5 December 2011

Dear Linda

Many thanks for your letter of 22 November to John Swinney and me. We were both very grateful for the opportunity to give evidence to the Committee on 17 November. This reply is on behalf of us both, covering the finance portfolio as well as the other issues you raise. We hope that the attached information further assists the Committee’s work.

Annexes A and B cover the specific questions you ask on corporation tax and the Crown Estate. I also attach the paper on corporation tax methodology requested by the Committee. Annexes C to G cover the areas which we did not have a chance to discuss in detail with the Committee namely: the proposed reservations; the Partial Suspension of Acts of the Scottish Parliament; the Implementation of International Obligations; Drink Driving; Speed Limits; Marine Conservation; and the Administration of Elections.

As I set out in my oral evidence on 28 June (see Column 24 of the Official Report), the Government supports the recommendations of your predecessor committee on further devolution of speed limits, drink driving and elections; and the removal of the proposed power for the UK Government to implement devolved international obligations. The Government also supports the removal of proposed reservations on insolvency and regulation of health professions. I provided more information in my letters to the Committee of 12 August and 7 September, and in my oral evidence on 17 November. The annexes provide further detail on the Government’s position. The Government’s evidence to your predecessor Committee also remains relevant, and I attach that for the Committee’s convenience.
You should also have received my letter of 21 November on the crucial issue of commencement powers. Please let me know if the Committee has any further questions on that, or any other issue, as your deliberations continue.

I look forward to seeing the Committee's report.

BRUCE CRAWFORD
CORPORATION TAX

Azores judgment

Extract from Scottish Government’s Corporation Tax Discussion Paper (published on 16 August; see pages 28 and 29. See also the proposition submitted to the UK Government for Devolving Corporation Tax in the Scotland Bill published on 8 September; page 9) (Copies are available here: http://www.scotland.gov.uk/Publications/2011/08/corporation-tax-paper)

Discussion paper of 16 August 2011

EU State Aid

Within the context of the Scotland Bill, it is important that plans to devolve any tax varying powers satisfy EU rules and regulations which govern tax policy within Member States. In recent years a number of cases have been brought before the Courts concerning the ability of governments within Member States to set business tax rates which are different to those set for the Member State as a whole. Recent cases have concerned the corporation tax measures introduced in the Azores, Basque Country and Gibraltar.

In delivering judgement on the Azores case, the European Court of Justice (ECJ) ruled that to justify a different tax rate on businesses at an intra-Member State level the region/country must satisfy three conditions of autonomy; constitutional, procedural and financial. Institutional autonomy requires that the sub-central government has a political and administrative structure distinct from the centre. To comply with procedural autonomy, any decision by the sub-centre to change taxation must be taken without central interference. Finally to satisfy financial autonomy, the fiscal consequences flowing from a reduction in the tax rate must not be offset by aid or subsidies from the central government.

Whilst recognising that confirmation may be required from the European Commission and/or Courts, the Scottish Government is confident that, within the Scotland Bill, full devolution of corporation tax—including responsibility for the tax rate, base and financial implications in Scotland of changes to corporation tax policy—would be consistent with the Azores Case.

Indeed, based on their assessment of the conditions, HM Treasury concludes that devolving corporation tax to Northern Ireland would meet the Azores criteria of constitutional, procedural and fiscal autonomy. Given the broadly similar constitutional arrangements with the Scottish Parliament, it suggests that the devolving of corporation tax to the Scottish Parliament would also meet the Azores criteria.

"The Northern Ireland Executive has institutional autonomy as the Northern Ireland Assembly is elected by a separate process to that of the UK Government and has autonomy over a wide range of spending and policy issues. The Northern Ireland Assembly would also have procedural autonomy, as the Northern Ireland Executive and Assembly would have the power to decide whether to raise or lower the rate of corporation tax. HMRC (the UK wide tax administration) could continue to collect receipts. In order to meet the fiscal autonomy condition, the Northern Ireland Executive would need to bear the full fiscal consequences of changes in tax revenues resulting from a new Northern Ireland corporation tax rate. This means that Northern Ireland’s block grant would be adjusted to reflect the fiscal costs of a reduction in the rate of corporation tax."

