The value of the Scotland Bill is now uncertain, as major disparities in powers that will directly impact on Scotland's people and communities have been left unexplored.

SCVO believes we need to start by considering the Scotland we want to see, and then work out the powers we would need to achieve that vision – a debate about the future of Scotland.

Key Issues

- The Bill fails to address the real issues where devolution isn't working. The real things that affect people's lives – health and care, welfare, employability – are still significantly split between Westminster and Holyrood - the Bill is silent on these issues.
- The current devolution settlement is causing difficulties as there is a divergence of policies in key areas i.e. Welfare. This is likely to result in increasing difficulties for the most vulnerable in our society who are most directly affected by this and also public sector agencies ability to provide help and support to them.
- This is illustrated by the current strategic issue relating to Welfare Reform, which is centred on the problems of benefits being reserved to Westminster whilst health and social care are devolved to Holyrood.
- It is not fit for the future – the Bill does nothing to anticipate the longer term. For example, in how governments will raise the bulk of their money from taxation in the future or how devolution will lead to a divergent approach to the delivery of public services.
- There is a lack of credibility with and understanding of the bill – it was clear from evidence this week, that even the UK Government can't fully explain how the income tax proposals would work. This poses the question, how do we know if they are worth supporting or using.
- The process that led to the Scotland Bill was flawed. Higher standards of consultation, engagement and consensus building are required for significant changes to the devolution settlement - this debate is too important to be left to the politicians, it belongs to the people of Scotland.
- The Bill has been overtaken by events. Even if the Bill is passed in its present form the provisions in the Bill and are unlikely to be implemented before the referendum.
- Rather than debating which powers should or should not be devolved as a starting point, there is an opportunity to frame the discussion differently, to ask the questions: 'what kind of Scotland do we want to see?', 'how do we get there?' and 'which powers would we need?' – it is a debate about the future of Scotland.
Introduction

This briefing builds on SCVO’s evidence to the previous Scotland Bill Committee’s scrutiny of the Scotland Bill and to the UK Parliament Scottish Affairs Committee enquiry earlier this year (see SCVO response\(^1\)). This is an update to SCVO’s evidence taking into account the new political context which has been created as a result of the outcome of the Scottish Parliament election, in May, 2011.

As an organisation which is driven by the needs and interests of a diverse range of voluntary organisations, we offer commentary on the disparities in powers that will directly impact on Scotland’s people and communities have been left unexplored and which ought to have been considered for inclusion in the Bill, with a particular emphasis on welfare reform.

This is not an issue of politics, it is simply an issue of how we align powers and policies to most effectively meet the needs of the most vulnerable in our society. In effect, for the Third Sector, it is all about coherence and management co-ordination, improving quality of service, and is all about the service user.

Failings in the process

While the limited public debate about powers for the Scottish Parliament has concentrated on specific areas of reserved responsibility such as Corporation Tax, there was an obvious missed opportunity to discuss wider social and economic policy. What would an independent Scotland do with powers over benefits? How could control over Job Centre Plus change the nature of support for unemployed people?

SCVO believes that all proposals to amend the devolution settlement ought to involve an open consultation and engagement process. This is where people, their communities and the organisations they work with can consider the pros and cons and the overall impact of the major political decisions that will change their lives.

We believe any constitutional changes require a much higher standard of public involvement.

The extent to which particular aspects of the Scotland Bill are coherent, sufficiently transparent and widely understood has a major bearing on the legitimacy of the Bill.

We stated in our response to the previous Scotland Bill Committee our view that the Calman Commission, the subsequent UK command paper and eventual Scotland Bill did not succeed in garnering the public involvement it required. The lack of proper public involvement set an unhelpful precedent about how to do devolution legislation.

In our current discussions with the sector on the forthcoming referendum early responses from the third sector suggest that rather than debating specific powers, a debate about *purposes* is more likely animate engagement.

It’s not about what powers we want, it’s what we want to do with the powers, and therefore what powers we need. That is, our starting point must be what kind of Scotland do we want to see?

The Scotland Bill itself

It can be argued that the major strategic weakness of the current Scotland Bill is that it was essentially a political/politician-led initiative which failed to build a wider consensus. Politically, the value of the Scotland Bill as currently proposed in the new political context now seems unclear.

The questions which still arise are: does the Bill represent a sufficiently significant transfer of powers to represent a genuine ‘middle ground’ between the status quo and full independence? Will it give us a position from which we can assess where Scotland needs to go?

We do not believe so, as it is mainly small issues which loom large in the Bill. While there is nothing wrong with devolving air rifle licensing or Scotland having the power to set speed limits – these are minor matters which don’t amount to any significant transfer of powers.

We think this is a serious issue since the central feature of devolving aspects of income tax will not have come into effect before any referendum. It seems most likely to us that the proposals in the Bill will be superseded by events, raising the question about whether it is preferable to withdraw, or decline to endorse, these proposals at this point.

Our main critique of the Scotland Bill is that it fails to recognise the diverging social policy context between Scotland and the UK Parliament. In some ways this divergence is a natural conclusion to devolution itself and was its central purpose but this has been accelerated by the widening of political divergence. The consequence is clear – there are aspects of reserved powers which can and are being used in ways which cut across the intentions and priorities of Scottish Ministers in their exercise of devolved powers.

