7 September 2011

Dear Linda,

As your Committee prepares to resume its consideration of the Scotland Bill, I thought that it would be helpful to summarise the areas where the Scottish Government believes that changes are necessary to the Bill.

Our position, of course, remains that independence would be the best means to enable Scotland to realise her economic potential and meet the ambitions of the Scottish people. A Scotland Bill that devolved key social and economic tools, such as full fiscal responsibility would represent genuine progress towards those aims, as well as demonstrating a real recognition by the UK Government of the incontrovertible appetite and rationale for change. Full tax-raising powers, along with responsibility for the welfare system, would ensure that the Parliament was fully accountable, and provide the maximum policy opportunities to shape the fiscal, economic and social environment in Scotland in line with our country’s best interests.

Short of that, however, if the Bill were amended in accordance with the proposals outlined below it would provide a meaningful development of Scotland’s position, significantly enhance the financial accountability of the Parliament, and, importantly, give the Parliament a range of job-creating powers it needs to maximize employment and economic growth in the years ahead.

At the heart of our concerns remain the financial provisions in the Bill. We remain deeply concerned that, in their current form, the income tax proposals are flawed and could expose the Scotland’s public finances to significant risk without adequate levers to mitigate their worst impacts. Your predecessor committee made some recommendations to help reduce the provisions’ damaging effects. However, while
an improvement, such proposals did not fully address all of the underlying issues, and the income tax provisions would remain a complicated, partial transfer of powers. Your Committee may wish to consider whether there would be more effective ways of addressing the Bill’s shortcomings and enhancing the Scottish Parliament’s financial accountability. It is also essential that the Scottish Parliament is satisfied with the merit and practicability of any accompanying financial arrangements put in place – such as the mechanism for adjusting the Block Grant – and for this reason we have proposed that Bill should require the Scottish Parliament’s consent to the commencement of the financial provisions. As presently drafted, the Bill would confer the power to commence the provisions on HM Treasury alone.

More generally, the Bill in its current form would devolve no meaningful new levers to help promote economic development in Scotland. Our proposed changes would therefore strengthen the Bill to help us to achieve strong, sustainable economic growth. Most significantly, enhanced borrowing powers, the devolution of corporation tax and the management and revenues of the Crown Estate would provide a much more balanced fiscal package and facilitate the tailoring of economic policy to Scotland’s distinct needs.

As you will be aware, these are three of the six areas for improvement on which we have focussed particularly since the election, the others being extended powers over broadcasting, a strengthened voice for Scotland in the EU and the devolution of excise duty. We undertook to provide the UK Government with papers setting out each of these proposed improvements, and we have already published – and sent to your Committee - the first four of these papers. Additionally, we have published a consultation paper on corporation tax, outlining a number of options for reform. Our policy papers on corporation tax and excise duty will be published and made available to the Committee as soon as possible, in good time to inform the Committee’s consideration of the Bill.

In my evidence to your Committee on 28 June I made clear that there are a number of other significant changes to the Bill that the Government would support and would urge the Committee to consider, and the UK Government to address. For your Committee’s ease of reference I attach at Appendix 1 a full list of the areas where we believe changes are necessary, encompassing areas raised in the previous session (whether by ourselves or by the previous Committee) and those which we have highlighted since the election.

More detail of our proposed changes to the Bill can be found in the full suite of papers we have produced on the Bill’s provisions; see:

http://www.scotland.gov.uk/Topics/constitution/docstoreconstitution2011

We have already produced illustrative amendments to deliver the vast majority of our proposed changes to the Bill. We will also provide updated papers and amendments to your Committee to reflect developments as the Bill progresses.
In the case of the issues surrounding ECHR and the role of the Supreme Court, we await the final report of the independent review group chaired by Lord McCluskey. This report is expected to be published in the autumn. We will provide our response to the report, and to any recommendations it contains, following its publication.

I look forward to offering further evidence and support to your Committee as its consideration of the Bill continues.

Bruce Crawford

BRUCE CRAWFORD
SCOTTISH GOVERNMENT PROPOSALS FOR THE SCOTLAND BILL

Financial matters

- The need for a clear and agreed mechanism – through the Bill, block grant adjustment proposals, borrowing powers and other measures – to address the flaws in the income tax proposals. To underpin that, a legislative requirement for the Scottish Parliament to consent to the commencement of the financial provisions, plus measures to ensure that HMRC is legally accountable to both the Scottish and Westminster Parliaments.

- In line with the motion passed unanimously by the Scottish Parliament on 9 June 2011, the establishment of a principles-based, sustainable capital borrowing regime.

- Devolution of Corporation Tax and Excise Duty.

- Implementation without delay of the devolution of Air Passenger Duty and the Aggregates Levy proposed by the Calman Commission.

Non-financial matters

- Devolution of the management and revenues of the Crown Estate in Scotland in line with the motion passed by the Scottish Parliament on 2 June 2011.

- Enabling the Scottish Parliament to establish public service broadcasting institutions; ensuring that the Scottish Government is consulted on the licensing of local television stations within Scotland and on license fee setting arrangements and local cross-media mergers; and enabling the Scottish Government to tailor the list of protected free-to-air televisions events for Scotland. Also, building on amendments already made to the Bill, full responsibility for Scottish Ministers in appointing and removing Scottish members of the BBC Trust, and sole responsibility for Scottish Ministers in approving MG Alba board appointments.

- Strengthening Scotland's voice in Europe by putting Scottish Ministers' attendance at Council of Ministers' meetings on a statutory footing.

- Ensuring that Scotland is in the same position in respect of human rights as the rest of the United Kingdom.

- Building on the proposals in the Bill for partial executive devolution of these matters, devolution of speed limits for all classes of vehicle and
more extensive powers over drink-driving, including responsibility for random testing and penalties.

- Devolution of legislative competence for the administration of elections to the Scottish Parliament rather than just the transfer of Ministerial powers currently proposed in the Bill.

- Removal of the proposed wide-ranging power for UK Government to implement devolved international obligations on the basis that joint working between the Scottish and UK Governments can ensure effective implementation.

- Removal of the provisions which would take away responsibilities from the Scottish Parliament through the reservation of insolvency procedures, and health professions and ensuring that no other new reservations are part of the Bill. Where both Parliaments agree about the necessity for transfer or sharing of powers, alternative routes, such as a transfer of executive functions, should be considered before the reservation of current devolved matters.

- Ensuring that the Scottish Parliament retains its responsibility for the insolvency of registered social landlords. This is of course without prejudice to our strong view that the reservation of insolvency should be removed from the Bill in its entirety.

- Removal of the unnecessary and undesirable provision on the partial suspension of Acts of the Scottish Parliament following reference to the Supreme Court.

- Removal of the proposed restriction of devolved legislative competence over air weapons which would allow the Secretary of State effectively to re-reserve regulation for an air weapon by designating it as "specially dangerous". Alternatively there should be a requirement that any such measure should be subject to the approval of the Scottish Parliament.

- To align the Scottish Parliament's legislative responsibilities with the existing executive powers of the Scottish Ministers, devolution of legislative competence for all otherwise devolved matters out to 200 nautical miles (as is already the case for fisheries) and early implementation of the Calman Commission recommendation that marine nature conservation should be devolved.

- Building on the executive devolution already in place to Scottish Ministers of powers and responsibilities for railways, devolution to the Scottish Parliament of legislative competence for rail regulation.