Rebalancing the Northern Ireland Economy, HM Treasury, March 2011
Modelling methodology

Attached is a technical report describing the model and the methodology employed as well a more detailed discussion of the key results of the study. This is the executive summary:

In simulating the impact of the reduction in the corporation tax rate in Scotland, the Scottish Government has used an established general equilibrium model of the Scottish economy.

The policy simulation
This modelling work assessed the impact on the economy of a reduction in the corporation tax rate in Scotland equivalent to lowering the headline rate from 23% to 20%.

Alternatives are clearly possible. However, the specific simulation conducted here is designed to illustrate the mechanisms through which a change to the corporation tax could impact upon the Scottish economy.

Summary of the modelling
The potential impact of a more competitive corporation tax regime flows through a number of channels. In particular, reducing the rate of corporation tax could reduce the cost of capital, boost investment and reduce production costs. At the same time, a change to corporation tax may also be associated with changes to export intensity due to increased flows of Foreign Direct Investment (FDI). As a result, it is anticipated that output and employment could rise.

Alongside this, however, changes to corporation tax can also have dynamic impacts on government revenues. A lower tax rate reduces revenues from firms’ profits but by stimulating economic activity it can grow the tax base which could in turn lead to higher tax revenues. A balanced budget assumption, which equates changes in current revenues to changes in current spending, was adopted as a starting point for this modelling work.

The results – central scenario
The modelling assesses the impact of the policy over time. It is helpful therefore, to consider both the short and long-term impacts of any change to corporation tax.

In the central scenario modelled, a reduction in the corporation tax rate, as set out above, is estimated to increase Scottish GDP by 1.4% and employment by 27,000 by year 20. Investment could increase by 1.9% and the economy as a whole could become more capital intensive.

Pre-announcing any changes to corporation tax can allow households and firms to adjust their consumption and investment behaviour before the policy is implemented. As a result, and in the context of a reduction in the corporation tax rate, this can lead to the increase in output being realised earlier on.
ANNEX B

CROWN ESTATE

Issues in devolving the Crown Estate to Scottish Parliament
The Scottish Government has experience of managing change to the status of cross-border bodies. There would be a need to ensure an orderly transfer of business, including reassuring leasees on the continuance of existing agreements. Detailed assessment of the scope and nature of the Crown Estate in Scotland would be necessary, including the details of partnerships and other undertakings relating to Scottish assets undertaken by the Commissioners. Staffing issues, governance and corporate matters would be addressed—where the presumption would be the retention of staff with Scottish responsibilities and the continuation of existing functions. There would need to be assessment of the appropriate share relating to Scottish business and HQ functions and future arrangements for corporate activities and governance. Financial flows, investment strategy and the history of asset disposals would be assessed to inform agreement on the overall financial equation. Arrangements would be put in place for ministerial oversight, including a formal framework document and establish direct accountability to Parliament. Full transparency and policy alignment will take longer to deliver as it would require legislative change to the administration of the Estate.

The Government remains convinced – as set out in its paper - that the long term arrangements for the Crown Estate in Scotland is best settled by a consultation on the optimal management arrangements. This would include a different purpose for the administration of the Crown Estate and a variety of management arrangements... Within that consultation the Government would want to offer a range of options.

Discussions with Scotland Office
The Cabinet Secretary for Rural Affairs and the Environment has discussed the Crown Estate issue, amongst a range of other issues, in his monthly telephone call with the Parliamentary Under Secretary of State for Scotland (Rt Hon David Mundell MP). There has been one meeting between Scotland Office and Scottish Government officials to discuss the Crown Estate following the publication of the Scottish Government's paper.

