset deviations from forecasts in times of recession, and whether the repayment period is sufficiently long in times of economic downturn when revenue budgets will already be being squeezed.

40. The Committee agrees with its predecessor that the proposed annual and overall limits for short-term borrowing need to be recalculated on a more principled basis than the UK Government has done. We recommend

⁵⁵ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this paragraph.

⁵⁶ David McLetchie, Richard Baker, James Kelly and Willie Rennie dissented from this sentence.

⁵⁷ David McLetchie and Willie Rennie dissented from this paragraph. Richard Baker dissented from the last sentence.

that the required amount should be at least twice the current proposed level of £500 million [RECOMMENDATION 8].⁵⁸

41. The Committee also recommends that in order to reduce the need for borrowing, the Office of Budget Responsibility periodically reviews its forecasts over the course of the spending review period as better data becomes available to ensure that forecast error is minimised [RECOMMENDATION 9].

42. The Committee also recommends the Scottish Government examine the case for establishing its own independent revenue forecasting service similar to the Office for Budget Responsibility [RECOMMENDATION 10].

43. The Committee accepts that cyclical revenue risks are faced by governments with revenue raising powers, but agrees with the Scottish Government that increased levels of revenue borrowing should be available as a means of cushioning these cyclical shocks.⁵⁹

44. The Committee agrees with the Scottish Government that the repayment period proposed by the UK Government would benefit from being extended to five years to increase the likelihood of the Scottish Government being able to repay without undue pressure on finances. We recommend this change to the UK Government [RECOMMENDATION 11].

45. Furthermore, we welcome the establishment a Scottish cash reserve but, as did our predecessor, the Committee recommends going further to ensure that this includes all Scottish End Year Flexibility money saved in Scotland without the need for Treasury agreement, so that in the future, Scottish ministers will have total discretion over the Scottish budget [RECOMMENDATION 12].

Capital borrowing

46. The Committee recognises the importance of sufficient capital borrowing powers to the Scottish Government in allowing investment in infrastructure and stimulating economic growth whilst facilitating social and environmental objectives.

47. However, whilst we welcome the amendments tabled by the UK Government in June 2011, we do not feel that these are an adequate response to the Session 3 Scotland Bill Committee's recommendations.⁶⁰

48. The Committee is concerned at the somewhat arbitrary borrowing limits proposed by the UK Government and we believe that a 'prudential' capital borrowing framework should be in place, based on the Scottish Government's ability to pay. However the Committee recognises that the UK Government has an interest in the control of the overall Public Sector Borrowing Requirement (PSBR) of which borrowing by the Scottish Government would form part. **We recommend these changes to the UK Government [RECOMMENDATION 13].**

⁵⁸ David McLetchie and Willie Rennie dissented from this paragraph.

⁵⁹ David McLetchie and Willie Rennie dissented from this paragraph.

⁶⁰ David McLetchie and Willie Rennie dissented from this paragraph.

49. The Committee believes that the early implementation of the capital borrowing powers and a significantly higher overall limit would help maintain capital investment and boost economic recovery at a time when both UK and Scottish Government expenditure is falling.

Power to issue bonds

50. The Committee welcomes the changes that the UK Government introduced in June 2011 in relation to the ability of the Scottish Government to issue bonds.

51. We recognise that, in the current economic climate, it may be preferable for the Scottish Government to raise money through a different means than issuing its own bonds. However, this may not always be the case and that is why the Committee concludes that it is important to have the powers for the future.⁶¹

52. The Committee recommends that there is a need to go further and remove any residual legal and technical obstacles to the ability of the Scottish Government to have a full range of debt instruments to hand in order to decide the best option for Scotland [RECOMMENDATION 14].⁶²

Stamp Duty Land Tax, Landfill tax and devolved taxes

53. In keeping with the previous Committee's recommendations, this Committee strongly supports Stamp Duty Land Tax and Landfill tax becoming "devolved taxes" and believes this will provide a blueprint for further tax devolution in the future.

54. The Committee notes that tax avoidance currently seen at UK level is an issue in relation to stamp duty land tax as it applies to commercial property transactions and that any successor scheme will have to take this in to account and have regard to the stamp duty regime applicable to corporate transactions.

55. In respect of Landfill Tax, we recommend that the Scottish Government gives consideration to retention of the Landfill Communities Fund [RECOMMENDATION 15].

56. The Committee also strongly supports the proposals for giving the Scottish Parliament the power to create 'new taxes'.

Air Passenger Duty and the aggregates levy

57. The Committee is disappointed that the UK Government did not include the devolution of air passenger duty and the aggregates levy in the initial Bill as per the recommendations of the Calman Commission.

58. The Committee has received evidence citing frustrations with the way in which the UK Government sets these taxes. We see a strong case for devolving air passenger duty and the aggregates levy to the Scottish Parliament and would

⁶¹ A proposal to remove this paragraph was disagreed to by division. For 3 (Richard Baker, David McLetchie and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don), Abstentions 1 (Alison Johnstone).

⁶² A proposal to remove this paragraph was disagreed to by division. For 3 (Richard Baker, David McLetchie and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don), Abstentions 1 (Alison Johnstone).

see this as an opportunity for the Scottish Government to reform these taxes so that they are more effective environmental taxes and fairer on the industries on which they are levied. **We recommend these changes to the UK Government [RECOMMENDATION 16].**

59. The Committee, however, recognises the serious financial consequences that would arise if the aggregates levy were found to be incompatible with EU law.

Excise duties

60. The Committee recognises that Scotland has a significant problem relating to alcohol misuse with negative impacts on the devolved areas of health, social welfare and public order. We are concerned that whilst it is the UK Government that benefits from the extra revenues per capita that are raised in Scotland it is the Scottish Government that bears most of the cost of alcohol abuse.⁶³

61. The Committee recommends that the revenues from excise duties on alcohol consumed in Scotland are assigned to the Scottish Parliament [RECOMMENDATION 17]. As alcohol misuse and duty revenues are more closely related to consumption, the Committee recommends using consumption as the basis to assign revenues to the Scottish Government.⁶⁴

Corporation tax

62. As indicated above, this Committee believes that the current Scotland Bill devolves an insufficient number of taxes to Scotland to provide enough economic teeth in the legislation. Key to this is its failure to devolve corporation tax.⁶⁵

63. The Committee recommends that all powers associated with corporation tax are devolved to Scotland [RECOMMENDATION 18]. This would include the ability to set the rate, decide on reliefs, allowances etc. In short, devolve the totality of corporation tax to the Scottish Parliament. This will provide Scotland with the ability to decide itself how to use this lever as a tool for greater economic growth.⁶⁶

64. We do note, however, that the costs of any implementation of a devolved regime must be worked out by the Scottish Government and minimised. The Committee also accepts that volatility is an issue but stresses that the argument of corporation tax as part of a wider basket of taxes minimises this concern. It should also be noted that, in absolute terms, corporation tax is less volatile than income tax.⁶⁷

65. The Committee recognises that any issues that may arise would need to be resolved by the Scottish Government. We note, however, the comments made to

⁶³ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph. James Kelly was not present for the remainder of the Committee's considerations of the conclusions and recommendations.

