DEVOLUTION (FURTHER POWERS) COMMITTEE

AGENDA

2nd Meeting, 2015 (Session 4)

Thursday 15 January 2015

The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Declaration of interests**: Duncan McNeil will be invited to declare any relevant interests.

2. **Choice of Deputy Convener**: The Committee will choose a new Deputy Convener.

3. **Evidence from civic Scotland organisations on the Smith Agreement**: The Committee will then take evidence from—

   Peter Kelly, Director, Poverty Alliance;

   Dave Moxham, Deputy General Secretary, Scottish Trades Union Congress;

   Lucy McTernan, Deputy Chief Executive, Scottish Council for Voluntary Organisations;

   Satwat Rehman, Director, One Parent Families Scotland;

   Bill Scott, Director of Policy, Inclusion Scotland;

   Mary Taylor, Chief Executive, Scottish Federation of Housing Associations.

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Stephen Imrie  
Clerk to the Devolution (Further Powers) Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 85206  
Email: devolutioncommittee@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 3**

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Introduction

The Poverty Alliance is the national anti-poverty network in Scotland, formally established in 1992. We are an independent organisation with almost 200 members; with members drawn from the voluntary and public sectors, trade unions, researchers, faith groups and individuals with direct experience of poverty. Our aim is to work with others to enable communities and individuals to tackle poverty. We have a number of key policy areas that provide the focus for our activities; these are addressing low incomes, supporting services to address poverty, enhancing the participation of people with direct experience of poverty in policy development processes, and addressing attitudes to poverty. These concerns were reflected in our response to the Smith Commission.

Smith Commission Consultation

In our response to the Smith Commission Consultation, the Poverty Alliance made a number of recommendations. We have outlined the key ones below:

Taxation

*Income Tax*

The Poverty Alliance called for the full devolution of income tax to the Scottish Parliament, with powers to vary rates and bands. This was on the basis that income tax can be a tool for redistribution of wealth, but as the powers are currently defined, they are so rigid that they are almost unworkable.

*Corporation Tax*

Due to concerns about direct tax competition and the relative mobility of some corporations, the Poverty Alliance recommended that corporation tax was not devolved to the Scottish Parliament.

*Inheritance Tax*

The Poverty Alliance recommended the devolution of inheritance tax. Over 72 per cent of people who responded to our survey supported this, and we know that inheritance tax can be a strong tool in the re-distribution of wealth and can break the cycle of intergenerational inequality.

*Borrowing powers*
For the Scottish Government to have credible fiscal powers and responsibility for the programmes it initiates, it is only right that it should therefore also have the right to borrow. We recommended that the capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the treasury.

Welfare

The Poverty Alliance, alongside other organisations in the third sector recommended that all welfare powers, excluding pensions, be devolved to the Scottish Parliament. In the absence of welfare powers being devolved wholesale, the Poverty Alliance made a number of other recommendations. The key ones are below.

*Power to create a new benefit*

This is possible even without any other powers over welfare being devolved and would allow the Scottish Parliament to (re)introduce things like Lone Parent Grants, Health in Pregnancy Grants and Child Trust Funds. This in turn would make significant in-roads in tackling poverty.

*Working age and family benefits*

The Poverty Alliance believes it is possible to pick out clusters of powers which could be devolved and suggested that one viable option was to devolve working age benefits. This includes, but is not limited to, Job Seekers’ Allowance, Employment Support Allowance, Housing Benefit, Universal Credit, the Work Programme and Job Centre Plus.

We also recommended the devolution of ‘family benefits’ such as Child Benefit, Sure Start Grants, Maternity Grants and Healthy Start Vouchers.

*Employment and Equalities*

We supported the STUC’s recommendations that employment law, health and safety, trade union law and the minimum wage be devolved to the Scottish Parliament. We also supported their recommendation that employment and equality law are not separated in devolution proposals.

The Poverty Alliance recommended that the Scottish Parliament be given the ability to legislate for mandatory 50-50 gender representation in the Scottish Parliament and local councils, and for gender equality on company boards.

*Smith Commission Report*

As was the case for many of our colleagues in the third sector, the final heads of agreement by the Smith Commission fell short of the recommendations we had made, and what we had hoped for. However, there is still much to welcome.
**Votes at 16**

The Poverty Alliance welcomes that the Scottish Parliament will be given the power to extend the franchise to 16 and 17 year olds in Scottish elections.

**Welfare**

*Universal Credit*

It is disappointing that so few powers over welfare were recommended to be devolved. The powers devolved over Universal Credit, while welcome, will have limited effect in the fight against poverty while conditionality and sanctions remain reserved at UK level. The devolution of the housing benefit element of Universal Credit, alongside the ability to change the frequency of payments and change who receives the payment, are welcome and provide real opportunity for change.

*Benefits outside of Universal Credit*

Devolution of benefits for carers, disabled people and those who are ill, are welcomed. It is important that the redesign of these benefits does not leave people worse off, and safeguards the rights of disabled people. We are also pleased to see the devolution of Cold Weather Payments, Funeral Payments, Sure Start Maternity Grants, Winter Fuel Payments and Discretionary Housing Payments.

*Power to create a new benefit*

The Poverty Alliance recommended the power to create a new benefit be devolved to the Scottish Parliament and we welcome that this was included in the Smith Commission Report. The safeguard to ensure that any new benefits must provide additional income for the recipient is important, as is the adjustment to the UK Government’s benefit cap to accommodate this.

**Employment**

*The work programme*

Devolution of the work programme is welcome but without control over the associated benefits, any improvement to the support offered to unemployed people will be limited. We hope that any redesign of the work programme will include greater flexibility and increased support in work for those who have found employment.

*National Minimum Wage*
It is disappointing that the Smith Commission did not recommend the devolution of the National Minimum Wage to the Scottish Parliament. We believe that this could have presented an opportunity for the Scottish Parliament to bring the Minimum Wage into line with the Living Wage.

**Tax**

*Inheritance Tax*

We were disappointed that inheritance tax is to remain reserved at UK level. We know that inheritance tax has real potential for the re-distribution of wealth and breaking the intergenerational cycle of inequality.