Options for consideration
The Government would develop options in collaboration with stakeholders and those who have an interest in the range of Crown Estate property in Scotland. The assets administered by the Crown Estate Commissioners include unique holdings of the Scottish Crown including salmon fisheries and shellfish, mineral rights and other matters. In some cases these property rights could be reviewed or even extinguished as essentially archaic in character. In other cases the property relates to historic assets and might best be administered in association with related property by those best placed to do so. Many communities have aspirations to have more involvement in managing their natural assets and arrangements to ensure this is possible would be part of the debate.

Memorandum of Understanding
The First Minister has indicated is that the Government’s relationship with the Crown Estate Commissioners may benefit by being placed on a more formal footing. The Government will look to codify some aspects particularly on offshore energy. However, the problems associated with the current constitutional arrangements for the administration of Crown Estate would not be solved merely by clarification of existing roles and responsibilities in a MoU.
ANNEX C

PROPOSED RESERVATIONS

General

The Government has made clear its opposition to the reservations proposed in the Bill, both as a matter of principle and on the case made for each; Insolvency; Insolvency of Registered Social Landlords; and the Regulation of Health Professions.

The principle of devolution is that decisions are best taken close to those directly affected. This promotes decision making accountable to those people and responsive to local needs and concerns. This principle has been subject to countervailing arguments for centralisation of responsibility, based on claims of efficiency or consistency. The Government believes that in a devolved system governments should work together to secure the wider benefits that greater cooperation might bring. Responsibility should not be centralised, removing future decisions from devolved legislatures.

The current system of health regulation provides an excellent example of this approach in practice. Recognising the benefits of UK-wide regulation, the four administrations work together to develop new regulations that are sensitive to the systems and needs of each (countering the hypothetical arguments of divergence of regulation raised in some evidence on this subject). The devolved competence of the Scottish Parliament ensures that the Scottish Government has a formal and robust position in inter-Governmental negotiations. It also ensures that the final result is satisfactory to the democratic representatives of the Scottish people (examples are below and in evidence to the predecessor Committee).

This approach should be seen as a model for devolved functions, not an administrative overhead or unnecessary duplication, as the Bill suggests.

The main proposals for reservation concern insolvency and regulation of health professions. The Bill also proposes reservation of Antarctica, and the Government’s evidence to the previous Committee on this is also attached.

Insolvency

The procedures for insolvency are an integral part of Scottish court procedure and Scots private law, and are best dealt with at Holyrood, rather than reserved to Westminster (which goes beyond the recommendations of the Calman Commission). A modernisation programme is underway to address the concerns identified to the Calman Commission by stakeholders.

The Scottish Parliament currently has responsibility for the process and effects of liquidation and receivership. Responsibility for other elements of corporate insolvency, such as the general legal effect of liquidation and administration, is reserved to Westminster. The Scotland Bill would transfer to the UK Parliament powers over all aspects of company liquidation. The Bill goes further than the Calman Commission, which recommended that the UK Insolvency Service should be responsible for the rules to be applied by insolvency practitioners on both sides of the border, with the consent of the Scottish Parliament.

The process and effects of liquidation are integrated into Scottish court procedures and Scottish private law, especially diligence, and are therefore better dealt with by the Scottish
As Professor George Gretton, Scottish Law Commissioner and insolvency expert, said in his evidence to the Calman Commission:

Insolvency law has to fit in within the general corpus of the law, including such matters as the different court structures, the different systems of what Scots lawyers call diligence, the different systems of property law, and the law of voidable transactions. I mention these areas because of their specifically Scottish characteristics. The chunks of corporate insolvency that the Scotland Act devolves are matched pretty well with those areas. The idea that DBERR [now BIS] (and the Insolvency Service) would do this job better than it can be done in Scotland strikes me as – I am sorry to use a strong word – nonsense.