⁶⁴ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁶⁵ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

⁶⁶ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

⁶⁷ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

us by Dr Gudgin, corporation tax adviser to the Secretary of State for Northern Ireland, that profit shifting can be satisfactorily policed in Northern Ireland without incurring significant extra costs.^{68, 69}

A joint approval process for the financial provisions in the Bill

66. In the latter stages of our deliberations and evidence-taking, the Committee discussed with both governments the issue of whether or not the financial provisions in the Bill (as outlined above) have been developed to a degree which is sufficient to provide clarity to all as to how they will be implemented and brought into force.

67. During these discussions, we considered the issue of whether the financial provisions in the Bill should be subject to a further joint approval process. This should not be confused with the commencement of various provisions in the Bill following Royal Assent.

68. Joint commencement relates to the commencement of various powers in the Bill, in this case the income tax provisions, through the consideration and approval of a joint order. This order would bring into force the income tax provisions. The Scottish Government is suggesting that it would seek the consent of the Scottish Parliament before it made such an order. It would then be for the Westminster Parliament to decide to what form of control it wishes to retain over the Secretary of State's exercise of his power to make the order. In legal terms, the order could not be made until both governments were authorised to do so in any manner prescribed by the Bill. Commencement of the relevant provisions is required in order to begin the process of estimating receipts for a Scottish income tax, establishing the forecasting mechanism etc.

69. On the other hand, a joint approval process, which we suggest, would enable the key provisions in the Bill relating in the main to the Scottish income tax to be commenced through an order made in the normal way (i.e. by the UK Government). This will mean that the estimation of receipts and forecasting can begin after the Bill receives Royal Assent. However, the Committee is keen to ensure that it will not be possible for the UK Government to unilaterally be able to "go live" with the new financial provisions (i.e. the date on which they have practical effect) without the approval of both the Scottish Government and Scottish Parliament.⁷⁰

70. The key difference is that the latter process allows some of the preparatory work and discussions to get underway but does not allow the system to go live without approval from Scotland (because the UK Government would be unable to legislate for the tax year when the new system starts without joint approval).

71. This Committee believes that the details on how the financial provisions will work are simply too vague at this stage and are such that agreeing to the Bill is like signing a blank cheque. We therefore recommend

⁶⁸ Scotland Bill Committee, *Official Report*, 8 November, Col 539.

⁶⁹ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

⁷⁰ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

that the UK Government should amend the Bill to insert a joint approval process in relation to the financial provisions [RECOMMENDATION 19].⁷¹

72. This process would be linked to the appointment of the relevant tax years after which the Scottish Variable Rate power would cease to have effect and the new taxation powers would take effect. This would mean that the UK Government could commence with the preparatory work of ironing out the technical issues, starting the forecasting process etc. but that the ‘final trigger’ to go live would be subject to joint agreement by both Governments. In doing so, this should also involve the Scottish Parliament through the affirmative procedure.⁷²

The non-financial provisions in the Bill

Re-reservations

73. The Scotland Bill currently proposes the re-reservation of powers to Westminster in the areas of corporate insolvency, regulation of the health professions and Antarctica. **As a matter of principle, the Committee does not believe that any powers should be re-reserved and we recommend that legislative consent is not given to these provisions [RECOMMENDATION 20].⁷³**

74. In the case of corporate insolvency, we do not consider that there is sufficiently clear evidence that makes the case for any change. In our view, it is not necessary to address any issues relating to different regimes for insolvency north and south of the border through reserving matters to the UK Government and Parliament and that improved inter-governmental working is preferable.⁷⁴

75. We also agree with our predecessor that the measures necessary to affect the winding-up of Registered Social Landlords should remain devolved.

76. In relation to the regulation of the health professions, we note the evidence from some, including the UK Health Department, that there is nothing inherently wrong with the current mixed system of partial reserved/devolved regulation, depending on the particular profession involved. We see no need to alter this.⁷⁵

77. Finally, we believe that creation of an entirely new reservation in Schedule 5 of the Scotland Act to address the issue of the regulation of activities in Antarctica, which were not reserved in 1998, is unnecessary and disproportionate. To our knowledge, there have been no problems to date with this.⁷⁶

Air weapons

78. The intention of the UK Government is to amend the Scotland Act to create a specific exception to the reservation of firearms for the regulation of air weapons, in order to give the Scottish Parliament legislative competence in this area. We note that this excludes those air rifles, air guns or air pistols which are of a type

⁷¹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁷² David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁷³ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁷⁴ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁷⁵ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁷⁶ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

declared by rules made by the Secretary of State under section 53 of the 1968 Firearms Act to be “specially dangerous”.

79. The Committee welcomes the provision in the Bill to devolve powers to regulate most air weapons. However, the Committee recommends that this be extended to cover the regulation of all firearms [RECOMMENDATION 21].⁷⁷

Speed limits

80. The UK Government intends to enable the Scottish Ministers to have the power to set speed limits on all Scottish roads without the need to consult with the Secretary of State, and Scottish Ministers would also be enabled to specify signs for a Scottish national speed limit. The powers would include setting the national speed limit on special roads, and setting the national speed limit on all other roads (except the 30mph limit on restricted roads), including the current 70mph on all dual carriageways and the current 60mph on all single carriageways.

81. There has been a debate on whether the provisions in the Bill should be adjusted to devolve responsibility for the speed of all classes of vehicle, not just the maximum speed of vehicles on roads. **The Committee recommends that there is a case to be made to extend the current powers in the Scotland Bill and devolve responsibility for the speed of all classes of vehicle, not just the maximum speed of vehicles on roads, which might therefore enable the Scottish Ministers, on a pilot basis, to alter the speed limits on specific roads for other types of vehicles such as HGVs [RECOMMENDATION 22].**

Drink driving

82. The UK Government has included provisions in the Scotland Bill to amend the Road Traffic Act 1988 to give Scottish Ministers powers to make regulations in relation to the prescribed alcohol limit which applies when driving in Scotland.

