This briefing was produced by the Scottish Parliament Information Centre (SPICe) which is the Parliament’s impartial research service. It identifies some of the key issues that MSPs may face in the Parliament’s fifth Session. It is intended to assist MSPs and their staff, who are encouraged to contact SPICe if they require further information on these or any other topics.
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ABOUT THIS BRIEFING

Members of the Scottish Parliament are charged with the responsibility of scrutinising the work of the Scottish Government and of holding it to account for its policies and actions. In the fifth Session, the Parliament will have more powers than ever before and, as a result, MSPs will have greater responsibility and face more challenges than previous parliaments. While some of these challenges can be anticipated, others will be unforeseen.

This SPICe briefing identifies 21 of what we think will be key issues for the new Scottish Parliament in Session 5.

Of course, in a short briefing we can only scratch the surface - there is much more to be said about each question and there are many more questions to be addressed. Nevertheless, we hope that you find the briefing informative and that it helps to stimulate your thinking on the challenges ahead over the next five years.
HOW CAN THE SCOTTISH PARLIAMENT INFORMATION CENTRE HELP YOU?

SPICe is an office of the Scottish Parliament, providing impartial research and information for Members and their staff whether located at Holyrood or in local offices. We also work for Parliament staff and with the Parliament’s committees. We are here to help Members, Members’ staff and parliamentary staff to access timely and accurate information. We have provided a list below of the key services and resources that will help you do your job effectively.

Enquiries

An impartial, confidential and bespoke enquiry service is at the heart of SPICe. Our dedicated Enquiries team answers most of the enquiries coming into SPICe. We aim to answer all enquiries on matters within the Parliament’s competence within timescales requested by the enquirer or, otherwise, within five working days of receipt.

Collections

Even though we are an electronically led service, SPICe has a collection of reference material which is available to consult. As well as books, we have access to around 40 journal titles and 20 national and 100 regional newspapers in hard copy. If we don't have the book, article or title you need we will try to obtain a copy from elsewhere.

All Scottish parliamentary publications including official reports from meetings of the committees and Parliament, Bills and accompanying documents are available online.

E-Resources

SPICe has access to a wide range of online resources which includes online subscriptions to legal sources including Westlaw, Lawtel and Justis; newspaper databases such as LexisNexis as well as specialist reference databases such as GRANTfinder and the Citizens Advice Bureau’s AdviserNet. We conduct searches on your behalf and send the results direct to your email inbox.

Data & Statistics

SPICe can provide analyses of spending figures, economic indicators, or constituency vital statistics. SPICe gives you the evidence base you need to do your work.

Research Briefings

Research Briefings are produced by our research specialists within SPICe. They provide accurate, in-depth and impartial analysis on issues of current interest to the Parliament or its committees including all major pieces of legislation.

Petition Briefings

Petition Briefings are produced by our research specialists within SPICe. These briefings provide a brief background to the subject matter of a petition and give an overview of the main issues with which the petition is concerned. They are intended primarily for use by Members and clerking staff of the Public Petitions Committee.
Material for Debates

Material for Debates is an electronic service produced weekly which identifies a range of information resources to provide background on the subject of forthcoming Chamber debates.

WHERE TO FIND US

You can visit us at our Garden Lobby SPICe Desk which is located next to the BIT helpdesk and is our one-stop-shop for all your questions.

The SPICe office is located in CG.01 which is just off the Garden Lobby. Our office contains a small comfortable reading area where you can browse our collections, borrow from our small lending collection or sit and read our newspapers, journals and other material. Just outside our office is the publications area where you can find hard copies of the key documents such as legislation and material for debates as well as official documents of topical interest and copies of our most recent briefings.

We have two hot-desks within our office available for your use. Both have PCs, one with network access.

How to contact us

Visit our Garden Lobby SPICe Desk

Email us on spice@parliament.scot

Call us on 0131 3485300

Our opening times

Garden Lobby SPICe desk opening times

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On Fridays the Garden Lobby SPICe Desk is not staffed. Instead the enquiry service is provided from the SPICe office in CG.01.

An enquiry service is provided from room P1.02 during Stage 3 debates. At other times, you can phone the SPICe Desk on 85300.
THE SCOTLAND ACT 2016

1. What role will the Parliament play in ensuring the effectiveness of inter-governmental arrangements?

Francesca McGrath

The main provisions of the Scotland Act 2016

The Scotland Act 2016 received Royal Assent on 23 March 2016. The Act was the UK Government’s response to the report of the Smith Commission (Smith Commission 2014), a cross party group established after the 2014 Scottish Independence Referendum.

The Commission’s remit was to produce Heads of Agreement on further devolution of powers to the Scottish Parliament.

The main powers which were transferred to the Scottish Parliament relate to taxes and welfare benefits, both of which are covered later in this briefing.

Other powers which will be transferred to the Scottish Parliament include legislative power over:

- Scottish Parliament and local government elections
- Management of the Crown Estate in Scotland
- Equal opportunities
- Roads
- Granting and regulation of licences to search, bore for and extract petroleum within the Scottish onshore area.

Some executive powers will also be transferred from the Secretary of State for Scotland to Scottish Ministers, including:

- Approval of appointments to Board of MG Alba
- Appointment of a member of Ofcom Board.

Commencement

Some of the Act will come into force two months after Royal Assent on 23 March 2016. However, most parts of the Act require secondary legislation to be made, by either the Secretary of State for Scotland or Her Majesty’s Treasury, before the powers are transferred, including those relating to:

- Elections
- Income tax
- Borrowing
- Welfare benefits and employment support
- Onshore petroleum.

Scrutiny of new powers and Inter-governmental relations

Scottish Parliament committees are expected to be established to oversee the introduction of the new powers. The new tax and welfare powers have a high degree of interaction with powers which remain with the UK Parliament. One key issue for the Parliament is how it will deal with scrutiny of inter-governmental relations (IGR).

The IGR structures, which will exist after the passing of the 2016 Act, include:

- Joint Ministerial Committee (in all its functioning formats)
- Finance Ministers’ Quadrilaterals
- Joint Exchequer Committee
The issue of lack of transparency on IGR had been highlighted as a problem in the Smith Commission report with a call for both Governments to: “...work together to create a more productive, robust, visible and transparent relationship” (Smith Commission 2014).

In Session 4, the Devolution (Further Powers) Committee – as part of its scrutiny during the passage of the Scotland Act 2016 – put forward a proposal for a Written Agreement on Parliamentary Oversight of Intergovernmental Relations (Scottish Parliament 2016).

The Written Agreement represented the agreed position of the Scottish Parliament and Scottish Government on the information that the Government would, where appropriate, provide the Scottish Parliament with regard to its own participation in formal, ministerial-level inter-governmental meetings, concordats, agreements and memorandums of understanding.

Three principles will govern the relationship between the Scottish Parliament and Scottish Government on IGR matters:

- Transparency
- Accountability
- Respect for the confidentiality of discussions between governments.

The proposal was agreed by the Scottish Government and the Scottish Parliament on 10 March 2016. In future, the Government will provide information to the relevant committee of the Scottish Parliament including:

- Advance written notice of meetings:
  o At least one month prior to scheduled relevant meetings
  o As soon as possible after meetings are scheduled for meetings with less than one month’s notice
- A written summary of the issues discussed at each inter-governmental ministerial meeting (within the scope of the Agreement) within two weeks, if possible
- An annual report on IGR summarising the key outputs.

The Scottish Government has also agreed to attend relevant Committee meetings, when invited, to provide oral evidence on IGR.
PUBLIC FINANCE AND TAX POWERS

2. How will the Scottish budget evolve?

Anouk Berthier and Ross Burnside

Powers that be and powers to come

In the coming Session, the Scottish Parliament will have at its disposal the most extensive set of financial powers and responsibilities since 1999. Once all the powers provided for in the Scotland Act 2016 are in place, tax revenues will make up broadly 50% of devolved spend (using 2014-15 data) (Figure 1).

Figure 1: Tax revenues as a percentage of devolved expenditure

Currently, most of the Scottish budget is funded through a block grant from the UK Government, with annual changes to the block grant calculated using the Barnett formula. As the Scottish Government gains more responsibility over tax and welfare in the coming years, adjustments will have to be made to the block grant. After lengthy negotiations, the two governments agreed that the method used to do so will be in place for a transitional period up to and including 2021-22. It involves two models, but the outcome delivered will be that of the Scottish Government’s preferred option, “the Indexed Per Capita method.” For tax, this will protect Scotland from the risk that its population grows more slowly than the rest of the UK but it has been criticised by the UK Government as unfair (UK Government 2016b). There will be a review of the operation of the fiscal framework including block grant adjustment arrangements by the end of 2021.

The Scottish Government will also have additional borrowing powers to fund the Scottish Budget from April 2017 onwards. It will be able to borrow up to £3bn for capital investment projects, with an annual limit of 15% of the overall borrowing cap, equivalent to £450m a year. As is the case at the moment, the Scottish Government will be able to borrow from the National
Loans Fund, directly from a commercial bank or through issuing bonds. The power to issue bonds was granted by the UK Government in February 2014 (UK Government 2014) but has not yet been exercised. The Scottish Government will also have the power to borrow up to £600m for resource purposes within a statutory overall limit of £1.75bn from the National Loans Fund for in-year cash management and to buffer the impact of (real or predicted) economic shocks and shortfalls in tax revenues.

As the size of the Scottish Budget becomes more dependent on Scottish tax revenues in the coming years, Parliament will need to consider a wider range of issues. These include:

- Setting the rates and bands for the devolved taxes
- Understanding the effect of behavioural change on the amount of tax collected
- Monitoring ‘Scottish taxpayers’ and the role of HMRC in collecting income tax
- The performance of Revenue Scotland
- Forecasting tax receipts and GDP by the Scottish Fiscal Commission
- The implementation of the fiscal framework (UK Government 2016a).

Shaping Scotland’s tax system

Taxation plays a central role in all modern economies and Scotland is getting a chance to reform some of its tax system. Taxation is used to raise revenue to fund government spending and in recent times has also been justified as a mechanism for changing behaviour e.g. green taxes, sugar tax. A tax system is generally a reflection of local values and the views of those in power. Tax reform needs to strike a balance between politicians’ ideals and the negative economic impact it may have on the economy.

Although there is little consensus over what constitutes a “fair” tax regime, it is generally accepted that a good tax system should be efficient and progressive. According to the Mirrlees Review, which provides a comprehensive set of recommendations for tax reform, this requires that “we think hard about the kind of progressivity we want” (Institute for Fiscal Studies 2011).

Additional tax powers will allow for a debate to take place on what a distinctive Scottish devolved tax system might look like, and what the core purpose of taxation should be. For example, should tax policy primarily seek to maximise revenues for public expenditure? Or should the aim be to reduce income inequality; maximise economic growth and competitiveness; and/or influence behaviour?

Careful consideration should be given to taxpayers’ potential “behavioural” response when changing the tax system which can have a direct impact on revenues but also a wider impact on the economy. For example, in response to a tax increase, taxpayers might shift the timing or type of income (e.g. sell their house before an increase in Land and Buildings Transaction Tax, put more of their earnings into pensions, receive dividends rather than earnings, etc.); change the hours they work; retire early; migrate or change how or when they spend their income.

Geographic, cultural and economic proximity as well as the interconnected nature of the tax regimes between Scotland and the rest of the UK may increase the potential for behavioural responses when either jurisdiction makes a change to taxes that are devolved in Scotland.