*Corporation Tax*

We welcome that corporation tax is not to be devolved, for the reasons stated earlier in this document.

*Value Added Tax*

The Poverty Alliance welcomes that receipts raised in Scotland by the first 10 percentage points of the standard rate of Value Added Tax will be assigned to the Scottish Government’s budget.

**Conclusion**

The Smith Commission report was borne out of compromise, and like many we were disappointed it did not go as far as we had hoped. However, there is much to welcome and we hope that the new powers devolved will enable the Scottish Parliament to make progress on tackling poverty.

It was very disappointing that working age benefits were not devolved to the Scottish Parliament. The limited powers over Universal Credit as welcome but as long as the punitive sanctions regime continues, we can expect to see growing levels of poverty.

In work poverty is one of the biggest growing issues in Scotland. Currently, almost two-thirds of children in poverty are in a household where someone works\(^1\). The devolution of the National Minimum Wage could have been an important tool in the fight against in work poverty and it is disappointing that the Smith Commission report did not recommend this.

Powers over disability benefits and the power to create a new benefit are welcome, and both provide opportunity for the Scottish Government to do things differently.

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Families containing a disabled adult are more likely to be in poverty, than those without, and the Poverty Alliance hopes that these new powers will enable the Scottish Government to make a positive change to the lives of those affected by disability.\textsuperscript{2}

Ultimately, the devil will be in the detail. There is still a lot of uncertainty as to what exactly is being devolved and when. Alongside our colleagues in the third sector, we will continue campaigning to ensure that further devolution delivers for those living in poverty.

**More information**

For further information contact:

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*The Poverty Alliance*

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\textsuperscript{2} Scottish Government (2014)
http://www.scotland.gov.uk/Topics/People/Equality/Equalities/DataGrid/Disability/DisabPov
Dear Bruce,

The STUC is grateful for the opportunity to give evidence to the Devolution Committee as part of your inquiry to consider the proposals made for further devolution to the Scottish Parliament and future legislation to implement such proposals in the UK Parliament and Scottish Parliaments.

I attach for your information the STUC’s submission to the Smith Commission which outlines in some detail our preferred position on further devolution.

As can be seen, there are a number of areas of policy in which the STUC’s aspirations have been met, or partially met and some others in which they have not.

Having advocated the devolution of significant additional tax powers but the retention of a block grant element, the STUC recognises significant progress within the Smith Commission proposals, though we clearly would have gone further.

We are pleased that key elements such as housing and some disability benefits are proposed for devolution. However, we support the view, shared by many civil society organisations, that the new powers can most effectively be implemented if the roll-out of Universal Credit across the UK is delayed.

Our greatest disappointment is in the failure to propose significant devolution in the area of employment and equality law. The power to regulate the labour market and provide better quality work in Scotland is a key driver for tackling inequality and promoting sustainable growth and as such, sits more comfortably with existing and to be devolved powers on promoting economic growth, public service delivery and additional tax powers.

The STUC is represented on the Scotland Office Stakeholder Group which has met on one occasion and which will have held further
meetings by the time the STUC provides evidence to the Devolution Committee. As such we are committed to ensuring that the Smith Commission proposals are progressed as effectively as possible within a very challenging schedule. Our involvement in the Stakeholder Group is also without prejudice to our continuing to publicly advocate a greater degree of devolution consistent with our original Smith Commission submission.

There are a number of recommendations within the Smith Commission report which give rise to a degree of uncertainty. This includes:

- Recommendations which might be subject to more than one interpretation
- Recommendations which might be implemented in more than one way, with differing impacts on the degree to which powers are devolved and in the fiscal impact thereof.
- Recommendations for which it is not clear, as yet, whether draft clauses will be produced at this stage.

The STUC would be happy to expand on this during the evidence session.

The STUC remains of the view that the Smith Commission proposals and their implementation should be the subject of the widest possible public consultation. Therefore, when the draft clauses are produced on January 25, we hope that arrangements for consultation will be brought forward which will find innovative ways of promoting full public engagement including, but going well beyond the involvement of ‘traditional’ civil society organisations such as ourselves.

I look forward to attending the committee and expanding on any areas of policy raised in our Smith Commission submission or this letter.

Best wishes

Dave Moxham
STUC Deputy General Secretary
STUC submission to the Smith Commission

INTRODUCTION

The STUC welcomes the opportunity to submit its views on further devolution to the Smith Commission. We do not underestimate the difficulty of the task the Commission faces and believe that significant compromise will be necessary on all sides if an agreement is to be reached which is coherent and matches the aspirations of a majority of the Scottish people.

The STUC’s concerns about the process for agreeing further powers is a matter of record. We have joined with a range of civil society organisations to argue that whatever proposals are agreed should be tested in a citizen led process involving the use of maximum consultation and the creation of citizens’ juries. The STUC is also on record as stating that the most important outcome is an optimal proposal and this, for us, is much less important than adhering to the very testing timetable laid down, both for the Commission and the subsequent parliamentary process.

The STUC has been disturbed at the enormously divergent accounts of what has been ‘promised’ with respect to further powers. We do not believe that the content of the proposals previously published by the three pro-devolution parties, or the wording of the ‘Vow’ can be categorised as a promise of ‘Devo Max’ or full fiscal autonomy. Equally however, a strong impression was conveyed that the powers proposed would extend significantly beyond that which had previously been promised.

Opinion polls suggest that there is strong public support in Scotland for the devolution of very meaningful fiscal, welfare, employment, equality and other powers. The detail of what this means has not been tested which is why the STUC is so strongly in favour of the outcome of the Commission being tested in an environment which is capable of investigating the detail and engaging the wider public.

The STUC’s proposals in this paper fall short of what would normally categorised as full fiscal autonomy or Devo Max. This is grounded in an honest assessment of what arrangement would best serve the people of Scotland in the years ahead. Equally, we do not propose the devolution of all aspects of welfare.

However, our proposals go significantly further than the sum total of the proposals of the three pro-devolution parties.

Our appeal to all parties in the negotiations is that they should be prepared to make significant compromises and that political advantage should take a back seat.