In evidence to the Calman Commission and the previous Scotland Bill Committee, stakeholders have identified a number of issues not about the legislative competence of the Scottish Parliament, but the delivery of changes by the Scottish Government. These issues should not be addressed by reducing the Scottish Parliament’s role, as the Calman Commission recognised. The programme of modernisation already underway within Scotland, with appropriate dialogue with the UK Insolvency Service, would result in a satisfactory outcome without disturbing the current devolved responsibilities, and would be consistent with the approach recommended by the Calman Commission. This would allow a position that brought about a consistency of approach, yet recognised the important differences in the legal framework of Scotland, and preserved the responsibility of the Scottish Parliament for these important areas of law.

The Scottish Government recommends that the Bill is amended to remove clause 12 and the related schedule 2.
Insolvency of Registered Social Landlords

The Scotland Bill would reserve competently insolvency of the Registered Social Landlords, reversing a previous extension of the Parliament’s competence.

The Scottish Parliament’s responsibility for the insolvency of social landlords (RSLs) was inserted into the Scotland Act in 2001 through an order agreed unanimously by the Scottish Parliament and passed by Westminster. The Scotland Bill proposes that responsibility for insolvency of RSLs is removed from the Scottish Parliament and transferred to Westminster, undoing the changes supported by the Scottish Parliament in 2001.

This has significant implications for housing legislation and policy in Scotland. The Scottish Parliament would no longer be able to legislate to ensure an effective, coherent policy approach to regulation of the social housing sector in Scotland as it has in the Housing (Scotland) Act 2010. Any measures relating to insolvency of RSLs would require legislation at Westminster. It was this difficulty that led to the changes in competence in 2001. Scottish RSLs would be subject to changes for the insolvency regime for England whether or not that was consistent with Scottish housing policy, or supported by the Scottish Parliament.

Evidence from stakeholders was unanimously opposed to this proposal and the previous Scotland Bill Committee supported the Parliament continuing to have the capacity to legislate for insolvency of RSLs (paragraph 148). The UK Government has yet to act on that proposal.

The current Committee has also received written evidence from the Scottish Federation of Housing Associations expressing concern at the potential impact of clause 12. SFHA concluded:

We therefore urge the Committee to support the Session 3 Committee’s recommendation that legislative consent to the provisions in the Scotland Bill relating to insolvency should be subject to provisions being drafted which will secure the capacity for devolved legislation to affect the winding up of RSLs.

The Scottish Government recommends that, if clause 12 is not removed, it is amended in line with the recommendation of the previous Scotland Bill Committee to preserve the Scottish Parliament’s legislative competence over the insolvency of Registered Social Landlords.
Regulation of Health Professions

The current arrangements for regulating health professions ensure that there is consistent UK-wide regulation sensitive to local needs and circumstances by ensuring that Scottish interests are taken into account in developing newly regulated professions. This model for joint working would be jeopardised if responsibility for regulation rested solely with the UK Department of Health.

The Scottish Parliament is responsible for the regulation of health professions regulated since devolution and those to be regulated in the future. In practice, the four administrations across the United Kingdom have worked together on the regulation of new health professional groups through the mechanism of orders made under section 60 of the Health Act 1999, which gives a role to the Scottish Parliament.

Health is almost entirely devolved to the Scottish Parliament under the Scotland Act. The health service in Scotland has developed separately from those elsewhere in the United Kingdom, and Scottish Ministers are accountable to the Scottish Parliament, and through them to the people of Scotland, for the design and delivery of health services. The current system has clear benefits for Scotland, enabling regulation to be tailored to the needs and circumstances of the Scottish health service. It also ensures that Scotland has a voice in wider decisions taken at a UK level which have implications on devolved health matters.

The introduction of statutory regulation for practitioner psychologists is an example of the benefit of the devolution of regulation. The Department of Health originally wanted them to be educated to Doctorate level for regulation purposes, as this was standard in England. This would have posed a major problem for NHS Scotland (and for its educational psychologists), where the majority are trained to Masters level to undertake specific tasks, as this is considered a better use of resources. (Further examples are set out in the Government’s evidence to the previous Committee; note the prospective regulation of healthcare scientists in particular.)