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1 A tax is progressive when the average tax rate rises as the “tax base” (for example, income or house prices) rises.
LOCAL TAXATION

3. What next for council tax?

Allan Campbell

The present council tax system

Council Tax is the system of local taxation that is used to part-fund local authorities. It was introduced in 1993 to replace the Community Charge (known as the “poll tax”) and has remained unchanged since its introduction. The rate of tax payable is based on the value of residential property in 1991, and the amount that households pay depends on which band (A to H) their house falls into.

Local authorities set the Band D rate, and other bands are calculated as a set ratio to the Band D rate. Since 2008-09, the Council Tax has been frozen at 2007-08 levels. Various exemptions and discounts apply and people on low incomes may be eligible for Council Tax Reduction, which replaced Council Tax Benefit in 2013-14.

The Scottish Government and COSLA established the Commission on Local Tax Reform, which reported in December 2015, concluding that local tax “needs substantial reform” because “some people are paying more than they should.”

Scottish Government’s proposals for council tax reform

Prior to the election, in March 2016 the Scottish Government published its proposals for reform of the Council Tax, with the aim of making the system “fairer” (Scottish Government 2016). The Scottish Government estimates that its proposed reforms would raise an additional £100m per year.

The main area of reform is to increase the ratios of the upper bands (E-H) relative to Band D (Figure 2). No additional bands have been added and the ratios for Bands A-D will remain unchanged. The Government has also confirmed that it does not plan to hold a revaluation of property, so Council Tax will remain based on 1991 property values. Changing the ratios in this way can be done through secondary legislation under the Local Government Finance Act 1992. Given the 2016 election result, it may now be more difficult for the new Scottish Government to get parliamentary agreement to its proposals as they stand.

Figure 2: Change in average Council Tax bill under council tax reform

Source: Campbell 2016
The impact of the proposed changes on Council Tax bills varies between local authorities – for example, those in Band H properties in Aberdeen City will see bills rise by £554, but those in Band H in Eilean Siar will see bills rise by £461.

Beyond the impact on Council Tax bills, many other aspects of the policy are, at present, unclear.

The distribution of households in higher bands varies considerably between local authorities, which mean that the impact of the changes will vary across Scotland. Some local authorities will take in more income than others - Edinburgh will receive around £15.6m additional income, but the three island authorities will each receive less than £0.2m.

The SNP has proposed that extra money raised as a result of the changes be distributed directly to schools based on the number of children eligible for free school meals. However, while it can ring-fence money in the local government finance settlement as a “specific revenue grant”, there does not appear to be a mechanism for ring-fencing money received from the Council Tax, as it is collected by councils. It is currently therefore not clear how this proposal would work in practice. The impact of this on the local government funding formula is unclear and it is also not known what will happen if more or less income is received by councils.

Another aspect of the Government’s proposed reform is to end the Council Tax freeze, although the Government states that any future rises will be capped at 3% per year. It is not clear how this will be enforced. It may require primary legislation, or the Government may need to develop another “holdback” policy, similar to that which was in place in relation to the freeze, whereby any council that diverged from the Scottish Government’s requirement would have funding withheld.

In addition to amending Bands E-H, the other major area of proposed reform to Council Tax is the introduction of a targeted relief for “around 54,000 households in properties in Bands E-H on net incomes below the Scottish median for their household type, up to a maximum of £25,000”. However, the published information from the Government contains very little detail on how this reform will operate in practice, how much it will cost to implement and to what extent local authorities were consulted prior to its announcement.

Finally, the Government also proposed to consult on exchanging a fixed proportion of general revenue grant for the assignment of a fixed proportion of income tax receipts, distributed to individual councils through the local government settlement. This reform will clearly take some time to implement and, given disparity in income tax receipts between local authority areas, it is likely that an equalisation system would need to be introduced.

**Commission on reform of local tax – alternative for council tax reform**

The Commission on Local Tax Reform modelled an alternative, “proportional” Council Tax. The Commission concluded that, “to achieve proportionality would require the tax on the highest value homes to be 15 times the tax on the lowest value homes”. This appears to indicate that, while the Government’s proposals make the Council Tax more proportionate than the present system, they fall short of making the Council Tax a “proportionate” tax and Council Tax would remain a regressive tax.
**BUILDING FOR THE FUTURE**

4. What are the plans for infrastructure in Scotland and how will it be funded?

*Nicola Hudson*

Investment in the right infrastructure can help grow the economy (LSE 2013). Many governments – including past Scottish Governments – have looked to prioritise infrastructure investment. It is not just the *quantity* of infrastructure investment that matters for economic growth, but also the *quality* (World Bank 2014).

**How does the Scottish Government plan to fund Infrastructure investment?**

The Scottish Government receives a capital budget allocation as part of its block grant from the UK Government. In 2016-17, this allocation was £3,158m (including £326m Financial Transactions money which must be spent on equity/loan finance schemes and repaid to HM Treasury in future years) (Figure 3).

Over the last Parliament, the Scottish Government supplemented its declining capital budget allocation through a revenue financing scheme known as the ‘non-profit distributing (NPD) model’. Under this scheme, the private sector finances the upfront capital costs of the project and, once operational, the Scottish Government makes annual payments to the private sector contractor to cover capital costs, interest costs and maintenance/service charges, usually for 25-30 years. The payments come out of public sector revenue budgets (as opposed to capital budgets). Due to changes in European accounting rules, some of the planned NPD investment has had to be accounted for upfront from the main capital budget. In 2016-17, the Scottish Government plans to fund projects with a net additional capital value of £511m through its NPD scheme.

Since 2015-16, the Scottish Government also has the option of using borrowing powers to finance capital investment. It can borrow up to 10% of its capital budget for capital projects, which is equivalent to £316m in 2016-17. Under the terms of the Scotland Act 2016, these capital borrowing powers are set to increase to £450m per year, within an overall cumulative limit of £3bn. So far, these borrowing powers have not been used to increase capital investment.

**Figure 3: Capital investment funding options, 2016-17**

* net additional capital value

Source: SPICe
What is being built?

The last Scottish Government set out its long-term plans for infrastructure investment in its Infrastructure Investment Plan (IIP) (Scottish Government 2015). The latest IIP (2015) identifies plans for more than £28bn of infrastructure investment over a 20 year period (Figure 4).

Figure 4: Planned investment by sector 2015-2035 (£m)

![Planned investment by sector 2015-2035 (£m)](image)

Source: SPICe, data from Scottish Government 2015

Over a third of this planned investment is in the transport sector, with the biggest projects including the Queensferry Crossing (£1.3bn), the A9/A96 dual carriageway (£1.3-£3bn) and Glasgow terminal stations (£1.5bn-3.0bn).

Future issues

The current project pipeline relies heavily on revenue financing, with two-thirds of the total project value expected to be funded through revenue financing. This planned reliance on revenue funding needs to be seen in the context of three particular issues:

- Despite anticipated growth in the capital allocation over the spending review period, on current plans the capital budget in 2019-20 will still be 17% lower than in 2010-11.
- The Scottish Government has committed to spending no more than 5% of its total budget on repayments arising from revenue financing and borrowing. On current plans, the Scottish Government will spend around 3.75% of its budget on such payments in 2016-17, peaking at just over 4.2% in 2020-21. Use of borrowing powers, higher interest rates and/or further use of revenue financing would affect this measure.
- If future NPD projects are affected by the changes to the European accounting rules, this will impact on the Scottish Government’s capital budget in future years as the value of investment will need to be included in the capital budget rather than revenue budgets.

Achieving value for money in infrastructure investment will continue to be critical. The Scottish Futures Trust and the Scottish Government’s Infrastructure Investment Board both have a remit for ensuring value for money in infrastructure investment. In 2015, the Institution of Civil Engineers recommended that the next administration should assess Scotland’s long-term infrastructure needs to inform the prioritisation of capital investment projects. In their assessment of current infrastructure, none of the sectors covered was considered to have infrastructure provision that was fit for the future. The best performing sectors were strategic transport and water, which were given a ‘B rating’ and assessed as “adequate for now”.

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5. What does the future hold for the Scottish economy?

Richard Marsh

Scotland’s economic challenges

Over the last five years (2011-2015) Scotland’s economy has expanded on average by 1.4% compared to 2.1% across the UK. The most recent results for 2015 showed Scotland’s economy growing at 1.9% compared to the UK’s economy at 2.3% (Table 1).

What might the Scottish economy look like at the end of the new parliamentary session in five years’ time? Scotland’s small and open economy will be buffeted by global events and it is difficult to predict how economic developments will unfold.

Table 1 summarises independent forecasts for the economies of Scotland and the UK. Projected changes for the Scottish economy were developed based on these independent forecasts.

Table 1: Forecasts for the UK and Scottish economies

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<td>2.3%</td>
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Source: Fraser of Allander Institute 2016, PWC 2016, EY Scottish ITEM Club 2015, Scottish Government 2016 and ONS 2016 (for 2015 outturn figures)

All three independent forecasters suggest that the Scottish economy will continue to fall just behind UK growth this year (2016). These were made before the most recent estimate of Scottish quarterly GDP was published in April 2016 (Scottish Government 2016). Latest figures show that for the last nine months the Scottish economy has strayed close to falling into recession.

Challenges of delivering Scotland’s Economic Strategy

The Scottish Government’s Economic Strategy focuses on two objectives - boosting growth and tackling inequality. The strategy sets out the importance of influencing how the Scottish economy grows as well as how quickly it grows. Policies to influence the nature of economic growth are set out in terms of inclusive growth, investment, innovation and internationalisation.

Inclusive growth

Scotland’s Economic Strategy shows that the highest earners in Scotland have seen the largest increases in income in recent years (Scottish Government 2015). The latest figures show that

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2 A recession is defined as two consecutive quarters of negative growth, the most recent quarterly GDP statistics show GDP growth of +0.1% in Q4 2015, -0.1% in Q3 2015, and +0.2% in Q2 2015.
19.5% of employees (or around 444,000 people) in Scotland earned less than the living wage in 2015 (Scottish Government 2015).

In Scotland, the latest quarterly national accounts show that, in 2014, wages accounted for 57% of the value added by the economy (excluding taxes and subsidies) (Scottish Government 2016). This share has fallen from 65% in 2001 and from 71% in 1979 (McGilvray and McNicoll 1984). The remaining share of the economy is accounted for by Gross Operating Surplus which includes the profits of companies.

**Investment**

Investment can cover a broad range of areas including people, infrastructure and businesses. Capital investment (also known as Gross Capital Formation) has risen in Scotland, but relative to the size of the economy it has remained at similar levels since 1998, even dropping slightly since 2007. In 1998, just over one fifth (20.2%) of the economy was accounted for by capital investment. By 2014, this had fallen to 18.1%.

**Innovation**

One of the challenges facing Scotland lies with R&D, where business expenditure on R&D (BERD) remains low compared to other countries listed in Scotland’s Economic Strategy 2015 (Figure 5). Higher education research and development (HERD) as a proportion of GDP is higher than in many other countries.

**Figure 5: HERD and BERD as a percentage of GDP, 2012**

![HERD and BERD as a percentage of GDP, 2012](source: Scottish Government 2015)

**Internationalisation**

Whilst the cash value of international exports has increased, relative to the size of the overall economy, the value of international exports declined during the early 2000s and has remained stable since. The latest Exports Statistics Scotland figures shows international exports in 2014 (excluding oil and gas) were £27.5 billion, down from £28.4 billion in 2013.
6. Where will our jobs come from in the future?