Taken together the proposals offer a coherent approach to tackling inequality and promoting sustainable economic growth. Fundamentally they recognise that the role of government is to support and nurture society and that the Scottish Parliament must be empowered to play a leading in role in meeting that challenge.
SUMMARY OF RECOMMENDATIONS

Sections

1. Democratic ownership and the public good
2. Fiscal powers
3. Workplace protection and labour market reform
4. Equality
5. Citizens rights
6. Welfare
7. Other issues

Democratic ownership and the public good

1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament’s jurisdiction particularly as it impacts upon democratic ownership.

1.2 The full devolution of the Crown Estate to the Scottish Parliament.

1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such as PFI.

1.4 Devolution of powers to enable a public sector led bid for the ScotRail franchise.

1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.

Fiscal powers

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

2.3 Devolution of income tax at all bands & other personal wealth related taxes
2.4 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

2.5 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

2.6 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

2.7 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury

2.8 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits.

A better labour market and workplace protection

3.1 The devolution of employment law, health and safety, trade union law and the minimum wage

3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.

Equality

4.1 That employment law and equality law not be separated with respect to further devolution proposals

4.2 The full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

Basic Rights for Scottish Citizens

5.1 STUC recommends that the Sewel Convention is given full legal force.

5.2 Consideration to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. Focus on both the powers of the Scottish
Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds.

Welfare

6.1 The devolution of Housing Benefit

6.2 The devolution of Attendance Allowance.

6.3 The devolution of Carer’s Allowance.

6.4 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus.

6.5 The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union*.

Other powers

7.1 A presumption in favour of the right to Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

7.2 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

7.3 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

7.4 Devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

7.5 A more formal role in energy industry regulation but recognising the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

7.6 The Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.
1. Democratic ownership and the public good

The STUC supports the devolution of a number of powers to Scotland which would enhance the ability of the Scottish Parliament to democratise the ownership of land, assets and natural resources through, community ownership, co-operative ownership and state ownership. Pursuant to these aims, the Scottish Parliament should be fully empowered to undertake a more ambitious land reform agenda and to decentralise power to, and through, democratically accountable and properly resourced local government.

The goal of strengthening local government and empowering communities cannot be considered an afterthought to the process of further devolution to Scotland, nor can it be used as an excuse to bypass the Scottish Parliament. All of those involved in the Smith Commission should make clear statements of intent with respect to local empowerment.

The Scottish Parliament already possesses significant powers which enable it to promote democratic ownership and community empowerment but there are also a range of European Union and international regulations which place limits on the role of the state in relation to privately held assets and public franchises. In the STUC’s view, the Scottish Parliament should be able to exert greater influence over the UK Government’s ratification of treaties and directives which have an impact in areas where power is devolved to Scotland. This would include all devolved public services areas, public procurement and companies owned publicly in Scotland. The clearest example of a current treaty which falls into this category is the Transatlantic Trade and Investment Partnership (TTIP) which, depending on the nature of the wording of the final treaty, could potentially impact upon the ability of the Scottish Government to ensure that the delivery of services such as the NHS remain public.

Recommendation

1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament’s jurisdiction particularly as it impacts upon democratic ownership.

Devolution of the Crown Estate

The STUC notes the proposals from various parties for the devolution, or partial devolution of the Crown Estate. The most logical approach to effecting devolution in this area is for the Scottish Parliament to have the power to manage the revenues from all Crown Estate assets in Scotland.

Recommendation

1.2 The full devolution of the Crown Estate to the Scottish Parliament.
Public Ownership

The STUC strongly supports the right of national and regional legislatures to own, or maintain a controlling stake in its utilities, transport system and other key industrial sectors. It should also be able to protect its public services from privatisation. Increased borrowing powers would allow for different models of finance and strengthen the potential of a Scottish National Investment Bank, capable of issuing bonds, to invest in infrastructure and industry.

Recommendation

1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such a PFI.
1.4 Devolution of railway powers to enable a “not for profit” option for the ScotRail franchise.
1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

Land ownership

The STUC believes that the empowerment of communities requires adequate control of land ownership and its use for the purposes of tax avoidance whilst, in many cases, subsidies are drawn down for farming and forestry activities.

Recommendation

1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

Public housing

The Scottish Government has significant powers to enact direct local authority house building and the extension of the social housing sector. In addition to the capital borrowing powers already identified.

Recommendation

1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.
2. Fiscal powers

STUC supports a devolution settlement which places Scotland on a firm fiscal footing and empowers the Scottish Parliament to undertake progressive tax reform and redesign.

The STUC has considered two options. Full fiscal autonomy; and increased tax powers supplemented by a continuing block grant.

STUC believes that full fiscal autonomy presents potential future challenges for the maintenance of current levels of per-capita public spending in Scotland relative to the rest of the United Kingdom. The key factors within this calculation are:

- Diminishing and uncertain tax receipts from North Sea Oil and Gas
- Demographic trends in Scotland

During the referendum debate, the Scottish Government argued that an independent Scotland would be able to:

- Benefit from higher oil revenues than predicted by the Westminster Government
- Rebalance its demographics through promoting inward migration
- Benefit from higher relative growth consequent to additional economic and fiscal powers
- Channel tax receipts currently used for defence into other public spending areas

To a greater or lesser extent the aforementioned outcomes will not be possible under an enhanced devolution settlement rendering the longer term relative fiscal position worse than the Scottish Government imagined under an independence scenario.

The challenging position presented by the Fiscal Affairs Scotland and others, only holds true if the comparison is with existing levels of Scottish Parliament funding. In the case that the combined effect of devolved taxes and a smaller block grant were to significantly reduce Scotland’s future revenues, there would be a different counterfactual which could render full fiscal autonomy more attractive.