Evidence on this issue has both highlighted consistent UK-wide regulation – which is delivered by the current system, or emphasised the advantages of a distinct Scottish responsibility for regulation in developing UK-wide proposals. Currently devolved practitioners were unanimously in favour of the current system (see the evidence to the previous Committee from dental technicians, counsellors and psychotherapist, healthcare scientists). The statutory UK regulatory bodies with responsibility for devolved professions that appeared before the Committee all clearly stated that the partly devolved arrangements had not caused them any practical problems. There is no evidence of actual difficulties with the current arrangements.

In its report the previous Committee concluded (at paragraph 151):

We note, however, that the Scotland Act 1998 was drafted to reserve all health professions as they then existed and it appears that the devolution of professions created since then was an unintended consequence.

It is unclear how the Committee came to this conclusion, which is contradicted by the evidence. Section 60 of the UK Health Act 1999 codified the new arrangements for legislative competence for regulating health professions. The Explanatory Notes to that Act make clear that regulation of some professions would be within the legislative competence of the Scottish Parliament;
349. Regulation of those health professions currently regulated by Act of Parliament is a matter reserved to the UK Parliament under the Scotland Act 1998 (see Schedule 5 to the Scotland Act at Head G section G2). The regulation of any other health profession, however, is not a reserved matter.

The Health Act 1999 was introduced as a Bill to Westminster on 28 January 1999; that is two months after the Scotland Bill received Royal Assent on 19 November 1998. The Health Act 1999 then received its Royal Assent the day before the Scottish Parliament received its full powers on 1 July 1999. It is therefore clear that the consequences of the Scotland Act for the regulation of health professions were well understood at the time and new legislative arrangements had been developed to give them effect in an integrated process. (This information was provided to the previous Convener in a letter of 7 March 2011).

The Scottish Government recommends that clause 13 is removed from the Bill.
PARTIAL SUSPENSION OF ACTS OF SCOTTISH PARLIAMENT

The provisions of the bill would allow parts of an Act of the Scottish Parliament to proceed to Royal Assent while other parts were referred to the Supreme Court. This measure could increase the likelihood of references to the Supreme Court following consideration of legislation by the Scottish Parliament, and risks the status and coherence of ASPs and undermining the will of Parliament.

Under the Scotland Act as it now stands, Scottish Law Officers may refer questions of the competence of the Scottish Parliament in relation to specific Bills to the Supreme Court. The Presiding Officer may not submit the Bill for Royal Assent until this has been resolved.

Clause 7 of the Scotland Act introduces a new mechanism for a limited reference to the Supreme Court, whereby a Bill is referred to the Supreme Court, but the relevant Law Officers identify provisions in the Bill which they consider are not affected. The Bill can be submitted for Royal Assent, and those provisions unaffected could be commenced in the terms of the Act of Scottish Parliament.

This provision did not result from a recommendation of the Calman Commission but was proposed by the UK Government.

The current provisions are similar to those in the Government of Wales Act 2006 and the Northern Ireland Act 1998 – neither of these Acts makes provision for limited references as proposed in clause 7. There is no precedent for sending a Bill for Royal Assent, despite a limited reference having been made in respect of part of it, and it is unclear what the status of the provisions affected by a reference would be in law. It is also not clear what the mechanism would be for Parliament to reconsider a Bill should the Supreme Court decide that sections are outwith competence.

The effect of the provision in the Scotland Act would be to lower thresholds for referral to the Supreme Court, which could weaken the current discipline on both the Parliament and the Law Officers on questions of competence and challenge.

In evidence to the previous Committee, the Dean of the Faculty of Advocates noted that the bringing into force certain provisions of a Bill whilst others remain suspended might not reflect the will of Parliament, which passes Bills as a whole, complete with checks and balances between different provisions.

The previous Scotland Bill Committee recommended (at paragraph 195) that that any order bringing into effect the non-referred parts of a bill should be subject to the affirmative procedure. The UK Government has yet to act on that proposal.