Areas of divergence of powers that remain unresolved

The third sector has, from time to time, highlighted many other areas of public policy and legislation which really do need to be examined for their “fit” with devolution. For example:

- Welfare reform - the current devolution settlement is causing difficulties as there is a divergence of policies and this is likely to result in increasing difficulties for those directly affected, and also for local authorities (who are having to pick up some of the costs being dropped by Westminster) and third sector organisations (who can end up picking up the pieces)
• Employability - the introduction of the Work Programme cuts across the development of Scottish job creation policy and economic strategy and what a distinctive Scottish approach to employability might look like
• The distribution of the proceeds from the National Lottery – e.g. top-slicing of funds for the Olympics undermined longer-term planning of the Scottish directions of the Big Lottery Fund in Scotland
• Control over the Crown Estate and its direct link to community regeneration policy that involves those communities directly affected (See SCVO response2)
• Economic powers - the Bill is silent on real powers where Scottish Ministers could shape the Scottish economy. Corporation tax, Crown Estates income, progressive income tax variations etc are not included

Conclusion

Our main critique of the Scotland Bill is that it fails to recognise the diverging social policy context between Scotland and the UK Parliament. In some ways this divergence is a natural conclusion to devolution itself and was its central purpose but this has been accelerated by the widening of political divergence. The consequence is clear – there are aspects of reserved powers which can and are being used in ways which cut across the intentions and priorities of Scottish Ministers in their exercise of devolved powers.

In this context the key question is: Is the Scotland Bill still relevant?

If the Scotland Bill is really to work for the people of Scotland, it needed to resolve the disparity in powers which has created the major anomalies we have highlighted above. As such we are left with a Bill that does not address the issues which directly impact on some of our most vulnerable people and communities.

If we are to build on the Scotland Bill, then we need to rethink our approach to developing devolution, an approach which starts with the kind of Scotland we want to see, and engages everyone fully in making it real.

It is a debate about the specific elements of constitutional change and what they would mean to the people the Third Sector advocate for and supports.

That is the debate about the future of Scotland we want to see.

A Case Study: UK Welfare Reform

The UK Government programme of welfare reform will have a huge and largely detrimental impact on many Scottish families.

There is a strategic element to Welfare Reform, which is centred on the problems of benefits being reserved to Westminster whilst health and social care are devolved to Holyrood. Health, social care and benefits are clearly closely intertwined and can

also impact on Scottish employability and housing policies. The current devolution settlement is causing difficulties as there is a divergence of policies and this is likely to result in increasing difficulties for those directly affected, and also for local authorities (who are having to pick up some of the costs being dropped by Westminster) and third sector organisations (who can end up picking up the pieces).

This is the issue that we have previously unsuccessfully asked both the Calman Commission and the House of Commons Scottish Affairs Select Committee to address.

It is clear to many in the voluntary sector in Scotland that these proposals do not represent the views and interests of the people of Scotland. Furthermore, they will impact adversely on many areas of public policy, including meeting the care needs of older people, social housing, the ability of people with disabilities to live independently and so on. Any such a programme of cuts has a shunting effect of placing additional burdens on those public finances which are controlled by the Scottish Parliament and delivered by Local authorities and NHS Boards.

The Equality and Human Rights Commission has commented\(^3\) - “The heavy reliance on secondary legislation may impede the government’s ability to assess the total impact of the measures on protected groups and to assess compliance with equality legislation Convention rights.” SCVO contends that the reliance on secondary legislation also makes it, at best, exceptionally difficult to assess the Scottish-specific impact in terms of numerical consequences, such as x Scottish residents will suffer y losses. We are therefore forced, to an extent, to rely on arguing principles and on a certain amount of conjecture. We regard this as unsatisfactory.

There is also a clash in approach to public services that will create a recipe for confusion. The increasing disparity between Westminster controlled benefits system and the direction of travel of Scottish health and social care is of particular concern. For example, the Self Directed Support (Scotland) Bill (SDS Bill) has been welcomed as a move towards an outcomes focussed, personalised care system that individuals can control and direct. Local authorities are moving rapidly in that direction. However, the draft assessment procedure for the UK Personal Independence Payment (PIP), which is to replace Disability Living Allowance (DLA), has received widespread criticism for appearing to revert to a medical model of “life and limb” care in stark contrast to the SDS Bill’s move towards personal fulfilment.

Whatever the merit of any particular approach to social policy, these issues raise the wider question of whether it is possible to maintain a UK wide approach to benefits policy within the divergent policy and practice contexts which are the inevitable outcome of devolution. We think not. But we also think that this issue indicates just how far short the Scotland Bill falls from being fit for the future.

**About SCVO**
The Scottish Council for Voluntary Organisations is the national body representing the interests of the voluntary sector in Scotland. SCVO’s mission is to advance the

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\(^3\) Memorandum submitted to the Public Bill Committee by the EHRC (WR 50)
values and shared interests of the voluntary sector to provide them with information and assistance; to improve their effectiveness and efficiency and to represent their views to Government and other public bodies. SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change.

SCVO
30 September 2011