83. Most of the evidence received by this and the former Committee expressed support for the proposal that the Scottish Ministers should set the alcohol limit for driving. However, one of the key issues to emerge related less to the principle of devolution of these powers and more to whether this goes far enough. Specifically, should there be additional devolution of a more complete package of powers over drink-driving, including limits, penalties, responsibility for random testing etc.

84. We again agree with the former Committee that the Scottish Parliament should give its legislative consent to the provisions in the Scotland Bill relating to drink driving limits.

85. We further recommend that the UK Government should devolve a more extensive set of powers (including limits, penalties and the responsibility for random testing). We see no logic behind a partial devolution and it would make far greater sense to devolve all associated powers [RECOMMENDATION 23].⁷⁸

⁷⁷ David McLetchie, Richard Baker and Willie Rennie dissented from this sentence.

⁷⁸ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

Administration of elections

86. In its Command Paper, the UK Government indicated that it agrees with the recommendations of the Calman Commission which stated that devolving those elements of responsibility for the administration of elections, currently vested in the Secretary of State for Scotland, would be consistent with the principle that matters should be decided at the level closest to those affected, unless there are good reasons for determining them at a UK level.⁷⁹

87. Specifically, under the proposals in the Bill, the Secretary of State will retain a number of responsibilities such as for voter registration, rules about the composition of the Scottish Parliament and the procedure for filling any regional seat vacancy during the life of a Parliament.

88. 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 [RECOMMENDATION 24].⁸⁰

Misuse of drugs

89. Licensing of the prescription of controlled drugs to treat addiction is currently reserved to UK Ministers. The Bill transfers to Scottish Ministers the authority for regulating licenses for doctors practising in Scotland in connection with patients being treated in Scotland.

90. The Committee is content to recommend legislative consent to this clause in the Bill [RECOMMENDATION 25].

Scottish Parliament/Scottish Government

91. The Bill makes provision that would replace the title “the Scottish Executive” with “the Scottish Government” in the Scotland Act.

92. The Committee is content to recommend legislative consent to this clause in the Bill [RECOMMENDATION 26].

Appointments to the BBC Trust and the Board of MG Alba

93. The Scotland Bill contains two provisions covering the Scottish Ministers’ role in the appointment of the BBC Trust member for Scotland and appointments to the Board of MG Alba. The UK Government considers that these clauses require a Minister of the Crown to obtain the agreement of the Scottish Ministers before making a recommendation for the appointment of the Scottish member of the BBC Trust and also that they enable the Scottish Ministers to approve the appointments of MG Alba board members.

94. The Committee noted that the Scottish Government is the sole funder of MG Alba and we consider that – on the principle of accountability – there can be no justification for the Scottish Secretary being involved. Similarly, in relation to the

⁷⁹ HM Government. *Strengthening Scotland’s Future*, p51.

⁸⁰ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

appointment of the BBC Trust Member for Scotland, we can also see no justification for the Scottish Secretary being involved.⁸¹

95. The Committee recommends that appointments to the BBC Trust and MG Alba should be devolved to Scottish Ministers [RECOMMENDATION 27].⁸²

Appointments to the Crown Estate Commissioners

96. The Committee's views are superseded by the far wider recommendations we make below on greater control of the Crown Estate by the Scottish Parliament.

The legal provisions in the Bill

The Lord Advocate – Convention Rights and Community Law

97. The Scotland Bill contains a provision to alter the role of the Lord Advocate in respect of Convention rights and Community law and to create a statutory right of appeal to the UK Supreme Court from the High Court of Justiciary sitting as a court of criminal appeal where it is alleged that there has been a breach of Convention rights or Community law on the part of the prosecutor.

98. Some of the issues associated with this provision have been a matter of some controversy and have been the focus of two expert working groups. The first (chaired by Professor Sir David Edward) was established by the Advocate General for Scotland and the second (chaired by Lord McCluskey) -- formed to comment to the conclusions of the former and the subsequent amendments to the Bill introduced by the UK Government -- was established by the First Minister.

99. The work of these two groups and that of the two governments have substantially narrowed the areas of disagreement and, through the evidence the Committee has taken and the advice we have received, we believe that this can be taken further as set out below.

100. The Committee agrees that it is appropriate that the acts or omissions of the Lord Advocate be removed from the Scotland Act in respect of devolution issues. However, the Committee believes that the High Court of Justiciary should remain as the final court of criminal appeal in Scotland.

101. The Committee notes that the Advocate General, Lord McCluskey and the Lord Advocate agreed that the scope of an appeal in respect of Convention rights or EU law should be widened to include the acts or failure to act of any public authority involved in the criminal process. This widening of scope underlines the need for certification as backed by Lord McCluskey, the Lord Advocate and the Lord President.⁸³

102. We welcome the proposals of the McCluskey Review Group in relation to the scope of the compatibility review which will continue to be undertaken by the Supreme Court and as noted above in relation to its powers of disposal. **We**

⁸¹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁸² David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁸³ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this sentence.

welcome the recognition given the Advocate General to the strength of these arguments and recommend that the Bill is amended along these lines [RECOMMENDATION 28].

103. We recommend that the proposals of the McCluskey Review Group relating to certification should be adopted [RECOMMENDATION 29].^{84, 85}

104. The Committee considers that any appeal from the High Court of Justiciary to the Supreme Court should only be on a question of law, by which we mean ECHR and EU law, and that further action or disposal of any case should remain with the High Court of Justiciary in accordance with Scots criminal law.

105. We recommend that the Supreme Court's considerations should be limited strictly to the compatibility question, referring the case back to the High Court for disposal [RECOMMENDATION 30]. This would preserve a clear distinction between the separate roles of the two courts, with the High Court firmly as the only Court which interprets the miscarriage of justice test, which is an aspect of Scots criminal law.

Partial suspension of Acts of the Scottish Parliament

106. The Committee has serious concerns regarding this provision. We believe that it has the potential for introducing significant unintended consequences and delay in the enactment of legislation. **As such, we do not consider that this should be part of the Scotland Bill and we recommend that the clause is removed [RECOMMENDATION 31].**⁸⁶

Continued effect of provisions where legislative competence is conferred for a limited period

107. We recommend that the clause is removed as we would like to see these powers being conferred on a more permanent basis [RECOMMENDATION 32].⁸⁷

Time limits for human rights actions against the Scottish Ministers

108. **As with our predecessor, the Committee is content to recommend legislative consent to this clause in the Bill [RECOMMENDATION 33].**

Implementation of international obligations

109. We have serious reservations about both the necessity of this clause in the Bill and its wide scope. The Committee notes the views of its predecessor that the UK Government should consider whether the provision is needed.