The most comparable full fiscal autonomy model to which we can refer is the relationship between the Basque/Navarre region and the Spanish state, where there is virtually full fiscal autonomy in a national region of comparable relative size and which has higher than average GDP per capita than Spain as a whole. After collecting almost all taxes, the Basque/Navarre region ‘buys back’ a range of Spanish state services (amounting to around 50% of total spending) covering state functions such as defence and international affairs, but also welfare and pensions. However, there is one difference and one peculiarity which suggests the situation is not analogous to Scotland.  a) The Basque/Navarre strength in GDP does not rest on a depleting natural resource b) the cost ratio at which the Basque/Navarre ‘buys back’ services from the Spanish state is highly advantageous to the region, a situation which is unlikely to be replicated here.
The STUC believes that it is both practical and fair to use the existing relative fiscal position as the basis for a new funding formula combining tax and block grant. Such an arrangement would recognise that Scotland has, since the inception of the Barnett Formula, contributed more in tax and received more in spending than the UK average. The arrangement would recognise that this situation may not persist in the medium to long-term as oil tax receipts diminish.

The role of the block grant would therefore be to maintain funding at existing levels relative to the rUK. Overall funding might increase or reduce pursuant to UK-wide public spending decisions or changes in Scottish devolved tax revenue, but the funding ratio would not change.

The STUC therefore supports a funding arrangement combining devolved taxes and a continuing block grant as the best option for Scotland, but this is predicated on a clear commitment that there will be no detriment to current Scottish funding levels relative to the rest of the UK for at least a generation. The block grant is the amount of funding Scotland has received in a given year and the Barnett Formula is the mechanism by which it is adjusted in the following year. ¹ Neither the block grant, the Barnett Formula, nor how the Barnett Formula is applied in a given year is enshrined in statute or given any legal or constitutional form. This gives rise to uncertainties about the future and disagreement about this application.

The purposes of the devolution of further taxes should be:

- To provide a better balance between the amount of revenue raised and spent by the Scottish Parliament
- To enable the Scottish Parliament to enhance protection and tackle inequality through progressive and redistributive taxation
- To provide a means by which economic success in Scotland can translate into higher public spending and to remove negative incentives towards investing in services and pursuing policies with positive labour market outcomes
- To enable redesign of Scottish tax, including local taxation.

Recommendation

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

¹ The block grant is currently calculated by taking the previous year’s expenditure in Scotland, multiplying by additional (or reduced) expenditure in England, multiplying that by Scotland’s population share relative to England and then adjusting it department by department
Specific Tax powers

The STUC supports the devolution of all forms of income tax.

- The STUC does not support the devolution of Corporation Tax as we support the harmonisation of Corporation Tax across the UK and Europe.
- The STUC also believes that oil and gas revenues should only be devolved in the case of full fiscal autonomy. We believe that recognising the historical and future contribution of oil and gas revenues to the UK economy is best represented by the strong block grant component recommended earlier.
- The STUC has previously rejected the devolution of National Insurance. There are competitive dangers in relation to the employer component and complications with relation to the employee component. We are however open to considering its devolution if a compelling case is put forward during discussions and negotiations post October 31st.
- The STUC recognises that assigned taxes cannot be used as economic levers, but believes that assigned taxation allows the tax base to better reflect economic success and can smooth out the unevenness potentially caused by devolving a large number of income related taxes but few other taxes.

Recommendation

7.2 Devolution of income tax at all bands & other personal wealth related taxes

7.3 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

The STUC believes that ‘behaviours’ taxes and VAT should be assigned, but not subject to variation. The proportion assigned should be 50%.

Recommendation

7.4 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

The full detail of the STUC’s devolved tax proposals is attached as appendix A.
**Funding flexibility and Financial Memoranda**

By increasing the proportion of revenue raised in Scotland, the Parliament is better incentivised to use its existing spending power to grow the economy and strengthen its labour market interventions. The STUC recalls the arguments during the referendum relating to child care in which the Scottish Government argued with some, if not complete, persuasiveness that without the capacity to benefit from the improved tax outcomes of a stronger labour market created by expanded child care, it would not be able to sustain the policy. Whilst the devolution of significant new taxes partly meets that criticism, it does not address the savings such a policy would effect in relation to UK Government welfare spending in Scotland i.e. Were a free and universal childcare policy to be implemented in Scotland under existing powers, the UK Government would benefit from reduced support for childcare costs of Scottish families as a consequence of entirely devolved Scottish public spending.

This situation already exists with respect to free personal care for the elderly, where there are savings to the UK welfare budget in Scotland pursuant to the universal nature of provision here. Until 2006, this phenomenon was recognised with respect to the Council Tax (devolved) and Council Tax Benefit (then reserved) through the use of a funding agreement between Westminster and Holyrood. Between 1999 and 2006, increases or decreases to Scottish Council Tax, compared to the UK average, which led to a higher or lower than average call for Council Tax Benefit funding in Scotland led to block grant adjustments compensating whichever government suffered a funding detriment as a consequence of the variation.

Whilst the devolution of Council Tax Benefit has now rendered this specific arrangement redundant, it has a wider application in circumstances where it can be demonstrated that specific decisions using devolved funding have a positive impact on the UK welfare budget in Scotland. As an example the STUC cites potential action by the Scottish Government to create jobs for young people as was delivered by the previous Westminster Government’s ‘Future Jobs Fund’. This initiative was partly financed through additional fiscal stimulus, but also funded through benefit savings as a consequence of the newly created jobs which were targeted at young job seekers.

**Recommendation**

7.5 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

**Borrowing**

The STUC has already outlined a recommendation for increased borrowing capacity to finance capital investment and direct government investment. However a significant
increase in tax devolution requires a borrowing capacity to match for the purposes of current account management.

Recommendation

7.6 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury
7.7 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits

3. A better labour market and workplace protection

The STUC believes that a central cause of current economic failures, and indeed the financial crisis itself, has been the fundamental inequalities in the labour market rooted in gender and other forms of discrimination; weak protections for workers; and the decline of collective bargaining as a means of ensuring decent wages and lower levels of pay inequality. A number of the key issues are discussed here and Appendix B looks in more detail at this area of policy, which is central to trade unionism.

Only a small number of aspects of employment regulation are currently devolved to the Scottish Parliament – the employment of children and the functioning of the agricultural wages board. However the Scottish Parliament exercises a range of powers which impact upon the workplace, some of which are detailed in Appendix B.