Greig Liddell

First, the good news. According to the report ‘Working Futures’ published by the UK Government-funded Commission for Employment and Skills (UKCES), there will be 140,000 more jobs in Scotland in 2022 than in 2012 – a 5% increase. The four sectors estimated to see the largest increases are health and social work, professional services, construction and information technology. Those sectors seeing the largest reductions by 2022 include manufacturing, public administration and defence, education and agriculture (UK Government 2015) (Figure 6).

With its forecasted reduction in skilled trades, manufacturing and civil service posts, Working Futures data supports the theory that a continued ‘hollowing-out’ of the mid-skilled labour market is likely over the next decade (Bank of England 2015). If realised, increases in professional and managerial jobs in the higher wage brackets, alongside substantial growth in low-paying personal care employment, could justify concerns about further labour market polarisation.

Figure 6: Changes in employment 2012-2022 by industrial sector (,000s)

Source: SPICe, data from UKCES 2015

Working Futures also provides projections of changes to the occupational composition of the labour market (Figure 7). The increase in the number of ‘professional’ and ‘associated professional’ jobs by 2022 is striking. Most of these will be in health, education and computer programming. Large reductions could be seen in ‘machine and plant operative’ positions, ‘skilled trades’ and ‘administrative and secretarial’ occupations.

These structural changes, and the possible growth in income inequality that might result, could provide some difficulties for a Scottish public sector now signed-up to principles of ‘inclusive growth’, ‘solidarity’ and ‘cohesion’. How our enterprise agencies, education providers and

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3 This report is “a quantitative assessment of the employment prospects in the labour market over a ten year horizon”.
employers respond to these challenges may well become a defining theme of the next parliamentary session.

Figure 7: Changes in employment 2012-2022 by occupational group (,000s)

Changes over the longer term

Over the past century, science fiction and philosophy have explored the implications of computers carrying out cognitive tasks previously done by humans. However, recent developments in the areas of artificial intelligence, ‘big data’ analysis and machine learning, mean that computerisation can now “readily substitute for labour in a wide range of non-routine cognitive tasks” (Frey and Osborne 2013). With this in mind, Oxford academics, Frey and Osborne, created a ranking of jobs most at threat from computerisation over the next few decades in the USA. As well as information processors and administrative occupations (such as insurance underwriters and data entry staff), the authors suggest that accountants, tax examiners, paralegals and credit analysts (ibid) may well be heading towards “vocational extinction” (Bank of England 2015).

Of course, new technologies should also lead to increased productivity and a possible boost to ‘real’ incomes over the longer term. From this, demand for entirely new goods and services may well grow. We have seen where forecasters say jobs are likely to be lost, but what about the new industries and new occupations in which our children and grandchildren will spend their working lives? In January this year, the World Economic Forum quoted “a popular estimate” that 65% of children entering primary school today will “ultimately end up working in completely new job types that don’t yet exist” (World Economic Forum 2016). In other words, we don’t know what the labour market will look like in twenty or thirty years. Perhaps we should ask a computer…
7. What is the future of the NHS in Scotland?

*Kathleen Robson*

Health is always a key political battleground, it is perhaps no surprise, therefore, that this briefing should contain an article on the future of the NHS. However, the NHS is currently facing a number of crosswinds that makes now an important time to consider how it might develop over the course of the next Parliament.

**Figure 8: Pressures on health and social care services, 2013-2030**

<table>
<thead>
<tr>
<th></th>
<th>Emergency Bed Days</th>
<th>GP Consultations</th>
<th>Long Stay Care Home residents</th>
<th>Homecare clients</th>
<th>New outpatient appointments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2013</strong></td>
<td>1.0m</td>
<td>16.3m</td>
<td>35,000</td>
<td>61,000</td>
<td>1.6m</td>
</tr>
<tr>
<td></td>
<td>+26%</td>
<td>+12%</td>
<td>+35%</td>
<td>+33%</td>
<td>+9%</td>
</tr>
<tr>
<td><strong>2030</strong></td>
<td>1.3m</td>
<td>18.2m</td>
<td>47,000</td>
<td>81,000</td>
<td>1.8m</td>
</tr>
</tbody>
</table>

Source: SPICe, data from Audit Scotland 2016

The pressures facing the NHS and social care are all too familiar: an ageing population suffering from multiple chronic conditions, workforce shortages, financial constraints and cost pressures from technological and medical advances (to name but a few). All of this creates the conditions for a perfect storm in that demand for services is expected to increase significantly (Figure 8) at a time when the resource to deal with that demand is increasingly limited. This has applied pressure on successive Governments to implement a plan which will ensure a sustainable future for the NHS.

Relative to other departments, the NHS has fared rather well financially due to a Scottish Government commitment to protect the health budget. However, an examination of the key performance indicators for the NHS reveals some symptoms of the ills facing the service. According to *Scotland Performs*, of the 18 standards due for delivery by NHS Boards, 11 were not met. While some of these were narrowly missed (e.g. *Clostridium Difficile Infections*), others were missed by larger margins (e.g. waiting times for child and adolescent mental health services) and others appear to be on a downward trajectory (e.g. outpatient waiting times).

Probably the most high profile of the standards is the A&E 4 hour waiting time target. This target was lowered from 98% to 95% in March 2013 as an interim measure but, despite this lower level, 95% has been reached in just 5 of the 35 months since then and the last time a 98% performance was achieved was in September 2009 (ISD Scotland 2016).

A recent report from Audit Scotland and the Accounts Commission presented estimates that, within current service models, health and social care services would need increased investment of between £422m and £625m per annum in order to keep pace with demand (Audit Scotland 2016). In the current financial climate this level of investment is unlikely. Therefore, significant changes will need to take place to ensure the sustainability of services.
Much hope rests on the integration of health and social care which was legislated for in the last Session of Parliament. The 31 Integrated Joint Boards went live on April 1st but are still in their infancy and are not expected to be in a position to make a major impact during 2016/17 due to difficulties in agreeing budgets (Audit Scotland 2015). Even once they are fully up and running, the estimated efficiency savings from integration are estimated to be between £138m and £157m per annum, so some way off the funding that is believed to be needed to keep pace with demand. It is therefore clear that something else will need to happen to address the shortfall.

This ‘something’ may be the National Clinical Strategy for Scotland which was published prior to the election (Scottish Government 2016). The clinical strategy sets out the future of healthcare services in Scotland for the next 10-15 years. It envisages remodelling primary care so that it is delivered by multidisciplinary teams integrated with social services and where GPs focus on more complex cases. The Scottish Government is currently negotiating a new GP contract with the British Medical Association and it is expected to be in place by April 2017. Given that the contract will need to facilitate any future approach to primary care, reforms may happen early in the Parliamentary Session.

A key feature of any future reforms is also likely to include hospital care and how to ensure quality and access within workforce and financial pressures. This is an issue that previous Scottish Governments have grappled with and there is a clear message within the clinical strategy that some specialist services may be provided on fewer sites. Given previous experiences of centralising services, this could prove to be controversial.

Prior to the SNP Government coming to power in 2007, there was controversy surrounding the proposed closure of A&E units in Lanarkshire and Ayrshire, decisions that were justified as being in tune with the previous administration’s Kerr report and its message that services should be “as local as possible and as specialised as necessary” (Scottish Executive 2005), i.e. that some centralisation might be necessary.

Much of the ensuing debate centred on the evidence that linked improved patient outcomes with higher volumes of clinical work within a unit. The then incoming Government over-turned the decisions in Lanarkshire and Ayrshire and stated there should be a presumption against the centralisation of core hospital services. However, the recent clinical strategy highlights that there is now better evidence that the volume of clinical activity is linked to outcomes, particularly for highly specialised services, and it signals a clear commitment to providing certain services on fewer hospital sites:

“Where clinically appropriate we will continue to plan and deliver services at a local level. Where there is evidence that better outcomes could only be reliably and sustainably produced by planning services on a regional or national level, we will respond to this evidence to secure the best possible outcomes.” (Scottish Government 2005)

It will be interesting to see how this will play with the Scottish public and which services will be affected. It may be that there is greater acceptance of more specialist services being centralised (as opposed to services like A&E) but it is notable that centralisation was already in the news prior to the election. This was in relation to the decision on whether or not to locate a trauma centre in Aberdeen (BBC 2016).

In summary, the incoming Government has some tough challenges ahead, and it is likely that health and social care services will feature highly on the political agenda in the coming years, with potentially significant reforms to how services are delivered.
INEQUALITY AND POVERTY

8. How can we tackle in-work poverty?

Andrew Aiton

“For increasing numbers of people in Scotland, and the UK more generally, just getting a job has not meant getting out of poverty.” (Scottish Government 2016) Naomi Eisenstaedt, Independent Advisor on Poverty and Inequality to the Scottish Government

The number of people living in poverty in Scotland fell from 21% of the population in 1999/2000 to 14% in 2013/14. The number of people living in poverty where at least one adult in their household works now represents around 40% of all those in poverty (Scottish Government, 2015) (Figure 9).

The jobs market in Scotland has changed considerably over recent decades. Since 2000, the share of jobs that are low-paid has increased, while the share of middle-ranked jobs has fallen. With a smaller number of mid-paid jobs, in manufacturing, for example, it has become harder for people to progress through the ranks from low-paid jobs. While increasing job polarisation can be found throughout Europe, the UK has seen a larger rise in the number of low-paid jobs than most European countries (Rogers and Richmond 2015).

Low pay is one of the main contributing factors leading to in-work poverty (hours worked and benefit changes are other important factors). Figure 9 shows that the gap between the 90th percentile of earners and the 10th percentile of earners is now wider than at any point since 1999. Median incomes and the incomes of the top 10% of earners have grown by 54%, whilst the incomes of the bottom 10% of earners have grown by just 49%.

**Figure 9: Scottish gross weekly income for all employees, 1999 to 2015**

Source: SPICe, based on nomis data

What is being done about low pay?

There are two major policy initiatives specifically aimed at dealing with low pay: first, the introduction by the UK Government of the National Living Wage (NLW) for those aged 25 and over, in place of the National Minimum Wage (NMW); and, secondly, the Scottish Government’s promotion of the Living Wage to employers across Scotland.
National Living Wage (NLW)

The NLW, set out by the Chancellor in the 2015 summer budget, is a minimum hourly rate currently set at £7.20 for those aged 25 and over. It took effect from 1 April 2016. The Resolution Foundation has estimated that the NLW will result in an hourly pay rise for around half a million people in Scotland, around one in five of the Scottish workforce (Resolution Foundation 2016). The Office for Budget Responsibility (OBR) has suggested that employees who would otherwise be earning the NMW will see an extra £28 in their weekly pay by 2020 (OBR 2015). Those earning above the current NMW but below the NLW will also see their pay increase and there might also be knock on effects for those earning just above the NLW, in order to maintain pay differentials.

How will the introduction of the National Living Wage affect jobs?

The latest report from the Low Pay Commission highlights research into the introduction of the NMW in 1999 (Low Pay Commission 2016). This shows that, while there was little effect on employment levels, there is some evidence that there was a small reduction in hours worked. It is not known whether the introduction of the NLW will have a larger effect. The OBR estimates that, assuming no other changes in the labour market, the introduction of the NLW could see 60,000 more people unemployed by 2020 across the UK (OBR 2015).

There have been some concerns raised that the introduction of the NLW could lead to employers being tempted to hire people under the age of 25 in order to avoid paying higher wages. Those over 25 could also see a reduction in hours, leading to underemployment. A survey of employers by CIPD suggests that 9% of businesses would consider reducing hours and 8% of business would hire more workers under 25, or more apprentices (CIPD 2015).