110. The Committee has considerable sympathy with the view expressed by some witnesses that it is a power of potentially very wide application – and could be used for matters which are of greater impact than the examples which have

⁸⁴ An amendment to this paragraph was disagreed to by division. For 4 (Richard Baker, David McLetchie, Alison Johnstone and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don), Abstentions 0.

⁸⁵ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

⁸⁶ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁸⁷ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

prompted the suggestion. **We recommend that the clause should be removed [RECOMMENDATION 34].**⁸⁸ The Committee notes that, to date, there have been no real problems in this area.

Numbers of DPOs, appointments to the SPCB, statements of legislative competence for non-government bills and changes to members' interests

111. The Committee welcomes the agreement of the UK Government to take forward the recommendations of the former Standards, Procedures and Public Appointments Committee as agreed by the Parliament in session 3. **We are, therefore, content with these provisions in the Bill.**

Other powers not in the Bill and proposals for amendments

112. In addition to considering the Bill and the response of the UK Government to the former Committee's report, this Committee has also been charged with considering proposals for amendments to the Bill. We outline our views on these below.

Greater control of the Crown Estate

113. The Committee has been struck by the degree to which the more we have learnt and understood about the Crown Estate in Scotland and the operations of the CEC here, the clearer and more compelling the case has become for change.

114. We note the tests that the Secretary of Scotland outlined in relation to whether he would consider any amendments in the Bill on the Crown Estate, namely that there should be detailed, evidence-based proposals, that they demonstrate benefits to Scotland without prejudice to other parts of the United Kingdom and that they are capable of receiving cross-party consensus.

115. In our extensive investigation of this issue, the Committee has considered a great deal of detailed evidence. This clearly demonstrates that the value of the Crown Estate Commissioners' (CEC) operations in Scotland in terms of net contribution to overall UK revenues is extremely small. The amount was significantly less than the £9.9 million, or 3.7% of the CEC's overall gross income, that came from Scotland in 2010-11. The 'loss' of these revenues to either the CEC's business model or HM Treasury is so small as to be of no detriment to any future change or to be prejudicial to other parts of the United Kingdom.

116. **The Committee recommends that there should be further devolution with different outcomes to match the nature and circumstances of the various Crown property, rights and interests involved [RECOMMENDATION 35].**

Increased powers over broadcasting

117. The Committee welcomes the submission made by the Scottish Government to the UK Government. We consider that this makes the case for a number of

⁸⁸ David McLetchie dissented from this paragraph.

changes and additions to the Scotland Bill to provide the Scottish Parliament with increased powers over certain broadcasting matters.⁸⁹

118. In that respect, we recommend that powers be devolved to the Scottish Parliament to regulate Public Service Broadcasters [RECOMMENDATION 36]. Furthermore, we recommend that there should be greater involvement of the Scottish Government in future decisions on licence fee matters [RECOMMENDATION 37].⁹⁰

119. Additionally, we recommend that the Scottish Digital Network should be the focus for local TV in Scotland and we urge there should be greater involvement of the Scottish Government in debates at a UK level on this [RECOMMENDATION 38].⁹¹

120. Finally, we recommend that powers should be devolved to the Scottish Parliament to decide on the content of the Scottish free-to-air list [RECOMMENDATION 39].⁹²

Statutory right to attend EU Council of Ministers meetings and officials' meetings

121. The Committee notes evidence that substantial areas of devolved policy are now legislated on at an EU level. It is therefore important that Scotland's voice in the EU is as strong as possible. The Committee welcomes the evidence we received that the occasions when Scottish ministers or officials have been refused attendance at EU meetings have been infrequent over the eleven years of devolution. Nevertheless, the potential for this has not been removed and we believe that the current intergovernmental arrangements are too vague, not enforceable and leave open the possibility for unnecessary problems.⁹³

122. We do recognise that there can be issues caused by the decisions of individual EU Presidencies on the size of delegations etc. We further agree that the EU recognises, from the perspective of negotiations, that there should be one member state position and that any minister (UK or devolved) attending any meeting has to abide by that.

123. Nonetheless, we conclude that none of the above are reasons for disagreeing to the introduction of an improved intergovernmental system that provides, on a statutory basis, for Scottish Ministers and officials to be able to decide to attend formal and informal Councils and working groups etc. when devolved issues are being discussed.⁹⁴

124. This Committee is content to recommend the conclusions of the Scottish Government's submission to the UK Government on this matter

⁸⁹ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

⁹⁰ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

⁹¹ An amendment to this paragraph was disagreed to by division. For 4 (Richard Baker, David McLetchie, Alison Johnstone and Willie Rennie), Against 6 (Linda Fabiani, Stewart Maxwell, Joan McAlpine, John Mason, Adam Ingram, Nigel Don), Abstentions 0.

⁹² David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁹³ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁹⁴ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph

and we agree that the Scotland Bill should be amended to this effect [RECOMMENDATION 40].⁹⁵

Devolution of welfare and benefits

125. The Committee welcomes the representations that were made to us by a number of voluntary organisations, charities, churches, trades union bodies and others urging us to look at the issues of welfare and benefits from the context of the Scotland Bill.

126. In part, these representations were made because of the strong case they were able to make that there were examples where there is evidence of a mismatch between reserved and devolved issues in these areas. Others made the case that this Committee should look into these matters because it was their view that there should be devolution of welfare and benefits.⁹⁶

127. The Committee also received evidence on the plans by the UK Government to reform the welfare system and on the detail of the Welfare Reform Bill, currently being discussed in the UK Parliament. We recognise the strength of feeling on the direction of travel of the Welfare Reform Bill and the concerns organisations had on this. We welcome the decision by the Parliamentary Bureau to refer this matter to other committees of the Parliament to consider the implications of the Welfare Reform Bill to Scotland and the issue of legislative consent for the relevant provisions.⁹⁷

128. In terms of our interests, however, we have great sympathy with those that provided evidence to us that the current reserved/devolved split was causing problems and confusion in some instances.

129. We recommend that the UK Government gives consideration as to how to amend the Scotland Bill to include enabling provisions which would begin the process of devolving welfare and benefits to the Scottish Parliament and that it works with the Scottish Government on the detail of how and when this would happen [RECOMMENDATION 41].⁹⁸

Overall conclusions and legislative consent to the Scotland Bill

130. The election of an SNP majority government committed to a referendum on independence has changed the nature of the constitutional debate in Scotland. The electorate has moved far beyond the proposals contained in the Scotland Bill and this raises questions as to whether there is public support for those proposals.⁹⁹

131. The Committee is disappointed that the UK Government in its evidence and responses has failed to recognise the views expressed by the people of

⁹⁵ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁹⁶ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁹⁷ David McLetchie and Willie Rennie dissented from this paragraph.