The Scottish Government recommends that clause 7 is removed from the Bill, or, if not removed, is amended in line with the recommendation of the previous Scotland Bill Committee.
IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

The Bill would allow UK ministers to implement international obligations in devolved areas without the consent of the Scottish Parliament. This is contrary to the principle of devolution and the safeguards of the Scottish Parliament's interests under the Scotland Act.

Under the current Scotland Act, international relations are in general reserved, but responsibility for observing and implementing international obligations is specifically exempted. The provision in clause 27 of the Scotland Bill will give UK Ministers concurrent powers with Scottish Ministers to implement international obligations without the agreement or prior knowledge of the Scottish Government and the Scottish Parliament.

The Scottish Government considers it unnecessary to extend the power in section 57(1) to international obligations. It undermines a key principle of the Scotland Act - that there should be clarity about which Ministers and which Parliament has responsibility for a particular matter. Further, the UK Government already has powers under the Scotland Act to enforce compliance with international obligations in areas of genuine concern (as opposed to administrative convenience).

The previous Committee concluded (at paragraph 198) that the UK Government should consider whether the provision is needed at all or whether it might be given a more restricted application. The UK Government has yet to act on that proposal.

The current Committee heard evidence on this subject from Alan Trench, of University College London. He pointed out both the insubstantial basis for clause 27, that any issues arising could be dealt with through other existing mechanisms, and the potential for these powers to be used more widely than anticipated.

The Scottish Government recommends that clause 27 is removed from the Bill, or, if not removed, is given a more restricted application, in line with the recommendation of the previous Scotland Bill Committee.
DRINK DRIVING, SPEED LIMITS AND MARINE CONSERVATION

The previous Scotland Bill Committee concluded that there is scope for further devolution on these issues. The UK Government has yet to act on those proposals. The Scottish Government supports the previous Committee’s recommendations.

**Drink driving**

Latest figures show that approximately 1 in 7 deaths on Scottish roads involve drivers who are over the legal alcohol limit. In terms of policy development, a more comprehensive package of drink driving powers for the Scottish Ministers would support a broad range of measures to assist the police in reducing the risk of further deaths.

The Scottish Government supports more extensive devolution of powers over drink-driving, including legislative flexibility to prescribe differential drink driving limits, power to set penalties, and legislation to enable the police to conduct breath tests any time, anywhere (as recommended by the North Review of Drink and Drug Driving 2009). If the Scottish Ministers have the power to set the drink driving limit, but not the ability to set the penalties, that would lead to the Scottish Ministers being limited in the steps they could take in dealing with the problem of drink driving.

The previous Committee concluded (at paragraph 174) that the UK Government should give consideration to the case for a more extensive set of powers to be devolved (including limits, penalties and the responsibility for random testing). The UK Government has yet to act on that proposal.

**The Scottish Government recommends that the Bill is amended to extend the drink-driving provisions as recommended by the previous Scotland Bill Committee.**

**Speed limits**

The provision on speed limits currently does not allow the Scottish Ministers to change the national speed limit for particular classes of vehicle, such as commercial vehicles or cars towing caravans. The Government believes that the omission of the ability to set the maximum speed limits for different classes of vehicle is anomalous and likely to lead to confusion. For example, the UK Government is proposing to consult on speed limits. Under the Scotland Bill as it stands, changes made by the UK Government to the general 70 mph limit would apply in England and Wales only, but other changes could apply across Great Britain. The Government believes that this would cause general confusion amongst motorists and potentially lead to an increased risk to road safety.

The previous Committee concluded (at paragraph 179) that the UK Government should give consideration to the case for a more extensive set of powers to be devolved, including the setting of speed limits for other classes of vehicle. The UK Government has yet to act on that proposal.

The Committee has received further evidence from the Road Haulage Association supporting the devolution of speed limits for commercial vehicles. The Association concludes:
We therefore urge the Scotland Bill Committee to press the UK Government to include an enabling provision in the current Bill along the lines previously proposed by the Session 3 Committee.