Living Wage

Unlike the NLW, the Living Wage is a voluntary rate which is set annually by the Living Wage Foundation based on a “minimum socially acceptable standard of living”. The Scottish Government funds the Scottish Living Wage Accreditation Initiative. Accreditation shows that the employer is committed to paying all staff, including sub-contractors, the Living Wage. At the time of writing (April 2016) there were 539 accredited Living Wage employers in Scotland.

Related to this the Scottish Business Pledge is a voluntary initiative from the Scottish Government to encourage businesses to uphold some of the “best modern business practices”, including a commitment to paying the Living Wage. So far, 240 organisations have signed up to the Pledge.

The Scottish Government recently provided funding as part of its health and social care budget specifically aimed at helping ensure care workers delivering publicly-funded care are paid the Living Wage. However, a recent report by the Scottish Government’s Independent Advisor on Poverty and Inequality highlighted the challenges faced by the lowest paying private-sector industries, such as retail and hospitality, in absorbing the additional costs of the NLW and the Living Wage (Scottish Government 2016).
9. How will free early learning and childcare increase by 2021?

Camilla Kidner

Nicola Sturgeon has described childcare expansion as, “one of the best investments any government can possibly make” (Scottish Government 2015a). The Scottish Government is committed to increasing the Early Learning and Childcare entitlement to 1,140 hours per year per child by 2021.

Currently, 27% of 2-year olds and all 3 and 4-year olds are entitled to 600 hours of free childcare per year. In 2016 this means the delivery of around 82 million hours of childcare. In five years this will have to nearly double to around 146 million hours.

Free childcare is also increasing in England where 40% of 2-year olds and all 3 and 4-year olds currently receive 570 hours per year. From next year, working parents of 3 and 4-year olds will be entitled to an additional 570 hours per year. Providing this in Scotland would equate to around 100 million hours of free childcare per year from 2017 (Figure 10).

Figure 10: Total number of hours of free childcare per year, English policy and Scottish policy proposals, 2006-2021

What has the Scottish Government done to prepare for this expansion?

Prior to the election, the Scottish Government consulted on setting up pilot projects (Scottish Government 2016a) and announced £1m to fund up to 6 trials (Scottish Government 2016b). It also established a Strategic Forum, a Workforce and Quality Group and a Project Board (Scottish Government 2015b).

How much will it cost?

The Scottish Government has estimated that revenue costs of early learning and childcare will be around £880m (Scottish Government 2015a), compared to a revenue spend in 2014/15 of £332m (Scottish Government 2016c). In 2014/15, local authorities spent £4,613 per pupil on
primary school education and £3,276 on early learning and childcare.\(^4\) The estimated annual cost of £880m suggests that, by 2021, local authorities will be spending more per child per year on early learning and childcare (£6,533) than they are currently spending per child per year on primary school provision.\(^5\) Capital costs are difficult to estimate because there is uncertainty about the number of extra places required. However, in its Infrastructure Investment Plan 2015, the Scottish Government has said that it will fully fund the capital costs and is working with the Scottish Futures Trust to identify what these would be (Scottish Government 2015c).

How many extra places do we need?

The SNP manifesto said they would create 600 new early learning and childcare centres. Doubling the number of state funded hours may not require twice the number of places to be created. Expanding free provision may lead some people simply to switch from self-funded to state-funded childcare. However, patterns of use are complex and demand for childcare may change if the availability of free childcare increases substantially. Although most free provision is currently in nurseries, the Scottish Government has said that child-minders, “will be central to the delivery of the expanded provision” (Scottish Government 2015d).

The National Day Nurseries Association (NDNA) has been concerned for some time that the price they are paid by local authorities to provide free places is too low to cover their costs. Their annual survey found that only half of private nurseries would be likely to extend their funded hours (NDNA 2015).

Flexibility and Choice

There is a statutory requirement for local authorities to ensure the provision of free nursery hours. However, parents do not have a right to choose where those hours are provided. Some parents cannot make use of the current free hours because they may only be available in a nursery and at a time that doesn't fit with their existing childcare arrangements or working hours. For example, 53% of nurseries only provide part day sessions (Scottish Government 2015c). Fair Funding for Our Kids have been campaigning on this issue.

The Children and Young People (Scotland) Act 2014 requires local authorities to consult every two years on how it provides early learning and childcare. They must also:

"have regard to the desirability of ensuring that the method by which it makes early learning and childcare available in pursuance of this Part is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service."

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\(^4\) Net revenue spend in 2014/15, expressed on per pupil basis from 2014 Summary School Statistics, showing 101,463 early learning and childcare ‘pupils’ and 385,212 primary school pupils (Scottish Government 2014).

\(^5\) Based on £880m estimated spend and population projections for 2020.
10. Can we break the link between children’s social backgrounds and how well they do at school?

Camilla Kidner

The SNP manifesto said that their “defining mission” would be “delivering significant progress in closing the attainment gap within the lifetime of the next parliament and substantially eliminating it within a decade.” Other parties also have a focus on educational inequality.

The link between social background and attainment: a global issue

Economic, social and cultural status explains about 15% of the variation in PISA\(^6\) mathematics scores, on average across OECD countries. In Scotland it explains around 13% of the variation (Scottish Government \(2013\)).

On average, exam attainment improves as deprivation decreases. However, this does not mean that all pupils living in poverty do badly or that social background is not a factor in attainment for everyone else. Pupils in the 40% least deprived areas\(^7\) are generally not living in poverty, yet they still do worse, on average, than those in the 20% least deprived areas, who in turn do worse than those in the top 10%. The chart below shows how attainment improves steadily as social and economic background improves. One example of the attainment gap is the Higher results of school leavers (SCQF level 6). On this measure, the gap is narrowing slowly (Figure 11). Over three years, an increasing proportion of pupils from deprived areas have left school with at least one Higher (or equivalent). There are many other possible measures. The SNP manifesto stated that they will identify specific measures for the attainment gap in order to measure progress.

Figure 11: School leavers’ attainment of at least one qualification at SCQF level 6 by SIMD quintile, 2011/12 and 2013/14

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\(^6\) PISA is an international sample survey of science, literacy and maths ability amongst 15 year olds.

\(^7\) As measured by the Scottish Index of Multiple Deprivation (SIMD), is a composite measure of deprivation in a small geographical area.
These statistics are only averages. Some pupils and some schools buck the trend. For example, in 38 schools in 2014, leavers from the 20% most deprived areas had an average tariff score that was higher than the national average for those from less deprived areas (information collated from Parentzone 2016).  

**What has the Scottish Government done about the attainment gap?**

A key priority of the National Improvement Framework, launched in January 2016, is "closing the attainment gap between the most and least deprived children." It sets out 6 drivers of improvement:

- School leadership
- Teacher professionalism
- Parental engagement
- Assessment of children’s progress
- School improvement
- Performance information.

The Education (Scotland) Act 2016 requires local authorities and Scottish Ministers to have regard to the need to reduce inequalities of educational outcome that are created by socio-economic disadvantage, and to report on the action they have taken. This includes creating new reporting requirements on education improvement linked to the National Improvement Framework.

Many existing policies might be expected to have a positive effect on the attainment gap. These include: efforts to improve leadership and teacher quality, Curriculum for Excellence, involvement of parents in schools, a focus on pre-school learning and early intervention. New initiatives, announced prior to the election campaign specifically in relation to the attainment challenge include:

- The Attainment Scotland Fund (£180m over four years), focused on primary schools in deprived areas
- The Innovation Fund (£1.5m), announced in January 2016 (Scottish Government 2016) with applications open to any school in Scotland
- The appointment of Attainment Advisors from Education Scotland in every local authority
- The National Improvement Hub providing access to research and evidence of what works. In addition to the above, the SNP manifesto includes commitments to expand the Attainment Challenge to a wider number of local authorities and to secondary schools.

The SNP manifesto announced an additional £750m in the next parliament for the Attainment Scotland Fund, £500m of which will go directly to head teachers, based on free school meal eligibility, to spend on measures head teachers consider will have the most impact (SNP 2016).

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8 In 38 out of 225 schools the average tariff score for leavers from 20% SIMD was above 743, which is the national average tariff score for leavers living in the 21% to 40% most deprived areas.
WELFARE BENEFITS

11. Scotland’s new Welfare Benefit Powers – How will they be used?

Kate Berry

Substantial new welfare benefit powers are being devolved to Scotland under the Scotland Act 2016. While this creates new opportunities for the Scottish Government to help address poverty and inequality, making use of the new powers will also bring challenges.

What powers will be devolved?

Scotland will soon have control over a range of existing benefits that account for about £2.7bn worth of spending (UK Government 2015) - around 15% of all welfare benefit spend in Scotland (Figure 12) (Scottish Government 2016a). The Scottish Parliament will be able to decide the structure and value of devolved benefits, or any new benefits which might replace them.

Figure 12: Value of Benefits Devolved by the Scotland Act 2016

Source: SPICe

The welfare powers to be devolved through the Scotland Act 2016 are:

- Powers over benefits for carers, disabled people and those who are ill, including Carer’s Allowance, Disability Living Allowance and Personal Independence Payments.
- Powers over those benefits under the Regulated Social Fund (Winter Fuel Payments, Cold Weather Payments, Sure Start Maternity Grants and Funeral Payments)
- The power to legislate for Welfare Foods.
- Powers to vary housing cost elements of Universal Credit and change payment arrangements for Universal Credit.
- Powers over Discretionary Housing Payments and Discretionary Payments and Assistance.
- The power to top up reserved benefits.
- The power to create other new benefits (except pensions) in areas not otherwise connected with reserved matters.

How will the new powers be used?

The Scottish Government has said that the new social security powers will be founded on a set of five principles that treat people with dignity and respect (Scottish Government 2016b). More
specifically, the Scottish Government has set out plans for how it will initially use the powers. These plans include:

- Increasing Carer’s Allowance so that it is paid at the same level as Jobseeker’s Allowance (JSA) which would give carers almost an additional £600 per year (Scottish Government 2016c).
- Abolishing the 84-day rule: families with seriously ill children will continue to receive Disability Living Allowance and Carer’s Allowance (or the new equivalent thereof) for the duration of their child’s stay in hospital.
- Effectively abolishing the “Bedroom Tax”, using its new powers over the housing element of Universal Credit and discretionary housing payments.
- Giving UC claimants the choice of having their housing element paid to social landlords and to have their payments made twice a month rather than once a month.

The SNP Manifesto (2016) commitments also included: creating a new Maternity and Early Years’ Allowance; restoring housing benefit for 18-21 year olds; increasing Carer’s Allowance for those who care for more than one disabled child, and expanding winter fuel payments to families with children in receipt of the highest rate of DLA.

**How will the proposals be taken forward?**

A new social security bill will be introduced in the Scottish Parliament by May 2017 (Scottish Government 2016d). This will provide the framework for the establishment of a new benefits delivery agency in Scotland. The implementation dates for any new welfare powers will be agreed by the Joint Ministerial Group on Welfare, with the Joint Exchequer Committee overseeing the transfer of funding (UK Government 2016).