⁹⁸ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

⁹⁹ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

Scotland in May's election and the changing political situation within Scotland.¹⁰⁰

132. The Committee recommends that the UK Government only proceed with the Scotland Bill if it has secured the clear legislative consent of the Scottish Parliament and met any conditions within that legislative consent motion [RECOMMENDATION 42].¹⁰¹

133. The Committee notes that the Scottish Government has not yet lodged a motion for legislative consent and is awaiting the outcome of this Committee's deliberations.¹⁰²

134. The Committee concludes that the proposals by the UK Government to re-reserve powers are unprecedented, undesirable and unacceptable and should not be given legislative consent.¹⁰³

135. The Committee recommends that the Scotland Bill be amended to devolve the full range of financial powers to the Scottish Parliament [RECOMMENDATION 43].¹⁰⁴

136. The Committee concludes that the financial provisions in the Scotland Bill are not fit for purpose and risk having a substantial negative impact on Scotland's economy, the Scottish budget and the ability of the Scottish Government to manage revenues.¹⁰⁵

137. The Committee considers that, should the UK Government proceed with the current financial provisions within the Bill, it would be unacceptable for these to be enacted without express agreement of the Scottish Parliament. Therefore, the Committee recommends that the Scotland Bill be amended to include a mechanism for joint approval [RECOMMENDATION 44].¹⁰⁶

Overall conclusion

138. The constitutional debate has moved far beyond the proposals contained in the Scotland Bill. Whilst the Committee is able to recommend legislative consent in limited areas, the proposals for re-reservation of powers and the financial provisions of the Bill are seriously flawed.¹⁰⁷

139. We recommend that the Bill be amended to provide full fiscal autonomy for the Scottish Parliament and enable the devolution of welfare and benefits [RECOMMENDATION 45].¹⁰⁸

¹⁰⁰ David McLetchie, Richard Baker, Alison Johnstone and Willie Rennie dissented from this paragraph.

¹⁰¹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰² David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰³ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰⁴ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰⁵ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰⁶ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰⁷ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

¹⁰⁸ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

140. Should the UK Government reject the Committee's proposal for full fiscal responsibility, the Scotland Bill must be amended to include a process of joint approval of the financial powers between the Scottish Parliament and the UK Government.¹⁰⁹

¹⁰⁹ David McLetchie, Richard Baker and Willie Rennie dissented from this paragraph.

ANNEX A – TIMELINE

<i>May 2007</i>	Election of a minority SNP government in Scotland
<i>August 2007</i>	Scottish Government launches its National Conversation
<i>December 2007</i>	Scottish Parliament debate on devolution, with a proposal to establish an independent commission
<i>March 2008</i>	Commission on Scottish Devolution (Calman Commission) established
<i>June 2009</i>	Calman Commission publishes final report
<i>June 2009</i>	Scottish Parliament debates Calman Commission's final report
<i>November 2009</i>	Scottish Government publishes formal response to the Calman Commission's final report
<i>November 2009</i>	Scottish Government publishes White Paper
<i>November 2009</i>	The then UK Government publishes a White Paper on its response to the Calman Commission's final report
<i>February 2010</i>	Scottish Government launches consultation on its draft Referendum (Scotland) Bill
<i>May 2010</i>	UK general election returns a Conservative-Liberal Democrat coalition government. Queen's speech announces the new government's intent to bring forward a bill
<i>November 2010</i>	Scotland Bill introduced in House of Commons
<i>December 2010</i>	Scottish Parliament establishes an ad hoc Scotland Bill Committee (in session 3)
<i>March 2011</i>	Session 3 Scotland Bill Committee publishes its final report, which is debated in the Scottish Parliament
<i>May 2011</i>	Scottish Parliament elections returns a majority SNP government
<i>June 2011</i>	Scottish Parliament establishes a new ad hoc Scotland Bill Committee
<i>June 2011</i>	Scotland Bill completes its passage through the House of Commons and is subsequently introduced in the House of Lords

Scotland Bill Committee, 1st Report, 2011 (Session 4) – Annex A

<i>December 2011</i>	Scotland Bill Committee publishes its final report
<i>Early in 2012 (date to be confirmed)</i>	Scotland Bill set to be discussed at Committee stage in the House of Lords
<i>Early in 2012 (date to be confirmed)</i>	Scottish Parliament to debate the report of the Scotland Bill Committee and decide on the issue of legislative consent

ANNEX B – DEVELOPMENT OF THE DEBATE ON GREATER DEVOLUTION OF POWERS TO THE SCOTTISH PARLIAMENT

Key

- +** Significantly more devolution of powers relative to the Scotland Bill as introduced
- Significantly less devolution of powers relative to the Scotland Bill as introduced

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Table 1 *Financial provisions*

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Scottish income tax	Proposed a Scottish income tax to replace part of the UK income tax. The tax is derived from reducing the existing rates of income tax by 10 pence and adding a new amount on to each of the basic,	+ Recommended the introduction of a “Scottish rate” of income tax applying uniformly to all rates. Stated that Scotland should also receive a share of tax on income on savings &	+ Recommended extension of income tax powers.	+ Content that initially any changes to income tax in Scotland would affect all tax bands uniformly, but consideration should be given to the Scottish Parliament having the power to	+ Welcome powers but insufficient and not fit for purpose. Recommend that Scottish Parliament should have flexibility over income tax rates for all bands.