The default position under the current constitutional settlement has been for primary legislation on equalities, employment law, health and safety, trade union regulation and minimum wages to be reserved to Westminster. These are henceforth referred to as ‘workplace protections’ although equalities is also considered in its wider context later.

Whilst this division of powers exists between Holyrood and Westminster, it is not the case across the whole of the UK. In Northern Ireland all of the legislation listed above is devolved to the Northern Ireland Assembly.

In the context of the wide range of powers already devolved to Scotland or potentially to be devolved to Scotland (including a separate legal system, powers on economic development, planning, environmental protection and additional tax and welfare powers) there is a strong case to be made for devolving workplace protection. This is because it is easier to imagine coherent policies on economic development, tackling inequality through public service provision, welfare and active labour market intervention if the Scottish Parliament is empowered to tackle discrimination, poor employment practice, insecure employment, low minimum wages and to create healthier workplaces and promote collective bargaining.

In taking the view that workplace protection should be devolved, STUC has been mindful of the potential for competitive deregulation in the pursuit of investment and of the economic impacts of the creation of separate regulation. The STUC also recognises that in a highly integrated economy with a shared currency and similar taxation system, the potential for
policy divergence is likely to be limited. Much of the law is underpinned by EU Directives which offers both minimum protection and a range of restrictions on workplace protection.

However, the STUC also notes the appetite in Scotland for reducing income inequality and the desire to forge a more positive relationship with trade unions. There are also specific Scottish challenges with respect to health and safety which can be better met with devolved powers.

There is no inherent reason why workplace protection and cannot be devolved, as is the case in Northern Ireland. Devolving these powers has allowed Northern Ireland to pass distinctive legislation with regard to equality, particularly around religion and political opinion - which has no precedent within the UK setting.

As mentioned earlier there has recently been some divergence in the employment environment with Northern Ireland choosing not to implement some of the reforms that were undertaken at a Westminster level.

There have been examples of delays in implementing equality and workplace protection legislation in Northern Ireland after its implementation in Great Britain and in practice some legislation came into place much later than in the rest of the UK, for example the Race Relations (Northern Ireland) Order was passed in 1997, whereas the Race Relations Act was passed in Great Britain in 1976. However, STUC does not believe that prevailing conditions in Scotland suggest that this would be the case.

The example of Northern Ireland shows, that it is possible to achieve a balance between maintaining a single labour market and devolving employment and equality powers. It also shows, however, that even where an effort is made to streamline provisions were possible, some divergence in the regulatory regimes is also inevitable, but that this divergence can be helpful and can reflect the specific context and needs of that nation.

**Recommendation**

**3.1 The devolution of employment law, health and safety, trade union law and the minimum wage**

Regulation of public sector pension schemes (with the exception of the Civil Service Pensions Scheme) is currently divided between the two legislatures even though these Scottish schemes are subject to separate actuarial valuation.

**Recommendation**

**3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.**
4. Equality

The case for devolving employment law and equality law together

If equality law were to be devolved without employment law, there would be a restriction on the areas that the Scottish Parliament could effectively legislate with regards to equality. In this scenario, it would be possible to have separate Scottish equality law on devolved matters such as housing and health, enforced by the Scottish courts but it would not be possible for the Scottish Parliament to legislate with regard to equality within employment as this would be considered ‘creating an employment right’ and therefore reserved. This creates a situation where equality law within the employment setting would wholly be governed by Westminster as a consequence of their reservation of employment law more generally, while other parts of equality law are governed by the Scottish Parliament.

By coupling employment law and equality law together, however, it is possible to avoid complexities and keep a streamlined approach to equality legislation that is to the benefits of organisations trying to meet the law and individuals trying to access their rights in a variety of settings.

Recommendation

4.1 That employment law and equality law not be separated with respect to further devolution proposals

Other aspects of equality law

Over and above equality issues relating to employment, the STUC believes that certain aspects of equality might better be tackled by the Scottish Parliament. Scotland has very distinct questions around sectarianism, differing demographics and a considerable rural dimension and therefore might benefit from different and distinctive legislative approaches to support equality outcomes for the Scottish people.

Devolution of the Enforcement of Equality Law

In the case that the Commission decides against the devolution of employment law, there is still potential to devolve its enforcement to the Scottish Parliament, even if primary legislative powers on passing the law are reserved to Westminster. This makes sense in conjunction with a wider set of proposals around the devolution of health and safety enforcement and employment tribunals. It also emphasizes the key point around equality. Ultimately equality law is governed by European minimums and therefore there is a level below which no part of the UK can drop. Equally the law as it currently stands is positive and tends to support the advancement of equality. The major barrier to achieving equality therefore is not the law, but practice, culture and indeed discriminatory attitudes. Therefore enforcement is key to advancing equality and major gains could be made if enforcement was carried out in line with Scottish expectations and the needs of the Scottish economy.
The STUC has a strong history of fighting for equality of representation for women. This includes arguing for the mandatory 50-50 representation of women in the Scottish Parliament and the extension of this to local government elections. The STUC also supports a policy of equal representation on company boards.

Recommendation

4.2 STUC recommends the full devolution of equality law, provided that employment law is also devolved.
4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.
4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

5. Basic Rights for Scottish Citizens

There is a question around how the UK constitutional settlement functions with regard to international law and the signing, amendment or repeal of international treaties. An element of this debate was picked up in section above around the TTIP but a wider question regarding the basic rights of Scottish citizens remains, particularly in light of recent discussions around European exit and the repeal of the Human Rights Act.

Both the European Convention on Human Rights (ECHR) and EU law are incorporated directly into the devolution statutes in Scotland, Wales and Northern Ireland. For example, section 29(2)(d) of the Scotland Act 1998 (SA), provides that Acts of the Scottish Parliament that are incompatible with EU law or with ECHR rights are ‘not law’. Section 108(6) Government of Wales Act 2006 states that any act of the Welsh Assembly incompatible with EU law or the ECHR, falls outside its competence. Section 24 of the Northern Ireland Act prohibits any legislation contrary to EU or ECHR.