**Future Challenges**

- **Finance:** the Fiscal Framework sets out the basis on which the transfer of powers will be funded. The block grant will be adjusted by an initial baseline increase equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved (UK Government 2016). Any changes that the Scottish Government makes to the benefits, or new benefits that result in an increase in benefit expenditure, will need to be paid for by the Scottish Government. Thus, in the context of public spending restraint and other competing priorities, the Scottish Government may have to think creatively about what can be achieved.
- **Complexity:** With the introduction of devolved benefits there is potential for a further layer of complexity in the benefit system. Any decision on new benefits that the Scottish Government makes will need to be considered in the wider UK context because of the integrated nature of benefits. From a claimant’s perspective, the Scottish Government has committed to look to reduce the bureaucracy involved in claiming benefits (Scottish Government 2016b).
- **The transition process:** Existing claimants of benefits that will be devolved may be worried about their payments and how they might change. A key priority for the Scottish Government is to ensure “a smooth transition” from the existing UK benefits to the new Scottish arrangements (Scottish Government 2016b).
- **Delivery:** Questions arise about: how the new benefits agency will work in practice; whether there is a role for local authorities to deliver benefits locally and how the administration of Scottish benefits will link in with existing UK administrative processes.
HOUSING

12. Scotland’s ‘Housing Crisis’ – a question of supply?

Kate Berry

Scotland needs more new homes. That is the consensus amongst political parties and stakeholders in Scotland. It is argued that housing problems such as the affordability of housing, access to social housing and homelessness can, at least partly, be tackled by increasing the supply of housing.

The picture of housing supply

Following the 2008 global financial crisis, new housing completions fell sharply, mainly because of a fall in private sector new builds. Accessing home-ownership became more problematic, particularly for first-time buyers, because of more restrictive mortgage lending criteria and the need to save for a large deposit (Whitehead and Williams 2011).

The climate of public sector spending restraint has meant that, while new affordable housing completions have remained fairly constant over the last few years, the number of social rented housing units completed (which require higher levels of subsidy) has reduced. Alternative, innovative methods of financing affordable housing are being sought by the Scottish Government so that more homes can be delivered for less public investment.

With the upturn in the economy, and with the support of UK and Scottish Government initiatives, such as the Help to Buy scheme, private housebuilding levels have increased recently. But overall, total new builds still remain almost 40% down on 2007 levels (Figure 13).

Figure 13: New Build Completions 1999-00 to 2014-15

The numbers game

Many commentators argue that housing supply in Scotland is not keeping up with housing needs. But exactly how much housing is needed is a difficult question which has no definitive answer.

Local authorities have responsibilities for assessing local housing needs through their Housing Needs and Demand Assessments which are used to help inform local housing strategies and
investment priorities. At the Scotland wide level the Scottish Government sets targets for its Affordable Housing Supply Programme but it does not set targets for the wider supply of housing. A recent report commissioned by the Scottish Federation of Housing Associations, CIH (Scotland) and Shelter Scotland estimated that over the next five years there is a need for a minimum 18,700 homes per year, of which at least 64% (12,000) should be affordable homes (Powell et al. 2015). Homes for Scotland is calling for the completion of at least 25,000 homes per year over the next Parliamentary Session. This compares with 16,213 completions in 2014-15.

Scottish Government Affordable Housing Supply Targets

Over the last five years (1 Apr 2011 to 31 May 2016), the previous Scottish Government’s affordable housing supply target was to deliver at least 30,000 units, of which 20,000 would be for social rent. This target was exceeded, by at least 1,000 units as, by December 2015, 31,034 units had been completed (Scottish Government 2016b). However, there had been some criticism that the target was not ambitious enough. Targets for the next five years (1 April 2016 to 31 March 2021) have been increased. The aim is to deliver at least 50,000 units, of which 35,000 will be for social rent (increases from the last five year period of 67% and 75% respectively).

What is the Scottish Government spending on housing supply?

In 2016-17, the housing supply budget is around £690m (Scottish Government 2015), with the majority, 83% (£572m), being devoted to the Affordable Housing Supply Programme (AHSP). While the overall budget remains broadly similar to last year’s budget, the amount allocated to affordable housing has increased by just over a fifth. In addition, the benchmark subsidy levels have been increased following evidence that previous subsidy levels were not sufficiently high (Scottish Government 2016c).

Most of the AHSP (about 70%) is distributed to local authorities who devise a local development programme to be agreed by the Scottish Government. Other programmes managed by the Scottish Government include those aimed at mid-market rented housing, low cost home ownership and other initiatives such as the Rural Homes Fund. New innovations in financing housing, such as charitable bond finance and the Local Affordable Rent Trust, are also being developed.

Most of the remaining housing supply money is spent on the Help to Buy (Scotland) Affordable New Build Scheme which helps buyers purchase a new build property from a participating developer (with the Scottish Government taking an equity share in the property).

What else needs to be done to increase housing supply?

Increasing housing supply, and meeting the affordable housing supply targets, is not just about money. Land needs to be available, and ready to build on, as do the materials needed to build houses. There also needs to be enough skilled people to build the houses. Other activities to support housing supply are underway. In particular:

- A review of the planning system, part of which focusses on housing delivery, is being undertaken by an independent panel and is due to report later this year. The SNP Manifesto (SNP 2016) set out a commitment to bring forward a Planning Reform Bill based on the recommendations of the Review.
- Removing infrastructure blockages: some major housing developments have been unable to proceed because of difficulties in getting the right infrastructure, such as roads, sewerage and water in place. A five year £50m fund comprising loans and grants has been established to help with these problems (Scottish Government 2016d).
13. Is it time to change the law on gender recognition?

Nicki Georghiou

There is growing political consensus in Scotland that the process to legally change gender should be based on self-declaration rather than psychiatric diagnosis, and it should be available from the age of 16 rather than 18. Additionally, there should be legal recognition for people who identify as non-binary - neither male nor female. Each of the five main parties referred to a review of gender recognition law in their manifestos (Equality Network 2016).

‘Transgender people’ or ‘trans people’ are terms that cover the range of ways people can find the personal experience of their gender differs from the assumptions of the society in which they live. It includes: trans women who are male-to-female transsexual women; trans men who are female-to-male transsexual men; non-binary people who are not comfortable thinking of themselves as either male or female; cross-dressing people who dress as the opposite gender, which is about gender expression rather than gender identity (Scottish Transgender Alliance 2016).

Equal Recognition Campaign

The Scottish Transgender Alliance (STA) has been calling for changes to the Gender Recognition Act 2004 in its Equal Recognition Campaign. The STA explained their campaign to the Scottish Parliament’s Equal Opportunities Committee in an evidence session in February 2016 (Scottish Parliament 2016). A summary of evidence on this evidence session provides further background (Georghiou 2016). The changes have been supported by the House of Commons’ Women and Equalities Committee (UK Parliament 2016), and by the leaders of the five main political parties in Scotland (Stonewall 2016). The campaign is calling for the following reforms to the Gender Recognition Act 2004:

- Removing the psychiatric diagnosis requirement from legal gender recognition, to be replaced with a self-declaration process.
- Reducing the age at which people can get legal recognition of their acquired gender, from 18 to 16, and for those under 16 with consent from their parent or legal guardian.
- Legal recognition for people who do not identify as men or women.

What is the current situation?

Under the Gender Recognition Act 2004 (GRA), transgender people can apply for legal recognition in their acquired gender. The Gender Recognition Panel, made up of legal and
medical members, makes decisions on issuing gender recognition certifications. To issue a certificate, the Panel must be satisfied that the person applying:

- Has, or has had, gender dysphoria; and
- Has lived in the acquired gender for two years before the date of the application.

Gender dysphoria is described in the General Guide for all Users: Gender Recognition Act 2004 as:

“…a recognised medical condition variously also described as gender identity disorder and transsexualism. It is an overwhelming desire to live in the opposite gender to that which a person has been registered at birth.” (HM Courts & Tribunals Service 2014)

Once someone has been successful in changing their gender they will be issued with a new birth certificate.

**Psychiatric diagnosis or self-declaration?**

The current process to change legal gender requires people to provide a range of documents and detailed reports from their GP and a psychiatrist. The process has been described as “traumatic, difficult and frustrating” to those wanting to change their legal gender by the STA.

The STA is seeking to replace this process with a self-declaration process, similar to the way in which people can currently change their gender on other documents. Self-declaration for gender recognition is used in Ireland, the Netherlands, Denmark, Malta, Sweden, Norway and Belgium.

**Lowering the age for legal gender recognition from 18 to 16**

People must be aged 18 or over to legally change their gender. Young people are able to change their gender on most documents, but not their birth certificate. The STA have said that people know their gender from a young age and to be able to legally change their gender at 16 allows a young person to feel valued, understood and accepted. The Equal Opportunities Committee heard evidence from the STA that in Scotland there has been an increase in the number of children being referred to the Sandyford Child and Adolescent gender identity service, rising from 67 in 2013 to over 180 in 2014 (Scottish Parliament 2016). The House of Commons’ Women and Equalities Committee said that there is evidence to show that earlier intervention can improve mental health and physical well-being for young transgender people (UK Parliament 2016).

**Legal recognition for people who do not identify as men or women**

Non-binary people are those who do not consider themselves either men or women; they do not identify with the gender they were assigned at birth and do not wish to switch to what might be considered the opposite gender. There is no legal recognition for non-binary people. The STA referred to good practice; driving licences and bank statements allow people to use gender neutral titles, such as 'Mx'. Malta and Argentina now allow people to be recognised as non-binary on their passports (Scottish Parliament 2016).

**The way forward?**

The House of Commons’ Women and Equalities Committee called for a change to the GRA within the current parliament (UK Parliament 2016). The STA suggested that the Scottish Parliament could reform gender recognition in Scotland because it is a devolved matter, but that this could be done in tandem with England and Wales. This was undertaken with equal marriage legislation, ensuring similar rights across Great Britain (Scottish Parliament 2016).
HUMAN RIGHTS

14. Are human rights in Scotland under threat?

Angus Evans

The Human Rights Act 1998 brought the European Convention on Human Rights into UK law. The UK Government has argued that the Act should be repealed and replaced with a “British Bill of Rights”. The proposals are controversial and have been delayed until after the EU Referendum. The SNP, and others, have argued that the Scottish Parliament would have to consent to any repeal under the Sewel Convention. There could, therefore, be constitutional implications.

The European Convention on Human Rights

The Convention was set up in the aftermath of the Second World War by members of the Council of Europe, an intergovernmental body which now has 47 member states, including the UK. The Convention came into force in 1953 and is aimed at protecting fundamental rights such as the right to life, the right to liberty and the right to freedom of expression.

Under international law, all member states of the Council of Europe have to comply with the Convention. Individuals can bring claims of violations to the European Court of Human Rights in Strasbourg and there are mechanisms for judgments to be enforced in member states (to a large extent dependent on political pressure).

The Human Rights Act 1998

For many years the Convention was not part of UK domestic law which meant that individuals seeking redress had to take cases to the court in Strasbourg. This changed when the Human Rights Act 1998 came into force in October 2000. Since then, UK courts have to take judgments of the Court of Human Rights into account. Legislation also has to be read in a way which is compatible with the Convention and it is unlawful for public authorities to breach Convention rights. The Convention is also incorporated into the devolution settlement through the Scotland Act 1998. Acts of the Scottish Parliament which breach the Convention (defined by reference to the Human Rights Act) are unlawful and can be struck down in the courts.

The UK Government’s proposals

On 2 October 2014, the Conservative Party published proposals for reform which built on its long-standing critique of human rights institutions (Conservatives 2014). Amongst other things, the reforms argued that the Court of Human Rights had developed “mission creep” by expanding into areas beyond the Convention’s original intentions. A key area of controversy is voting rights for prisoners where the UK government (including the previous Labour administration) has been locked in a battle with the Court of Human Rights for more than 10 years and has consistently refused to follow its judgments (Caird 2016).