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
<p>Short-term revenue borrowing and managing risk</p>	<p>higher and additional rates of tax.</p>	<p>distributions.</p>	<p>+</p> <p>Should have borrowing powers and fiscal responsibility which fit into an agreed UK system of fiscal federalism.</p>	<p>vary the higher rates of income tax independently in the future.</p>	<p>Must be part of wider basket of taxes.</p> <p>Cost of introduction must be met by UK Government.</p> <p>More accountability of HMRC to Scottish Ministers and Parliament.</p> <p>+</p> <p>Current powers insufficient.</p> <p>Need countercyclical borrowing facility</p> <p>Proposed limits need recalculated on a more principled basis. The required amount should be at least twice the proposed level of £500m</p> <p>Increase the repayment period to 5 years</p>
<p>From 2015, new borrowing power to finance current expenditure to allow it to manage potential deviations between forecast and outturn receipts. Limits of £200m in any one year up to a cumulative limit of £500m. First 0.5% of the Scottish resource budget for any year (c. £125m) to be absorbed by the Scottish budget.</p>	<p>Existing power for Scottish Ministers to borrow for short term purposes should be used to manage cash flow when devolved taxes are used.</p> <p>Consideration should be given to using the power in the Scotland Act to increase the limit on it if needs be.</p>	<p>+</p> <p>Limits in Bill are inadequate. Should be recalculated on a more principled basis, possibly up to £1bn. Requirement for the first £125m of any tax shortfall to be met by spending reductions to be dropped.</p>	<p>+</p> <p>Limits in Bill are inadequate. Should be recalculated on a more principled basis, possibly up to £1bn. Requirement for the first £125m of any tax shortfall to be met by spending reductions to be dropped.</p>	<p>+</p> <p>Limits in Bill are inadequate. Should be recalculated on a more principled basis, possibly up to £1bn. Requirement for the first £125m of any tax shortfall to be met by spending reductions to be dropped.</p>	<p>+</p> <p>Limits in Bill are inadequate. Should be recalculated on a more principled basis, possibly up to £1bn. Requirement for the first £125m of any tax shortfall to be met by spending reductions to be dropped.</p>

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
	<p>Borrowing will be from the National Loans Fund via the Secretary of State for Scotland</p>				<p>Case for the Scottish Government establishing its own independent revenue forecasting service, similar to the OBR, should be examined.</p> <p>Scottish Case Reserve should include all Scottish End Year Flexibility.</p>
Capital borrowing	<p>From 2013, borrowing powers of up to 10% of the Scottish capital budget per year. Overall limit of £2.2bn.</p> <p>First two years subject to HM Treasury consent for specific projects, with wider scope for borrowing from 2015.</p> <p>Borrowing can be from the National</p>	<p>+</p> <p>Additional powers to borrow. Should be limited in similar way to the prudential regime for local authorities. Limits set by capacity to repay debt.</p> <p>Scottish ministers should have complete discretion over what this money is spent on without having to seek agreement from the</p>	<p>+</p> <p>Borrowing powers and fiscal responsibility which fit into an agreed UK system of fiscal federalism.</p>	<p>+</p> <p>No principled basis for the particular limits in Scotland Bill. Total limit should be set by reference to the capacity of the Scottish Government prudently to finance it from devolved tax revenue. Precise amount likely to be substantially more than £2.2bn (to around £5bn)</p>	<p>+</p> <p>Changes to date not an adequate response to the predecessor Committee's recommendations.</p> <p>A 'prudential' borrowing framework should be in place based on the Scottish Government's ability to pay.</p> <p>The early implementation of</p>

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Bonds	Loans Fund and/or additional commercial sources. Not included	Treasury. Borrowing should be from the National Loans Fund or Public Works Loans Board Not included	+ Scotland would be able to borrow money on the international finance markets, backed up by the credit status of the UK.	+ Bill be amended to permit the Scottish Government to access the bond market.	+ Welcome changes but legal and technical obstacles to the Scottish Government having a full range of debt instruments, including bonds, need to be removed.
Grant adjustment mechanisms	Some information in Command paper but details to be worked out in due course	Block grant should continue to make up the remainder of the Scottish Parliament's Budget but should be justified by need. Barnett formula should continue to be used as the basis for calculating the proportionately reduced block grant until further	Not included	+ Mechanism suggested for grant reduction and indexation following the introduction of a Scottish income tax rate. Should be formally reviewed after a period of 10 or 15 years.	+ More detailed needed. New legislative requirement is inserted into the Bill in order that the Scottish Parliament can give its consent before the financial provisions take effect.

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
		assessment done			Important that there is not a simple percentage reduction. An attractive option is for any adjustment in relation to the Scottish income tax to be indexed to changes in the UK income tax base.
Power to issue new taxes	Introduces power to create new devolved taxes.	The Scottish Parliament should be given a power to legislate with the agreement of the UK Parliament to introduce specified new taxes that apply across Scotland.	Scottish Parliament should have the ability to introduce new taxes, subject to specific criteria and advice provided by a Finance Commission for the Nations and Regions.	Welcomed the power to create new devolved taxes. Seeks formal assurance that the UK Government will not unreasonably withhold its agreement for any new proposals.	Recommend the on-going monitoring of the grant adjustment mechanism, with a review after a number of years to correct for any bias if necessary. Welcome new powers.
Stamp duty land tax	UK rate disappplied in Scotland. Scottish	SDLT to be devolved	Not included	Welcomed devolution	Strongly support devolution.

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
	Government can bring forward new regime				Want to see any successor tax deal with issue of tax avoidance in relation to stamp duty land tax as it applies to commercial property transactions
Landfill tax	UK rate disappplied in Scotland. Scottish Government can bring forward new regime	Landfill tax to be devolved	Under system of fiscal federalism case for giving the Scottish Parliament authority over taxes which can act as policy levers such as landfill tax should be considered.	Welcomed devolution	Strongly support devolution. Recommends Scottish Government considers retention of the Landfill Communities Fund.
Corporation tax	Not included	Should not be devolved	+ Recommended system of fiscal federalism which could include the Scottish Parliament having authority over direct taxes including corporation tax	+ HM Treasury should devolve corporation tax to Scotland as part of a wider UK-wide tool for regional economic policy if the rate setting power is devolved to Northern Ireland	+ Current financial provisions are inadequate and will not provide enough economic teeth in the legislation Recommend the devolution of all

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Air passenger duty	Not currently included	<p style="text-align: center;">+</p> <p>Should be devolved.</p>	<p style="text-align: center;">+</p> <p>Further work needed on basket of taxes needed for fiscal federalism.</p>	<p style="text-align: center;">+</p> <p>Devolve once the future of this tax is decided.</p>	<p>powers associated with corporation tax, including the ability to set the rate, decide on reliefs, allowances, etc</p> <p style="text-align: center;">+</p> <p>See a strong case for devolution</p> <p>Disappointed that the UK Government did not include the devolution of this tax in the initial Bill.</p>
Aggregates levy	Not currently included	<p style="text-align: center;">+</p> <p>Should be devolved.</p>	<p style="text-align: center;">+</p> <p>Further work needed on basket of taxes needed for fiscal federalism.</p>	<p style="text-align: center;">+</p> <p>Devolve once the relevant court case is resolved.</p>	<p style="text-align: center;">+</p> <p>See a strong case for devolution</p> <p>Disappointed that the UK Government did not include the devolution of this tax in the initial Bill.</p>
Excise duties	Not included	<p style="text-align: center;">-</p> <p>Considered as not</p>	Not included	Not included	<p style="text-align: center;">+</p> <p>Revenues from excise</p>

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
		suitable for devolution.			<p>duties on alcohol consumed in Scotland should be assigned to the Scottish Parliament.</p> <p>As alcohol misuse is more closely related to consumption, this is the basis which should be used to assign revenues</p>
<p>Joint approval powers for the financial provisions in the Bill</p>	<p>Not included</p>	<p>Not included</p>	<p>Not included</p>	<p>Not included</p>	<p>+</p> <p>Details on how the financial provisions will work are too vague.</p> <p>The UK Government should amend the Bill to insert a joint approval process in relation to the financial provisions.</p> <p>Would enable key provisions to begin after the Bill receives Royal Assent. However, the UK</p>

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
					Government would not be able to 'go live' with the new financial provisions without the approval of both the Scottish Government and the Scottish Parliament.