In this way the ECHR and EU law are essential parts of the Constitutional settlement of the Scottish people and are often rightly portrayed as the backbone of a Scottish legal system. The Westminster Government has the power to repeal the Human Rights Act but in order to do so effectively it would also have to amend the Scotland Act. The UK Parliament may amend the devolution Acts, but the UK government has stated that it will not normally legislate on devolved matters without the consent of the devolved legislature. In this way, repeal of the Human Rights Act should require a Sewel convention.

In order to solidify the position of the Scottish Parliament in this respect it is necessary to give the Sewel Convention legal force and therefore remove the word ‘normally’ from the UK Government’s commitment not to amend the devolution Acts. As a minimum the STUC would like to see this incorporated into an enhanced devolution package.
It might also be possible to go further than this and provide scope for the devolved Parliaments to have a power of co-decision on constitutional matters. So for example in order to change the UK’s relationship with the European Court of Human Rights the Westminster Government might need consent from the majority of devolved parliaments, or to win a referendum on European exit, there might need to be majorities in every devolved nation.

There are many options for strengthening the rights of Scottish people on constitutional issues. However a basic starting point for this would require a clear understanding of what a ‘constitutional issue’ is within the UK context, a stumbling block which should not be underestimated. Ultimately this kind of ‘co-decision’ approach would strengthen democracy and local decision making (particularly if devolution was pursued within English regions) while also dealing with the current asymmetrical structure of UK democracy.

Extending the franchise for 16 and 17 year olds should also be considered as a matter of priority. It is the STUC’s view that 16 and 17 year olds should have the vote in all UK elections, and the Scottish Government and the UK Government should work together to ensure that all necessary statutes are amended to allow this to happen.

Recommendation

5.1 STUC recommends that the Sewel Convention is given legal force.

5.2 In addition consideration should be given to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. The STUC recommends that focus on both the powers of the Scottish Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds

6. Welfare

The STUC is deeply disturbed at the direction of UK welfare policy both in terms of cuts in support; and policies such as workfare and the extreme conditionality in the system. We also believe that there is a strong case for the alignment of powers and spending in health and education with welfare.

The key challenges for a full devolution package are the funding of a devolved welfare system and the creation of a new architecture to support an entirely separate system.

The STUC is doubtful that without an agreement on full fiscal autonomy Westminster will consent to a fully devolved welfare system because it would remove important fiscal stabilisers.
In the context of a challenging financial climate, and the likelihood that additional welfare expenditure in Scotland would rely on additional taxation, it cannot be asserted with any confidence that the overall budget would grow if welfare were entirely devolved. There would however be the potential for better policy with respect to conditionality, work fare and other ‘initiatives’ which are neither cost effective nor humane.

The STUC would need to be convinced that an autonomous welfare system would be sufficiently distinct and better funded to justify the creation of a separate institutional architecture and national insurance system.

The STUC recognises that it might be possible to separate pensions from other functions of the welfare state, with the former remaining reserved.

Short of the full devolution of welfare, the STUC supports the devolution of as many welfare powers as are possible within the UK-wide system of Universal Credit. We also strongly recommend the use of financial memoranda as outlined earlier to enable the Scottish Government to recoup more of the benefit of any interventions reducing the extent to which Scottish people rely on benefits.

STUC supports the devolution of the Works Programme and Jobs Centre Plus to Scotland, allowing the creation of a Scottish Employment Service. Whilst the benefit levels underpinning the systems would endure, as would overall budget constraints, the ability to design back to work support in concert with currently devolved spending budgets such as health and education would be important. It is particularly important that workplace health, equality and decent employment are considered to be integral parts of back to work programmes and these could be more effectively pursued with enhanced devolution. Block grant flexibilities as discussed earlier, would allow a more strategic view to be taken across budgets to enhance the quality of labour market interventions.

Additional welfare powers

The partial devolution of welfare can be supplemented by additional powers providing that changes to the Scotland Act are agreed to allow the Scottish Parliament to adopt new Scottish legislation with a social security purpose; and further, to empower it to “top up” UK benefits with a supplementary Scottish rate through the universal credit using devolved Scottish revenues. This would invest in the Scottish Parliament the power to mitigate the impact of benefit cuts as it sees fit, but not to reduce the basic level of support offered through Universal Credit.

This highly persuasive proposal is discussed in detail by Andrew Tickell, Lecturer in Law, Glasgow Caledonian University and is part of a proposal he has submitted to the Commission (Securing greater Social Security autonomy and restating the Union: Submission to the Smith Commission). STUC recommends this approach to additional welfare powers in the strongest possible terms.

Recommendation
6.1 The devolution of Housing Benefit as discussed earlier in this paper
6.2 The devolution of Attendance Allowance
6.3 The devolution of Carer’s Allowance
6.4 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus
6.5 The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union*

Section 7 Other powers

*Immigration & Asylum*

The STUC recognises that the continuation of the United Kingdom implies primary control by the Westminster parliament of immigration and asylum policy. Even with Scottish independence, the STUC foresaw difficulties with an entirely separate Scottish immigration system.

This notwithstanding, the STUC considers there is particular scope for the Scottish Government to pursue migration policies fitted to particular Scottish conditions and the views of its people. These are:

- The tendency for fewer EU and non-EU migrants to wish to come to Scotland compared to some regions of the UK
- The demographic challenges particular to Scotland – its ageing population
- A general (if often exaggerated) tolerance of inward migration amongst those living in Scotland.
- The desire evidenced by successive administrations in Scotland, of different political colours, for a more humane approach to refugees and asylum seekers and the existence of various devolved powers (including child protection) which has clashed in the past with reserved powers on immigration.

The current UK immigration legislation creates and has the powers to create a number of conditions for entry to the UK for EU and non-EU including residency requirements, proof of employer, spousal rights, the treatment of overseas students etc. The STUC believes that agreement should be reached to allow amendments to immigration legislation and, if necessary, the Scotland Act, to invoke a ‘presumption in favour of Scottish Government autonomy’ in which the Scottish Government would be able to direct immigration policy as it affects Scotland. The caveat would be the ability of the UK Government to override such legislation, but only in the case that it demonstrated clear detriment to the rUK in relation to identifiable and significant security or economic issues.