The Queen’s Speech in May 2015 also included a commitment to replace the Human Rights Act, but did not include any details (UK Government 2015). However, press articles and debates in the UK Parliament suggested that judges might be given more room not to follow judgments of the Court of Human Rights and that any new law might only apply in the UK so that, for example, it would not cover the armed forces acting overseas (The Sunday Times 2015, The Independent 2015). Government statements indicated that a key goal would also be to change

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9 This should not be confused with the European Council – one of the EU’s legislating institutions.
the law in relation to criminals and terrorists (both areas of recurrent media controversy since the coming into force of the Human Rights Act) (UK Parliament 2015).

The UK Government originally indicated that its proposals would be published by Christmas 2015. Publication was, however, delayed a number of times and it now appears that any proposals will not be published until after the EU Referendum in June 2016.

The debate

The Human Rights Act affects almost all devolved and reserved policy areas, including criminal law/policing, healthcare, immigration, national security, and education. It can therefore impact on the state’s options in terms of policy development.

Campaigners against the proposals have argued that they would have a regressive effect and would impact on the state’s powers over individuals in a negative way. There have also been arguments that the claims made about the current system are based on inaccurate statistics and media myths. This view is expressed for example by Rights Info on its website. Major human rights groups such as Amnesty and Liberty have been heavily involved in this debate and all the major UK-wide opposition parties have come out against the proposals, as have the SNP. The UK Government’s proposals have also proved controversial in Scotland – this is reflected in the recent inquiry of the Scottish Parliament’s European and External Relations Committee into the subject (Scottish Parliament 2016).

Proponents of the policy, such as the Secretary of State for Justice, Michael Gove MP, stress, however, that some sort of realignment is necessary, arguing that the Human Rights Act can undermine UK courts and the sovereignty of the UK Parliament (UK Parliament 2016). Arguments have also been made that a new law is needed so as to provide UK “glosses” on certain rights (for example more of an emphasis on freedom of expression as opposed to privacy rights).

Scotland - devolution settlement

While there are contrasting views, some commentators have argued that repealing the Human Rights Act could trigger the Sewel Convention – i.e. the principle that the UK Parliament will not normally legislate in devolved areas without the consent of devolved legislatures. Although the Scottish Parliament has no right itself to amend the Human Rights Act as Schedule 4 of the Scotland Act specifically prohibits this, there is an argument that the repeal of the Act at UK level would change the devolved powers of the Scottish Parliament since the requirement to comply with Convention rights (defined by reference to the Human Rights Act) would fall. The SNP has indicated that, if it has a majority in the Scottish Parliament, it would not give legislative consent. However, while the SNP did not achieve an overall majority in the 2016 parliamentary elections, given the views of most parties represented in the Parliament, it seems likely that a majority of MSPs would withhold legislative consent in such a scenario.

What next?

The repeal of the Human Rights Act has the potential to have wide-ranging policy and constitutional implications. The proposals have, however, been delayed on various occasions and there is perhaps a question mark as to how the policy will develop. From a narrow political perspective the fact that the UK Government only has a small majority in the House of Commons is likely to be crucial, as certain moderate Conservatives such as the former Attorney General, Dominic Grieve, have indicated that they do not support the proposals.
SCOTLAND AND THE WORLD

15. Refugees, asylum seekers and the Syrian crisis – what is Scotland’s role?

Anouk Berthier and Iain McIver

Before someone can be granted refugee status they must make an asylum application. Across the EU, asylum applications have increased sharply since 2013.

- 1.3 million - number of asylum applications in the EU in 2015, twice as many as in 2014. This increase is partly as a result of the situation in Syria (Eurostat 2016)
- 38,878 – number of asylum applications (main applications and dependants) in the UK in 2015 (2.9% of the EU total), a 20.2% increase from 2014
- 2,846 – number of Syrian asylum applications to the UK in 2015 (Syrians made up the fifth largest-group or 7.3% of asylum seekers) (Figure 14)
- 400 – number of Syrian refugees resettled in Scotland under the VPR Scheme since November 2015.

Figure 14: Asylum applications (main applicants and dependents) to the UK by nationality, first ten countries of origin, 2015

Source: SPICe, based on data from UK Government 2016

What is the UK Government doing?

Since 2013, the European Commission has proposed a number of relocation and resettlement schemes for people in need of protection, which the UK Government has chosen not to participate in. However, in September 2015 the UK Government extended its Syrian Vulnerable Person Resettlement (VPR) Programme which was set up in January 2014 to provide a route for selected Syrian refugees in the Syrian region to come to the UK.

Under the VPR Scheme, the UK Government committed, in September 2015 and April 2016, respectively, to resettling 20,000 Syrians plus 3,000 (mainly children) by 2020. Between January 2014 and the end of December 2015, 1,337 Syrian nationals were resettled under the scheme (UK Government 2016). This was in addition to the 5,850 Syrian nationals who were granted a positive asylum decision between January 2012 and December 2015 (UK Parliament 2016).

10 Relocation is the transfer of persons who need or already receive international protection in one EU Member State to another EU Member State. Resettlement is the transfer of non-EU nationals or stateless persons who have been identified as in need of international protection to an EU state where they are admitted either on humanitarian grounds or with the status of refugee.
(2016), taking the total number of Syrian refugees accepted into the UK over that period of time to 7,187.

Asylum seekers are not entitled to mainstream, non-contributory social security benefits, for example income-based Jobseeker’s Allowance and Income Support, but they may be eligible for accommodation and/or financial support from the Home Office. They are eligible for free NHS healthcare and may be eligible for free prescriptions, free dental care, free eyesight tests and vouchers for glasses. Asylum seeker children have the same entitlement to state education as other children and may be eligible for free school meals. Broadly, refugees can claim social security benefits and tax credits, and access services, on the same basis as UK nationals.

How are asylum seekers and refugees being supported in Scotland?

Asylum and immigration are reserved to the UK Government and Parliament. However, the Immigration and Asylum Act 1999 introduced a policy of national dispersal for asylum seekers across the UK and many areas of social policy concerning the integration of refugees and asylum seekers living in Scotland are devolved to the Scottish Parliament, for example, education, interpreting and translation, policing, housing, health, provision of legal aid and child protection (Scottish Government 2013).

In 2013, the Scottish Government, in partnership with COSLA and the Scottish Refugee Council, published New Scots: Integrating Refugees in Scotland’s Communities, a strategy for 2014-17 aimed at providing a clear framework to support the integration of refugees and asylum seekers in Scotland. In 2015, the Scottish Government set up a refugee taskforce to examine and help establish capacity in a range of services in Scotland, including housing, health services, language support, transport and social services.

The VPR scheme is voluntary for local authorities and they are encouraged to think carefully about whether they have the infrastructure and support networks needed to ensure the appropriate care and resettlement. The first 12 months of a refugee’s resettlement costs are funded by the UK government which has also committed to providing additional funding to assist with costs incurred in future years (UK Government 2015). Roughly half of Scotland’s 32 local authorities are participating in the VPR Scheme. The first Syrian refugees arrived on 17 November 2015, and Scotland now has more than 400. Action by the Scottish Government to help refugees and asylum seekers includes:

- Providing English language training to all refugees as part of the New Scots refugee integration strategy, with funding allocated from the Overseas Aid Budget (Scottish Government 2016a).
- Launching the New Refugee Doctors Project, run by the Bridges Programmes, in partnership with the BMA and NHS Education for Scotland which will offer around 30 doctors support to access training, language support and professional mentoring and the work experience they need to re-enter their profession.
- Amending existing legislation to ensure that Syrian refugees are able to benefit from student support in Scotland, and to enable Syrian refugees to take up the Education Maintenance Allowance (Scottish Government 2016b).
- Donating, in coordination with the Scottish Book Trust, 1,000 children’s books and toys to refugee families across Scotland (Scottish Government 2016c).

The Scottish Government has also committed funds to helping refugees outside of Scotland, for example through the donation of over £500,000 to charities with humanitarian operations in mainland Europe (Scottish Government 2015, 2016d).

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11 The Education (Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 with regulations 5-10 making amendment to student support, coming into force on August 1, 2016.
12 Regulations 1 and 11-13 amend eligibility for EMAs and will come into force on 31 March 2016.
CUSTODIAL AND COMMUNITY PENALTIES

16. In or out? What is being done to reduce Scotland’s prison population?

Graham Ross

Scotland’s prison population has been the subject of much debate in the Parliament in recent years. The efficacy of imprisonment as a way of reducing reoffending has also been widely debated and will no doubt continue to be in Session 5. The following paragraphs provide a snapshot of some of the work which has been undertaken recently in an effort to reduce Scotland’s prison population.

Prison population

The average daily population in prison in Scotland rose by 15% between 2005-06 and 2013-14 (Figure 15). In 2007, the Scottish Government established the Scottish Prisons Commission to take stock of the problems and to develop solutions to a seemingly ever-increasing prison population. In examining how the issue of prison numbers might be tackled, a number of facts emerged to underline the scale and complexity of the problem. For example, it was found that, as a proportion of the population, Scotland imprisons more people than many other countries in Europe; the prison population has increased in every year of this Century and was projected to reach 8,700 inmates by 2016; high prison populations do not reduce crime and they are more likely to create pressures that drive reoffending than to reduce it.

Figure 15: Average daily population in penal establishments in Scotland, 2005-06 and 2013-14

Source: SPICe, based on data from the Scottish Government 2015a

Short custodial sentences

One of the key features driving the increase in prison populations was the use of short custodial sentences. The Commission found that, in 2005-06, eighty three per cent of all custodial sentences passed were for 6 months or less and that, for the most part, these sentences were not dealing with serious crimes. The Commission recommended that the Scottish Government should bring forward legislation to require a sentencing judge, who would otherwise have imposed a custodial sentence of 6 months or less, to impose a community sentence instead. The Scottish Government responded by bringing forward legislation in 2010.
Legislation

The **Criminal Justice and Licensing (Scotland) Act 2010** introduced, for the first time into Scots law, a presumption against short periods of imprisonment. As it currently stands, the presumption provides that a court must not pass a sentence of imprisonment for a term of 3 months or less (less than the period recommended by the Commission) unless the court considers that no other method of dealing with the person is appropriate.

The presumption is intended to highlight to the court the need to only use short prison sentences as a last resort, and that community disposals should be favoured where possible. It should be noted that it is a presumption, not a ban, and it is for the sentencing judge to decide on the most appropriate sentence based on the facts and circumstances in any given case. In 2014-15, sixty six per cent of all custodial sentences passed were for 6 months or less – a reduction of seventeen per cent from 2005-06.

Consultation

The 2010 Act also enables the Scottish Ministers to substitute another number of months for the number currently specified in legislation – this would be done by way of secondary legislation. To that end, the Scottish Government recently consulted on whether the current presumption against sentences of three months or less should be extended and if so, by how much (Scottish Government 2015b); and whether a more radical review of the presumption against short sentences and the use of short-term imprisonment, including the use of remand, is required. For example, should consideration be given to whether particular types of offences should never result in a custodial sentence?

Women offenders

In June 2011, the Scottish Government established the independent **Commission on Women Offenders**. The Commission reported in 2012. The report found that the female prison population in Scotland had doubled in the preceding ten years. It recognised that many women in the criminal justice system are frequent reoffenders with complex needs that relate to their social circumstances, previous histories of abuse and mental health and addiction problems. As such, the report identified an urgent need for action to reduce the number of women reoffending and going to prison.