Table 2 *Non financial provisions*

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Re-reservation of health professions	Re-reserve regulation of newer professions not covered at the time of the Scotland Act.	As per the Scotland Bill.	Not included.	Agreed re-reservation	Disagreed to re-reservation.
Re-reservation of insolvency	Re-reserves responsibility of legislating on certain elements of the process for the winding up of companies in Scotland.	The UK Insolvency Service, with input from Scottish Government, should be made responsible for laying down the rules to be applied by insolvency practitioners on both sides of the border.	Not included.	Agreed re-reservation but had concerns in relation to the impact on Registered Social Landlords (RSLs)	Disagreed to re-reservation. Regulation of RSLs should remain devolved
Devolution of air weapons	Devolve powers to regulate air weapons except 'specially dangerous' weapons.	Regulation of airguns should be devolved.	Not included.	Agreed with provisions in the Scotland Bill.	+ Devolve powers for all firearms.
Devolution of speed limits	Devolve power to determine the level of the Scottish national speed limit and the power to make regulations to specify traffic signs to	As per the Scotland Bill.	+ Scotland should have exclusive competence over transport powers.	+ Devolve powers and also ask UK Government to consider case for a more extensive set of	+ Welcome the provisions in relation to the devolution of speed limits but believe there is a case

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
	indicate that limit.			<p>powers to be devolved, including the setting of speed limits for other classes of vehicle.</p>	<p>to be made to extend the current proposals and devolve responsibility for the speed of all classes of vehicle, not just the maximum speed of vehicles on roads.</p> <p>This might therefore enable the Scottish Government, on a pilot basis, to alter the speed limits on specific roads for other types of vehicles such as HGVs</p>
Devolution of drink driving	Devolve powers to make regulations in relation to the prescribed alcohol limit which applies when driving in Scotland.	As per the Scotland Bill.	<p>+</p> <p>Scotland should have exclusive competence over transport powers.</p>	<p>+</p> <p>Devolve powers and also ask UK Government to consider the case for a more extensive set of powers to be devolved (including limits, penalties and the responsibility for random testing).</p>	<p>+</p> <p>Welcome the provisions and give legislative consent but recommend that a more extensive set of powers to be devolved (including limits, penalties and the responsibility for random testing).</p>

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Administration of elections	Transfer certain powers relating to Scottish Parliament elections, which are currently exercisable by the Secretary of State, to the Scottish Ministers.	Devolve powers of the Secretary of State for Scotland relating to the administration of elections to the Scottish Parliament.	<p>+</p> <p>Scotland should have exclusive competence over: the electoral system.</p>	<p>+</p> <p>Agreed provisions in the Bill but asked that both the procedure for filling any regional seat vacancy during the life of a Parliament and the rules relating to disqualification be devolved to the Scottish Parliament.</p>	<p>+</p> <p>Devolve responsibility and powers for all elections that take place in Scotland, except those to the UK and EU Parliaments.</p>
Misuse of drugs	Devolve authority for regulating licenses for doctors practising in Scotland in connection with patients being treated in Scotland.	Responsibility for those aspects of the licensing and control of controlled substances that relate to their use in the treatment of addiction should be	Commission did not take specific view on the matter of control over drug policy but recognised it was an area of legitimate public	Agreed provisions in the Bill.	Agreed provisions in the Bill.

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Appointments to BBC Trust	UK Government to obtain the agreement of Scottish Ministers before making a recommendation for the appointment.	Responsibility for appointment of Scottish member of the BBC Trust should be exercised by Scottish Ministers, subject to normal public appointments process.	Not included.	Agreed provisions in the Bill.	<p style="text-align: center;">+</p> <p>Appointments to the BBC Trust should be devolved to the Scottish Ministers.</p>
Appointments to MG Alba	Not included.	Not included.	Not included.	<p style="text-align: center;">+</p> <p>Recommended Scottish Ministers should approve appointments to MG Alba.</p>	<p style="text-align: center;">+</p> <p>Appointments to the Board of MG Alba should be devolved to the Scottish Ministers.</p>
Appointments to Crown Estate Commissioners	UK Government to obtain the agreement of Scottish Ministers	The appointment of a Scottish Crown Estate Commissioner	Not included.	Agreed provisions in the Bill.	Views are superseded by the far wider recommendations on

Issue	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
	before making a recommendation for the appointment.	should be made following formal consultation with Scottish Ministers. As per Bill.			greater control of the Crown Estate.
Scottish Government/Scottish Executive	Replace phrase "Scottish Executive" with "Scottish Government" in Scotland Act.	As per Bill.	As per Bill.	Agreed provisions in the Bill.	Agreed provisions in the Bill.
Re-reservation of Antarctica	Re-reserve regulation of activities in Antarctica.	Not included.	Not included.	Agreed provisions in the Bill.	Disagreed to re-reservation.