An example of where such a ‘presumption’ would be utilised is the decision of the current UK Government to revoke the Scottish Government ‘Fresh Talent’ initiative without, in the STUC’s view, the provision of objective evidence of detriment to the UK.
There are likely to be severe limitations to the Scottish Government’s ability to conduct an alternative Asylum and Refugee policy, as the ultimate outcome of offering asylum tends for some, to be UK citizenship. However, evidence from Glasgow suggests that once UK citizenship is achieved, new citizens tend to remain in the communities in which they have lived and imaginative approaches should be explored to allow the Scottish Government to offer asylum to particular ethnic groups or those suffering for reasons of war or other oppression.

The STUC does not see any reason why those in the process of seeking leave to remain or citizenship should not be allowed to work in Scotland following the criteria for a discreet approach to migration outlined earlier.

Recommendation

1.2 A presumption in favour of the right of Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

1.3 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

1.4 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

Energy policy

As reflected in our A Just Scotland reports, the STUC believes that energy policy at Scottish and UK level has failed - and is likely to continue to fail - to deliver on the three key social priorities of security of supply, emissions reduction and affordability.

The STUC also agrees with the Scottish Government’s view that ‘currently there is a complex landscape for energy policy across the UK’ and that the division of relevant responsibilities established by the original devolution settlement may not have assisted in delivering the priorities listed above. For instance, there can be little doubt that the regulatory regime has discriminated against Scottish generation; especially low carbon power generated around Scotland’s periphery.

Therefore the STUC is sympathetic to the Scottish Government’s call for Scotland to have a ‘formal role in network regulation and setting reliability standards, including planning, ownership and operation of energy infrastructure and fairer grid charges to ensure secure energy supplies’ and supports the full devolution of the regulation of energy efficiency and additional powers to support low carbon generation. These new powers must be used to build a new approach to energy policy which prioritises community ownership and effectively tackles fuel poverty.

However the STUC notes that the Scottish Government wishes Scotland to remain fully integrated into the UK energy market. The challenges of making a system with separate and distinct approaches to industry regulation work in practice must not be underestimated.
The STUC does not support devolution of the Oil and Gas Fiscal Regime.

Recommendation

1.5 The STUC supports devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

1.6 The STUC is supportive of Scotland playing a more formal role in industry regulation but recognises the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

Broadcasting

As reflected in earlier submissions to the Calman and Broadcasting Commissions, the STUC believes that the broadcasting industry has failed both to provide sufficient quality employment opportunities and to discharge its duty to strengthen and sustain Scotland’s democracy and culture due to low investment, failures of regulatory oversight and a lack of accountability.

The STUC and the Scottish Federation of Entertainment Unions have previously called for the regulatory system to be restructured to create a significantly enhanced role for the Scottish Parliament. It is essential that, for instance, the BBC Trust and Ofcom are much more accountable to the Scottish Parliament. Any additional powers devolved to Scotland as a result of the Smith Commission process must be designed and used to boost the accountability of broadcasting to Scottish citizens through their democratically elected representatives.

Recommendation

1.7 The STUC calls for the Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.
INTRODUCTION

The STUC welcomes the opportunity to submit its views on further devolution to the Smith Commission. We do not underestimate the difficulty of the task the Commission faces and believe that significant compromise will be necessary on all sides if an agreement is to be reached which is coherent and matches the aspirations of a majority of the Scottish people.

The STUC’s concerns about the process for agreeing further powers is a matter of record. We have joined with a range of civil society organisations to argue that whatever proposals are agreed should be tested in a citizen led process involving the use of maximum consultation and the creation of citizens’ juries. The STUC is also on record as stating that the most important outcome is an optimal proposal and this, for us, is much less important than adhering to the very testing timetable laid down, both for the Commission and the subsequent parliamentary process.

The STUC has been disturbed at the enormously divergent accounts of what has been ‘promised’ with respect to further powers. We do not believe that the content of the proposals previously published by the three pro-devolution parties, or the wording of the ‘Vow’ can be categorised as a promise of ‘Devo Max’ or full fiscal autonomy. Equally, however, a strong impression was conveyed that the powers proposed would extend significantly beyond that which had previously been promised.

Opinion polls suggest that there is strong public support in Scotland for the devolution of very meaningful fiscal, welfare, employment, equality and other powers. The detail of what this means has not been tested which is why the STUC is so strongly in favour of the outcome of the Commission being tested in an environment which is capable of investigating the detail and engaging the wider public.

The STUC’s proposals in this paper fall short of what would normally categorised as full fiscal autonomy or Devo Max. This is grounded in an honest assessment of what arrangement would best serve the people of Scotland in the years ahead. Equally, we do not propose the devolution of all aspects of welfare.

However, our proposals go significantly further than the sum total of the proposals of the three pro-devolution parties.

Our appeal to all parties in the negotiations is that they should be prepared to make significant compromises and that political advantage should take a back seat.

Taken together the proposals offer a coherent approach to tackling inequality and promoting sustainable economic growth. Fundamentally they recognise that the role of government is to support and nurture society and that the Scottish Parliament must be empowered to play a leading role in meeting that challenge.
SUMMARY OF RECOMMENDATIONS

Sections

1. Democratic ownership and the public good
2. Fiscal powers
3. Workplace protection and labour market reform
4. Equality
5. Citizens rights
6. Welfare
7. Other issues

Democratic ownership and the public good

1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament’s jurisdiction particularly as it impacts upon democratic ownership.

1.2 The full devolution of the Crown Estate to the Scottish Parliament.

1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such a PFI.

1.4 Devolution of powers to enable a public sector led bid for the ScotRail franchise.

1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.

Fiscal powers

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

2.3 Devolution of income tax at all bands & other personal wealth related taxes
2.4 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

2.5 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

2.6 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

2.7 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury

2.8 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits.

A better labour market and workplace protection

3.1 The devolution of employment law, health and safety, trade union law and the minimum wage

3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.

Equality

4.1 That employment law and equality law not be separated with respect to further devolution proposals

4.2 The full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

Basic Rights for Scottish Citizens

5.1 STUC recommends that the Sewel Convention is given full legal force.

5.2 Consideration to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. Focus on both the powers of the Scottish
Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds.

