21 November 2011

Dear Linda

Thank you again for the opportunity to speak to the Scotland Bill Committee on 17 November. I undertook to write to the Committee with further detail on the amendments the Scottish Government would like to see in the Scotland Bill. That letter will follow very shortly. This letter is specifically about the issue of commencement.

The Cabinet Secretary for Finance, Employment and Sustainable Growth wrote to the previous Scotland Bill Committee in February this year providing the Scottish Government’s position on commencement of the financial provisions of the Bill. I enclose a copy of his letter. Under the Bill as currently drafted, the UK Treasury has the power to control the coming into force of the taxation provisions through a power to set a date on when that will happen. The Scottish Government therefore proposed changes to the Bill which would require the consent of the Scottish Parliament in a vote before the date is set by the Treasury. Such a requirement would provide time and an incentive for both governments to reach a satisfactory agreement on the implementation arrangements.

The UK Government’s proposal is that the adjustments to the Scottish block grant should take effect from April 2019 after a transitional period from 2016. There is no commitment about when the mechanism will be finalised, but it is clear that it will be well after the Scottish Parliament is asked to approve the Scotland Bill. Without knowing what mechanism will be used, this amounts to the Scottish Parliament being asked to sign a blank cheque. That is why we have proposed that commencement of the taxation provisions should require the consent of the Scottish Parliament. That will allow the Scottish Parliament to take an informed view before it gives final consent to the taxation provisions being implemented.

There are plenty of precedents for Westminster legislation being commenced by, or with the agreement, of devolved institutions. Under the Government of Wales Act 2006 it fell to the Welsh Assembly Ministers (rather than UK Government ministers) to commence the new powers for the assembly to make primary legislation after the referendum there. Section
Section 127(4) of the Anti-terrorism, Crime and Security Act 2001 required an order to be made jointly by the UK Secretary of State and the Scottish Ministers before certain provisions were brought into force. Section 148 of the Adoption and Children Act contains a range of commencement procedures involving the Scottish Ministers and the Welsh Assembly. Sections of the Policing and Crime Act 2009 relating to Football Banning Orders required the consent of the Scottish Ministers before being brought into force.

The objective of the Scottish Government's proposal is that there should be a requirement for the UK and Scottish Governments to agree, and for the Scottish Parliament to be satisfied, before the provisions have effect. As will be apparent from the examples cited in the previous paragraph, there are a number of different ways of framing a provision which gives joint Ministerial control. Our proposal is framed so as to include an explicit requirement for consent by the Scottish Parliament.

At the Committee meeting last week the Secretary of State for Scotland questioned the viability of the Scottish Government's proposal, on the basis that the taxation powers would need to be commenced and be operated for two, or possibly three years, on a transitional basis before the block-grant adjustment can be calculated.

It is true that it will not be possible to calculate the block-grant adjustment applicable in any year until the relevant factors relating to that year are known. The Scottish Government also recognises that the agreed block-grant adjustment mechanism will have to be put into operation before the values of all the relevant factors are known. The systems proposed in the UK Government's November 2010 Command paper will have to operate for two or three years in "shadow" mode before real adjustments are made to the block grant, in order to allow time for systems to settle in and for reliable data to be gathered on (for example) receipts from the Scottish rate of income tax.

However, the key question is not the outcome of the calculation itself, but deciding on the mechanism governing the calculation. What concerns us is the choice of formula, rather than the result of the calculation using the formula. The Scottish Government does not believe it is appropriate for Parliament to assume the risk that an unacceptable mechanism may be imposed on Scotland.

The Scottish and UK Governments have already agreed the broad principles which should apply to the block-grant adjustment, but the detailed mechanism - the formula and the procedures for inter-governmental agreement which will underpin it - has yet to be worked up. The Scottish Government is working in good faith with the aim of agreeing the mechanism. However, it is accepted by both governments that this work will not be complete before the Legislative Consent Motion on the Scotland Bill is considered by the Scottish Parliament. That is why we propose that the Scottish Parliament should be asked to approve commencement of the relevant parts of the Bill only once the block-grant adjustment mechanism has been agreed between the two Governments. This is a safeguard against an unacceptable mechanism being imposed.

Once the mechanism has been agreed, the Scottish Government would recommend to the Parliament that the commencement order should be approved. That could take place in the second half of 2012 or in 2013. The mechanism itself would first be used to produce a calculated block-grant adjustment in 2016-17, but the Command Paper makes clear that this would be on a notional basis. The mechanism would on present plans first be used in earnest to adjust the Scottish block grant actually rather than notionally in 2018-19 or in 2019-20.
I hope that this helps to clarify the Scottish Government's proposal.

A copy of this letter will be sent to John Swinney, Michael Moore and David Gauke.

Yours sincerely

BRUCE CRAWFORD