Table 3 *Legal/technical provisions*

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
<p>Devolution issues and acts of the Lord Advocate</p>	<p>The Government was awaiting provisions proposed by the expert group appointed by the Advocate General for Scotland.</p>	<p>The question of whether, and to what extent, Scottish criminal law and procedure should in future be subject to review by the UK Supreme Court did not come within the Commission's remit.</p>	<p>Not included.</p>	<p>Took no definitive concluding view at time of writing.</p> <p>Welcomed the principle of what is being proposed by the Advocate General for Scotland – that prosecution actions by the Lord Advocate should be removed from the devolution issues procedure under the Scotland Act. It also found persuasive the evidence that the UK Supreme Court should have scope to hear issues that arise in relation to ECHR or EU obligations in criminal cases.</p>	<p>+</p> <p>It is appropriate that the acts or omissions of the Lord Advocate be removed from the Scotland Act in respect of devolution issues. However, it is a concern that the proposals in the Bill will not ensure the High Court of Justiciary is the final court of criminal appeal in Scotland.</p> <p>Widening of scope of an appeal in respect of Convention rights or EU law to include the acts or failure to act of any public authority involved in the criminal process. Underlines the need for certification.</p>

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
					<p>Welcome the McCluskey Review Group proposals in relation to the scope of the compatibility review which will continue to be undertaken by the Supreme Court and in relation to its powers of disposal and recommend that the Bill is amended along these lines.</p> <p>Consider that any appeal from the High Court of Justiciary to the Supreme Court should only be on a question of law, meaning ECHR and EU law, and that further action or disposal of any case should remain with the High Court of Justiciary in accordance with</p>

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
<p>Partial suspension of Acts of the Scottish Parliament</p>	<p>Allows for part, or parts of a Scottish Parliament Bill, to be referred to the UK Supreme Court whilst allowing the rest of the Bill to be brought into force.</p>	<p>Not included.</p>	<p>Not included.</p>	<p>+ Agreed provisions in the Bill but recommends that any order bringing into effect the non-referred parts of a bill should be subject to the affirmative procedure.</p>	<p>Scots criminal law. The Supreme Court's considerations should be limited strictly to the compatibility question, referring the case back to the High Court for disposal. Thus, the High Court is the only Court which interprets the miscarriage of justice test, which is an aspect of Scots criminal law.</p> <p>Recommend clause is removed.</p>

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Continued effect of provisions where legislative competence conferred for limited period	Enables an Order in Council made under section 30 of the Scotland Act to be time limited and that anything done using the amended provision will continue to have effect.	New legislative procedure should be established to allow the Scottish Parliament to seek the consent of the UK Parliament to legislate in reserved areas where there is an interaction with the exercise of devolved powers.	Not included.	Agreed provisions in the Bill.	Recommend clause is removed.
Time limits for human rights actions against Scottish Ministers	Inserts a time limit of one year for actions against the Scottish Ministers under the Scotland Act 1998 where it is claimed that they have acted incompatibly with Convention rights.	Although the issue appeared to come within its remit the Commission came to the conclusion the issue raised wider questions, not within its remit, and so it could not make recommendations.	Not included.	Agreed provisions in the Bill.	Agreed provisions in the Bill.
Implementation of international obligations	Allows a single piece of subordinate legislation, made by UK Ministers or following consideration by the UK Parliament, dealing with the	Not included	Not included	Asked UK Government to reconsider this clause.	Serious reservations about the necessity and wide scope of this clause. Recommend clause is removed.

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
	<p>observation or implementation of international obligations can have effect throughout the UK, irrespective of whether or not it deals with matters falling within devolved competence.</p>				
<p>Recommendations by previous Standards, Procedures and Public Appointments Committee based on Calman Commission recommendations</p>	<p>Numbers of Deputy Presiding Officers Appointments to the SPCB. Statements of legislative competence for non-government bills Members' interests.</p>	<p>Scotland Act amended to loosen requirement on the Parliament to appoint a Presiding Officer and deputies at the first meeting of a new session, and to enable additional deputies to be appointed if and when appropriate.</p> <p>Scotland Act amended to require any person introducing a Bill to make a statement it is (in that person's opinion) within Parliament's legislative competence.</p>	<p>Not included.</p>	<p>Agreed provisions in the Bill.</p>	<p>Agreed provisions in the Bill.</p>

Table 4 Other key issues (not currently in the Scotland Bill)

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
Increased powers over broadcasting	Not included.	Focused on whether the Scottish Broadcasting Commission's recommendations on accountability were likely to be followed.	Second Constitutional Convention should pay particular attention to Scotland gaining an increased role in the governance of broadcasting.	Agreed provisions in the Bill.	<p>+</p> <p>Recommend that powers to regulate Public Service Broadcasters be devolved to the Scottish Parliament.</p> <p>There should be greater involvement of the Scottish Government in future decisions on licence fee matters.</p> <p>The Scottish Digital Network should be the focus for local TV in Scotland and there should be greater involvement of the Scottish Government in debates at UK level on this.</p> <p>Powers to decide on</p>

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
<p>Statutory right for attendance at EU Council of Ministers and officials' meetings etc.</p>	<p>Not included.</p>	<p>+</p> <p>Ensure Scottish Ministers are visibly engaged with EU business affecting their interests:</p> <p>a. When a request is received there should be a presumption that Scottish Ministers are accepted as part of the UK delegation where EU matters which cover devolved areas are for discussion.</p> <p>b. When Scottish Ministers request to speak in support of the agreed UK Government line there should be a presumption that this is granted wherever practicable.</p>	<p>Not included.</p>	<p>Not included.</p>	<p>the free-to-air list should be devolved to the Scottish Parliament.</p> <p>+</p> <p>Recommend the introduction of an improved intergovernmental system that provides, on a statutory basis, for Scottish Ministers and officials to be able to decide to attend formal and informal Councils and working groups etc. when devolved issues are being discussed.</p>

Issues	Scotland Bill as introduced in the House of Commons	Calman Commission	Steel Commission	Report from the former Session 3 Scotland Bill Committee	Report of the Scotland Bill Committee
<p>Devolution of welfare and benefits</p>	<p>Not included. But UK Government agreed that there needs to be improvement in the interaction between reserved and devolved responsibilities.</p>	<p>Formal consultation role should be built into Department for Work and Pensions' commissioning process for those welfare to work programmes that are based in, or extend to, Scotland.</p>	<p>A second Constitutional Convention should consider the case for extending the role of the Scottish Government, in the strategic planning of welfare services.</p>	<p>Creation of an inter-governmental forum for dialogue on the interface of devolved and reserved matters. UK Government to commit to consulting with devolved institutions on its plans for tax and benefit reform and the interaction with devolved competences and policies.</p>	<p>+</p> <p>Recognise strong case being made by Reform Scotland and others for eventual devolution of welfare and benefits. Recommend that the UK Government gives consideration as to how to amend the Scotland Bill to include enabling provisions which would begin the process of devolving welfare and benefits and that it works with the Scottish Government on the detail of how and when this would happen.</p>

DISCLAIMER: the above tables are intended to offer an 'at-a-glance' summary of the recommendations made in the various committees, commissions etc. It is by its very nature, therefore, intended to be a guide only. For a verbatim record of the detailed recommendations, the reader should consult the source document.

December 2011

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