At the time of the report, HMP Cornton Vale was Scotland’s only all-female prison. The Commission concluded that Compton Vale was not fit for purpose with overcrowding causing significant problems for the management and staff, which inhibited opportunities to rehabilitate women and reduce their reoffending on release. The Commission recommended that the prison should close, to be replaced with a smaller specialist prison for those women offenders serving a statutory defined long-term sentence and those who present a significant risk to the public.

Initially, the Scottish Government intended to build a new, large national prison as a replacement but, on further consideration, decided instead to adopt a new approach to dealing with female offenders with a move towards custody in the community, backed by targeted support to address underlying issues and action to reduce the numbers of women receiving custodial sentences. Under plans unveiled by Justice Secretary Michael Matheson, a new small national prison with 80 places will be created, alongside five smaller community-based custodial units each accommodating up to 20 women across the country. The smaller community-based custodial units will provide accommodation as women serve out their sentence, with access to intensive support to help overcome issues such as alcohol, drugs, mental health and domestic abuse trauma which evidence shows can often be a driver of offending behaviour. The units will be located in areas close to the communities of female offenders so that family contact can be maintained.
17. Will the new Scottish Government make big changes to the law of inheritance?

Sarah Harvie-Clark

The legislation which says who should inherit when somebody dies dates back to the 1960s. The last Scottish Government wanted wide-ranging and fundamental reforms, with the new legislation being passed in Session 4. However, some parts of the farming community are worried about the possible effect of some of these reforms on the inheritance of family farms.

Policy background

The law which says who should inherit when somebody dies is called ‘the law of succession’. Much of it is currently found in the Succession (Scotland) Act 1964 (c 41).

This law is widely recognised as being overdue for reform, as society has changed significantly over the past half century. Individuals are living longer and many more people own their own homes. Family structures have changed too, with more “blended families” and many people choosing to cohabit rather than marry. Just over a third of our population is single. Scotland’s population’s is also ageing; with the percentage of those aged over 65 increasing fairly significantly (Scottish Government 2015).

What hasn’t changed of course is the inevitability of death and the need for clear and fair laws in place which reflect modern day society. In practice though, succession law tends to be a difficult area to reform. There are often very mixed views in society on how large a role governments should play in limiting the freedom of individuals to decide what should happen to their property after death. Policy debates can also rage on topics including to what extent a cohabitant of the deceased should be treated like a spouse or civil partner on death.

The previous Scottish Government's 2015 consultation document

In 2015, the previous Scottish Government published an important consultation document proposing reforms which would effectively create a new set of laws designed for the 21st Century (Scottish Government 2015). These were based on an earlier in-depth report (Scottish Law Commission 2009) by the Scottish Law Commission.

Who should inherit when there is no will?

Most of the Scottish population do not have a will and so a very important part of the consultation document set out the proposed rules which would cover that situation. We have such a set of rules at the moment and they favour any deceased’s spouse or civil partner and
any children of the deceased. However, sometimes, where there are no children, the current rules say that the spouse or civil partner must share the estate with the deceased’s parents and siblings. Instead, the previous government wanted the spouse or civil partner to inherit everything in this situation.

Should someone be able to disinherit their spouse, civil partner or children?

The consultation document also proposed very significant changes to the law where the deceased did have a will.

At the moment, a key feature of the law is that it is not possible for someone to entirely disinherit (leave nothing to) their spouse, civil partner or children. This includes their adult children. Where a will is made that tries to do this the law steps in to say that such people should nevertheless get a share of the deceased’s money and property (other than the land or buildings he or she owns).

An important policy issue that the then government had to consider was whether the law should continue to protect adult children in this way. On consultation, it proposed two options: one would further limit the freedom of an individual to disinherit their adult children; the other would enhance that freedom.

A new regime for cohabitants

Another key feature of the proposals was a significant increase in the rights of any cohabitant of the deceased. Such individuals have relatively limited rights at present and only where the deceased has not made a will. What was proposed was a new regime for cohabitants which covered all situations. It would give a cohabitant “an appropriate percentage” of what he or she would have inherited if he or she had instead been a spouse or civil partner. That appropriate percentage was to be decided in individual cases, looking at factors such as the number of years the couple had lived together.

The concerns of the farming community

For many people, the proposals were a very welcome attempt to overhaul an outdated area of law.

However, some members of the farming community were very worried by some of the proposals. At the moment, the protection from disinheritance available to spouses, civil partners and adult children does not extend to land and buildings. The consequence of this is that for many generations a farmer has been able to leave his farm to his first born son in his will, knowing that this wish would be fulfilled.

However, all this would change under one of the options the previous Scottish government proposed. In particular, all children of the farmer, as well as the farmer’s spouse or civil partner, would be able to claim a share of the farm, regardless of what any will had said on the topic. The concern was that, in practice, small parcels of land would have to be sold to fulfil such claims. This, in turn, might affect a unit’s commercial viability.

The previous government acknowledged the importance of the agricultural sector to Scotland’s economy and was sympathetic to the concerns expressed, particularly in relation to small family farms and farms where the farmer was an agricultural tenant. It sought views on the possibility of a special rule for the sector. However, the Government also stressed that there were “significantly polarised” views on this issue, with a majority of stakeholders outwith the sector not supporting such a move.
LAND REFORM

18. What next for land reform?

Alasdair Reid

Land is a finite, national resource, and the current pattern of ownership and use largely reflects historical forces and events of the second half of the Nineteenth Century. Opinions differ on whether ownership is the key determinant of how land is used.

Land reform, and the role of human rights in land reform, has moved back up the policy agenda, and was defined by the Land Reform Review Group (LRRG) as, “measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest” (Scottish Government 2014).

A program of land reform legislation in the first Scottish Parliament followed the Land Reform Policy Group’s Recommendations for Action (Scottish Office 1999). This legislation included the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Land Reform (Scotland) Act 2003, and the Agricultural Holdings (Scotland) Act 2003. The 2003 Land Reform Act introduced a right of responsible access to land, a Community Right to Buy (CRtB) rural land when it was put on the market, and a Crofting Community Right to Buy (CCRtB), regardless of whether it was for sale.

At present, approximately 500,000 acres are in community ownership; it is also regularly cited (e.g. Wightman 2013, Scottish Government 2014) that 50% of Scotland’s private rural land belongs to 432 owners, and that “Scotland has the most concentrated pattern of land ownership in the developed world” (Hunter et al. 2014). However, many of these statistics and claims are not, or cannot be, verified by official data. As Hindle et al. note, “no definitive database of “estates” (or landowners) exists in Scotland” (Hindle et al. 2014). Scottish Land & Estates does not dispute these calculations, however it does note that from a membership of 2,500, over half own fewer than 450 hectares (UK Parliament 2014), and states:

[…] the 432 owners are not individuals, but are legal entities which may include a large number of joint owners, trustees (including professional advisers and community representatives) or in the case of companies, shareholders. The other 50% of the privately owned land in Scotland is owned by many tens of thousands.

Figure 16 shows different categories of private and public land ownership in Scotland.

**Figure 16: Private and public land ownership in Scotland**

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private</td>
<td>83%</td>
</tr>
<tr>
<td>Public</td>
<td>12%</td>
</tr>
<tr>
<td>Other bodies (e.g. NGOs)</td>
<td>3%</td>
</tr>
<tr>
<td>Community</td>
<td>2%</td>
</tr>
</tbody>
</table>

Source: SPICe, based on data from Wightman (2013)

Research into the CRtB has stressed the importance of the formation of community bodies (CBs) (often driven by key individuals) and guidance from support agencies; and where land/assets have been purchased, a willing seller has helped make the process easier and made success more likely. Barriers to community ownership include: the absence of key motivating individuals as part of a CB and/or a willing seller; difficulty in sustaining community interest over the long term, particularly where a registration has been active for a long period.
(e.g. 5 years) and re-registration is required; ageing and declining populations making it difficult to attract new members to the CB; and securing finance (Scottish Government 2015a).

In 2012, the Scottish Government established the LRRG, which was asked to identify how land reform might: enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land; assist with the acquisition and management of land and assets by communities; and generate support, promote, and deliver new relationships between the land, people, economy and environment in Scotland. The Group reported in 2014 with over 60 recommendations, noting that there was, “no single measure, or ‘silver bullet’, which would modernise land ownership patterns in Scotland and deliver land reform measures which would better serve the public interest” (Scottish Government 2014).

In 2013, the Scottish Government established an agricultural holdings legislation review (AHLR), which reported in early 2015 with 49 recommendations (Scottish Government 2015b).

Other Scottish Government action includes asking the Registers of Scotland to complete the Land Register by 2024, and setting a target of 1 million acres to be in community ownership by 2020. A Short Life Working Group reported seven major factors as the key barriers to achieving the target. These are a need to: (Scottish Government 2015c & 2015d):

- stimulate demand for land through raising awareness
- build the capacity of communities to take land ownership projects forward
- support engagement with and within communities
- improve access to support services
- develop the network of support providers
- address the availability of land and barriers to the supply of land

The Community Empowerment (Scotland) Act 2015 amends and simplifies the 2003 Land Reform Act, extends the CRtB to urban Scotland and introduces a new right to buy “abandoned, neglected or detrimental land” in certain circumstances without a willing seller.

The Land Reform (Scotland) Act 2016 is substantial, key provisions include:

- the preparation of a land rights and responsibilities statement
- the creation of a Scottish Land Commission whose functions include reviewing the effectiveness of land law/policy and conducting research
- a public register of persons who have controlling interests in owners and tenants of land
- the creation of a right to buy land to further sustainable development for eligible CBs (or a nominated third party purchaser) from an unwilling seller
- substantial amendments to the 1991 and 2003 Agricultural Holdings Acts, which strengthen the rights of tenant farmers

As previously noted, a significant proportion of landowners are not individuals, but legal entities comprising joint owners, trustees or shareholders – many of whom are currently not traceable, and have been linked to offshore tax havens. A consultation on the Register of Controlling Interests is expected to be published, though no date has been given (Holyrood Magazine 2016, Herald 2016). The extensions of the CRtB to “abandoned, neglected or detrimental land”, or to further sustainable development puts substantial qualifying hurdles in place for the interested community. The Rural Affairs, Climate Change and Environment Committee (2015) noted that many community groups considered the conditions to be too onerous, and were unsure how all of the various rights to buy relate to each other. Updated guidance for communities sets out how communities might take forward a right to buy (Scottish Government 2016), and any CB exercising these new rights will be a test case. Amendments to the 1991 and 2003 Agricultural Holdings Acts implemented many, but not all of the recommendations of the AHLR. Implementing the remaining recommendations would require further primary legislation.

The new Scottish Land Commission is likely to play a key role in how the broad policy area of land reform develops, and is currently expected to be fully operational on 1 April 2017 (Scottish Parliament 2015).
CLIMATE CHANGE

19. A Low Carbon Scotland - Pipedream or possibility?

Dan Barlow

In December 2015, world leaders reached a new global agreement aimed at tackling climate change. The commitment includes a goal of seeking to limit temperature rise to 1.5°C above pre-industrial levels. The agreement also states that in the second half of this century we need to achieve ‘net-zero emissions’ i.e. the amount of emissions we produce must balance with the amount that can be absorbed each year. Many countries have adopted specific greenhouse gas reduction goals and the UK and Scotland have passed legislation that commits them to cut emissions by 80% by 2050.