The Scottish Government recommends that the Bill is amended to extend the speed limit provisions as recommended by the previous Scotland Bill Committee.

**Marine conservation**

The Scottish Parliament currently has legislative competence only out to 12 nautical miles from its coastline. Between 12 and 200 nautical miles, legislative competence on these matters is reserved to the UK Parliament, other than fishing which is fully devolved out to 200 nautical miles. The executive devolution process put in place by the UK Marine and Coastal Access Act provides some administrative functions to Scottish Ministers for offshore conservation but there are different UK and Scottish legislative frameworks for marine nature conservation in inshore and offshore waters and Scottish Ministers may not designate an area of Scottish offshore waters as a marine conservation zone without the agreement of the Secretary of State. There is inconsistency between the legal frameworks and the differences are illogical as marine animals naturally cross boundaries between the two. The fragmentation of responsibility also poses a risk to wider marine issues, for example the wind and tidal energy industry in Scottish waters. There is support for full devolution from stakeholders, for example Scottish Environment LINK, and the Steel Commission also recommended that particular attention should be given to the strong case for Scotland gaining additional powers over the marine environment.

The previous Committee concluded (at paragraph 212) that there is scope for further devolution of marine conservation issues and recommended that the UK Government begins a review of new marine management arrangements as soon as possible. In his evidence on 8 September, the Secretary of State said that the UK Government was in the review period, but there has been no formal notice of this review from the UK Government to the Scottish Government.

The Scottish Government believes that legislative competence for offshore marine conservation should be devolved as soon as possible, and that the overall arrangements for management of marine resources from 12 – 200 nautical miles should be considered for devolution.
The Scotland Bill would devolve some (but not all) administrative arrangements for elections to the Scottish Parliament. This would offer Scottish Ministers the opportunity to make rules of conduct for elections, but they would still need to approach the UK Government if primary legislation were needed, for example in relation to the date of elections, the voting system to be used or the franchise. The Scottish Parliament’s role would be limited to approving or rejecting the rules made by Scottish Ministers; it would have no opportunity to shape the parameters for those rules through its own primary legislation. The Bill would also require Scottish Ministers to consult the Secretary of State before making the rules.

The Calman Commission recommended that the UK Government transfer responsibility to Scottish Ministers for those functions that "relate to the administration of the Scottish Parliament elections which are currently held by the Secretary of State for Scotland". The Scotland Bill does not transfer all the Secretary of State’s functions in relation to elections, and so does not implement the Commission’s recommendation fully.


The previous Scotland Bill Committee (at paragraph 189) concluded that the UK Government should give consideration to the case for curtailing the extent of the Rules to be reserved, that the issues of the procedure for filling any regional seat vacancy during the life of a Parliament and the rules relating to disqualification should be devolved to the Scottish Parliament, and that the UK Government should commit to consultation with the Scottish Parliament and the Scottish Ministers prior to any future use of the powers.

In response to those proposals, the UK Government has amended the Bill to require the Secretary of State to consult Scottish Ministers before making regulations about Scottish Parliament elections (in those areas where responsibility has been retained rather than devolved), consistent with the Bill’s requirement for Scottish Ministers to consult the Secretary of State before making regulations in devolved areas. A new clause 16 provides for Scottish Ministers to promote disqualification orders. In line with the UK Government general approach to the Bill, the measure provides Scottish Ministers with executive competence rather than providing the Parliament with legislative competence. The clause falls short of recommendation of the previous Committee. The UK Government has yet to act on the Committee’s other proposals.

The Scottish Government believes that partial devolution, as envisaged in the Scotland Bill, would create potential difficulties for the future administration of elections. The Scotland Bill should be amended so that it fully devolves administration of elections (as per the illustrative amendment provided to the previous Committee). Further, the Scottish Government would still wish to see full devolution of responsibility for elections to the Scottish Parliament so that decisions about franchise, the voting system and the length of Parliamentary terms could be decided at Holyrood.