To date, Scotland’s emissions have reduced by 38% since 1990 (Scottish Government 2015). However, progress across sectors varies considerably as reflected in (Figure 17). Emission cuts of 30% from energy and 70% from waste contrast with reductions of just 2% from transport and 12% from homes. Cuts in emissions to date have been attributed not only to specific policies (at a Scotland, UK and EU level) but also the economic downturn and the closure of Ravenscraig steel works. Whilst on track to hit an interim target of 42% emissions reductions by 2020, Scotland has missed annual targets for the past four years.

Figure 17: Emissions by sector, 1990 - 2020

Some of the reductions to date have been achieved by focusing on the ‘low hanging fruit’ – changes that are most cost effective or publicly acceptable. Making Scotland’s long term climate goals a reality is likely to involve some more wide-ranging changes to our transport, energy, buildings and land use systems. As an indication of the kind of outcomes that would be required, the Scottish Government’s climate advisers have already suggested that scenarios compatible with our climate goals would see:

- An electricity system powered solely by renewables, or generation fitted with carbon capture by 2030.
- Two-thirds of new cars and vans sold being electric by 2030.
• Nearly a fifth of our homes fitted with heat pumps by 2030 (430,000 heat pumps installed); and
• 16,000 hectares of land planted with trees each year (Committee on Climate Change 2016).

Such scenarios would require the equivalent of an 8-fold increase in the amount of energy generated from wind compared to 2013, a 65-fold increase in the proportion of new vehicles that are sold being electric and a doubling of the rate of tree planting. While ambitious, examples elsewhere in Europe should provide some confidence in achieving such goals. In 2015, nearly 30% of all cars sold in Norway were electric (Gas2 2016), in 2014, Austria generated renewable electricity equivalent to 70% of their gross electricity use (REN 2014) and in a number of European countries sales of heat pumps now exceed 100,000 each year (European Heat Pump Association 2015).

Achieving a low carbon Scotland provides opportunities to replicate approaches that have been tried and tested elsewhere and to develop new approaches in areas where Scotland faces distinct challenges (for example associated with improving the energy efficiency of our many solid wall properties) or has a particular niche (for example maximising Scotland’s significant marine energy potential). There are also significant opportunities to use approaches that offer benefits beyond cutting climate emissions, for example:

• Transforming the energy efficiency of our housing stock offers opportunities to cut fuel poverty and create green jobs across Scotland.
• Reducing our reliance on petrol and diesel vehicles can help cut air pollution and the associated threats this poses to public health,
• Boosting the amount we walk and cycle could help tackle obesity,
• Cutting the amount of meat and dairy in our diets and replacing this with alternatives could help reduce cancer and heart disease.

The previous Scottish Government had started developing the next plan setting out how Scotland would meet its forthcoming annual climate change goals and remain on track towards the 2050 targets. For the last iteration of the plan, a number of parliamentary committees took evidence and reported on progress across a variety of sectors. In the next year, the Scottish Parliament will have the opportunity to consider a draft of this plan and input to the Scottish Government as they finalise the plan.
20. What is the future of Scotland’s relationship with the European Union?

Iain McIver

On 23 June 2016, voters across the country will be asked to decide whether the UK should remain in or leave the EU. SPICe has previously published a briefing examining the Impact of EU Membership in Scotland (SPICe 2015).

The outcome of the referendum will have important consequences for Scotland’s economy and demography. For example, the European Union accounts for around 42% of Scotland’s international exports in 2014, with an estimated value of around £11.6 billion (Scottish Government 2016). Six of Scotland’s top ten international export destinations are EU Member States (Netherlands, France, Germany, Ireland, Spain and Denmark). Any decision to leave the EU would result in a need to agree a new form of trading partnership with former EU partners.

Figure 18: Value of Scotland’s exports to the EU, 2014

In its inquiry on the ‘EU Referendum and EU reform: implications for Scotland,’ the Scottish Parliament’s European and External Relations Committee concluded that “access to the single market is not just beneficial, but is crucial to the Scottish economy” (Scottish Parliament 2016).

An aspect of EU membership is the entitlement to freedom of movement for European workers. The latest estimates suggest that, in 2014, there were around 173,000 people in Scotland who had the nationality of another EU member state, equating to 3.3% of the overall population. The arrival of non-UK EU nationals in Scotland has helped grow the Scottish population and address Scotland’s demographic challenge of an ageing population. The European and External Relations Committee concluded that:

“The Committee believes that freedom of movement has been culturally enriching. It has allowed Scots to study, work and live abroad, and it has brought EU citizens to Scotland to study, work and live. Moreover, freedom of movement has helped reverse the decline in Scotland’s population and respond to labour shortages in the Scottish economy.” (Scottish Parliament 2016)

It has been suggested that a decision to leave the EU would result in more powers for the Scottish Parliament (BBC 2016). Professor Drew Scott, Professor of European Union Studies at the University of Edinburgh, has said that powers over areas such as fishing and farming that are currently EU competences would automatically revert to the Scottish Parliament. Given that European programmes such as the Common Agricultural Policy provide significant funding to
Scottish farmers (over €4 billion for the period 2014-2020), it would also be necessary to address how future programmes are funded in the event the UK leaves the EU.

What happens if the UK votes to leave the EU?

The procedure for leaving the EU is set out in Article 50 of the Treaty on European Union (TEU). The procedure can take up to two years, at which point, if no agreement on the terms of departure has been reached, the Treaties may cease to apply to the State wishing to leave, unless the European Council, by unanimous decision, along with the Member State decide to extend the period.

As Article 50 TEU has never been used, there is no clear framework or previous example of how the process would work. However, it is likely that if the UK votes to leave the EU, much of the next two years (at least) is likely to be taken up negotiating the terms of withdrawal and the UK’s consequent future relationship with the EU.

In addition to the negotiations at European level, the UK would need to examine its domestic law in relation to EU law. For example, in Scotland this would require an assessment to be made of the ways in which EU law is incorporated into domestic law and whether some of these measures need to be retained if the underpinning legislation the European Communities Act 1972 is repealed. There would also be the question of whether the Scotland Act 1998 should be amended to remove the requirement that Scottish Parliament legislation comply with EU law and whether this would require the prior agreement of the Scottish Parliament to a Legislative Consent Memorandum to allow the UK Parliament to enact such an amendment.

At this stage it is not clear what the alternatives to EU membership might be for the UK. However, it seems likely that an agreement incorporating a free trade arrangement would be sought with the EU. This would require the agreement of all the remaining Member States and could include requirements to adopt relevant EU legislation and observe the four fundamental freedoms of the EU, including freedom of movement.

What happens if the UK votes to remain in the EU?

If the UK votes to remain in the EU, the Scottish Parliament will continue its role in scrutinising the Scottish Government’s engagement with the EU. This will include scrutinising Scottish Government engagement with the UK Government through the intergovernmental Joint Ministerial Committee (Europe) and the Scottish Government’s engagement with the European Union institutions. This scrutiny will focus on the activities and actions set out in the Scottish Government’s Action Plan on European Engagement (Scottish Government 2015).

What are the key issues facing the EU?

Two key issues facing the EU over the coming years are finding a solution to the Eurozone crisis and addressing the migration crisis – on both these issues the UK has in effect legal opt-outs.

Another priority for the Member State Governments will be trying to reinvigorate the European economy to boost economic growth and create new jobs, consequently reducing unemployment rates across the EU. Amongst the ways the EU will seek to boost growth is by strengthening efforts to complete the Single Market in goods and services and developing the Digital and Energy Single Markets. The European Commission will also seek to conclude international trade agreements such as the Transatlantic Trade and Investment Partnership with the United States. These priorities were identified by the European Commission President Jean Claude Juncker when he assumed the role in 2015 and they will continue to be priorities of an EU with or without the UK.
21. Can Scotland achieve a low carbon transport system?

Alan Rehfisch

The Climate Change (Scotland) Act 2009 sets ambitious greenhouse gas emission reduction targets. Given that transport is Scotland’s second biggest source of greenhouse gas emissions, accounting for 34.4% of total emissions in 2013, significant reductions in transport related emissions will have to be made to meet these targets (Scottish Government 2015a).

Progress to date

Greenhouse gas emissions from Scotland’s transport sector fell by just 2.1% between 1990 and 2013, compared with a 34.3% fall in total emissions over the same period. The fall in transport emissions is mainly attributable to the increased fuel efficiency of new cars and the growing proportion of diesel engine vehicles.

Policies and Proposals

The Second Report on Proposals and Policies outlines the Scottish Government’s intention to almost completely decarbonise road transport by 2050 (Scottish Government 2013a). It also sets out a number of milestones to be achieved by 2020, including the development of a mature market for low carbon cars, supported by the development of electric vehicle charging infrastructure, and a vision of at least 10% of all journeys being made by bike by 2020. The Committee on Climate Change reports on progress in meeting these milestones in its 2015 progress report (Scottish Government 2015).

Progress on the uptake of low carbon cars, increasing cycling modal share and possible future developments in these areas is outlined below.

Low carbon cars

The Scottish market for electric and hybrid electric cars is currently very small. There were 2.496m private and light goods vehicles registered in Scotland on 31 December 2014, of which just 9,000 (0.36% of the total) were hybrid electric and 5,000 fully electric (0.2% of the total). During 2014, a total of 217,400 new private and light goods vehicles (vans and smaller trucks) were registered in the country, of which just 2,000 (0.92% of the total) were hybrid electric and 1,600 (0.74%) fully electric.

The Scottish Government’s ‘Switched On Scotland’ policy sets out its vision for the development of a market for electric vehicles by 2050 (Scottish Government 2013b). It identifies the period between 2015 and 2020 as one of “market growth”, with the uptake of hybrid electric and fully electric vehicles beginning to increase substantially around 2020. The period 2016-2020 will be focused on developing the vehicles, charging infrastructure, market conditions and consumer expectations to allow for mass uptake of such vehicles. More information on possible future developments is set out in the International Energy Agency’s (IEA) Global EV Outlook, which examines the development of the international electric vehicle market up to 2020 (IEA 2013).

Cycling

The Cycling Action Plan for Scotland (CAPS), first published in June 2010 (Scottish Government 2010) and updated in June 2013 (Transport Scotland 2013), sets out the Scottish Government’s vision that 10% of everyday journeys will be made by bike by 2020. Little progress towards meeting this target has been made to date (Figure 19).
As can be seen, cycling has accounted for around 1% of all trips annually over the period 2004 to 2014, although 2014 reported the highest incidence of cycling at 1.4% of all trips. There has been no significant, sustained increase in cycle modal share since the publication of CAPS in 2010. A more than seven-fold increase in national cycling modal share in a four year period would be unprecedented anywhere. Given this, it seems clear that the vision of 10% of everyday trips in Scotland being made by bike by 2020 will not be met.

However, while the 10% figure may not be met at a national level, it is likely to be met in one or more local authority area. The local authority taking the lead on cycling is the City of Edinburgh Council (CEC). Transport Scotland figures for 2014 indicate that 11.8% of commuting trips in Edinburgh were made by bike, although these figures are subject to a fairly high margin of error (Scottish Government 2014b). The next closest authority is Highland Council – with a cycle modal share of 6.1%.

There is a substantive body of research into the political, policy and financial commitments required to increase cycling modal share, e.g. Pucher and Buehler (2008) and the International Cycling Infrastructure Best Practice Study (Urban Movement & Phil Jones Associate 2014). This research identifies a number of key actions for increasing cycle modal share, including the need for strong political and official leadership, the development of segregated cycle networks, a willingness to reallocate road space from cars to bikes, and consistent and substantial budget allocations for cycling.
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Charlotta Nordlander, SPICe information specialist, contributed to data visualisation used in this briefing.
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