Welfare

6.1 The devolution of Housing Benefit

6.2 The devolution of Attendance Allowance.

6.3 The devolution of Carer’s Allowance.

6.4 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus.

6.5 The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union*.

Other powers

7.1 A presumption in favour of the right to Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

7.2 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

7.3 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

7.4 Devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

7.5 A more formal role in energy industry regulation but recognising the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

7.6 The Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.
1. Democratic ownership and the public good

The STUC supports the devolution of a number of powers to Scotland which would enhance the ability of the Scottish Parliament to democratise the ownership of land, assets and natural resources through, community ownership, co-operative ownership and state ownership. Pursuant to these aims, the Scottish Parliament should be fully empowered to undertake a more ambitious land reform agenda and to decentralise power to, and through, democratically accountable and properly resourced local government.

The goal of strengthening local government and empowering communities cannot be considered an afterthought to the process of further devolution to Scotland, nor can it be used as an excuse to bypass the Scottish Parliament. All of those involved in the Smith Commission should make clear statements of intent with respect to local empowerment.

The Scottish Parliament already possesses significant powers which enable it to promote democratic ownership and community empowerment but there are also a range of European Union and international regulations which place limits on the role of the state in relation to privately held assets and public franchises. In the STUC’s view, the Scottish Parliament should be able to exert greater influence over the UK Government’s ratification of treaties and directives which have an impact in areas where power is devolved to Scotland. This would include all devolved public services areas, public procurement and companies owned publicly in Scotland. The clearest example of a current treaty which falls into this category is the Transatlantic Trade and Investment Partnership (TTIP) which, depending on the nature of the wording of the final treaty, could potentially impact upon the ability of the Scottish Government to ensure that the delivery of services such as the NHS remain public.

Recommendation

1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament’s jurisdiction particularly as it impacts upon democratic ownership.

Devolution of the Crown Estate

The STUC notes the proposals from various parties for the devolution, or partial devolution of the Crown Estate. The most logical approach to effecting devolution in this area is for the Scottish Parliament to have the power to manage the revenues from all Crown Estate assets in Scotland.

Recommendation

1.2 The full devolution of the Crown Estate to the Scottish Parliament.
Public Ownership

The STUC strongly supports the right of national and regional legislatures to own, or maintain a controlling stake in its utilities, transport system and other key industrial sectors. It should also be able to protect its public services from privatisation. Increased borrowing powers would allow for different models of finance and strengthen the potential of a Scottish National Investment Bank, capable of issuing bonds, to invest in infrastructure and industry.

Recommendation

1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such a PFI.
1.4 Devolution of railway powers to enable a “not for profit” option for the ScotRail franchise.
1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

Land ownership

The STUC believes that the empowerment of communities requires adequate control of land ownership and its use for the purposes of tax avoidance whilst, in many cases, subsidies are drawn down for farming and forestry activities.

Recommendation

1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

Public housing

The Scottish Government has significant powers to enact direct local authority house building and the extension of the social housing sector. In addition to the capital borrowing powers already identified.

Recommendation

1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.
2. **Fiscal powers**

STUC supports a devolution settlement which places Scotland on a firm fiscal footing and empowers the Scottish Parliament to undertake progressive tax reform and redesign.

The STUC has considered two options. Full fiscal autonomy; and increased tax powers supplemented by a continuing block grant.

STUC believes that full fiscal autonomy presents potential future challenges for the maintenance of current levels of per-capita public spending in Scotland relative to the rest of the United Kingdom. The key factors within this calculation are:

- Diminishing and uncertain tax receipts from North Sea Oil and Gas
- Demographic trends in Scotland

During the referendum debate, the Scottish Government argued that an independent Scotland would be able to:

- Benefit from higher oil revenues than predicted by the Westminster Government
- Rebalance its demographics through promoting inward migration
- Benefit from higher relative growth consequent to additional economic and fiscal powers
- Channel tax receipts currently used for defence into other public spending areas

To a greater or lesser extent the aforementioned outcomes will not be possible under an enhanced devolution settlement rendering the longer term relative fiscal position worse than the Scottish Government imagined under an independence scenario.

The challenging position presented by the Fiscal Affairs Scotland and others, only holds true if the comparison is with existing levels of Scottish Parliament funding. In the case that the combined effect of devolved taxes and a smaller block grant were to significantly reduce Scotland’s future revenues, there would be a different counterfactual which could render full fiscal autonomy more attractive.

The most comparable full fiscal autonomy model to which we can refer is the relationship between the Basque/Navarre region and the Spanish state, where there is virtually full fiscal autonomy in a national region of comparable relative size and which has higher than average GDP per capita than Spain as a whole. After collecting almost all taxes, the Basque/Navarre region ‘buys back’ a range of Spanish state services (amounting to around 50% of total spending) covering state functions such as defence and international affairs, but also welfare and pensions. However, there is one difference and one peculiarity which suggests the situation is not analogous to Scotland. a) The Basque/Navarre strength in GDP does not rest on a depleting natural resource b) the cost ratio at which the Basque/Navarre ‘buys back’ services from the Spanish state is highly advantageous to the region, a situation which is unlikely to be replicated here.
The STUC believes that it is both practical and fair to use the existing relative fiscal position as the basis for a new funding formula combining tax and block grant. Such an arrangement would recognise that Scotland has, since the inception of the Barnett Formula, contributed more in tax and received more in spending than the UK average. The arrangement would recognise that this situation may not persist in the medium to long-term as oil tax receipts diminish.

The role of the block grant would therefore be to maintain funding at existing levels relative to the rUK. Overall funding might increase or reduce pursuant to UK-wide public spending decisions or changes in Scottish devolved tax revenue, but the funding ratio would not change.

The STUC therefore supports a funding arrangement combining devolved taxes and a continuing block grant as the best option for Scotland, but this is predicated on a clear commitment that there will be no detriment to current Scottish funding levels relative to the rest of the UK for at least a generation. The block grant is the amount of funding Scotland has received in a given year and the Barnett Formula is the mechanism by which it is adjusted in the following year.¹ Neither the block grant, the Barnett Formula, nor how the Barnett Formula is applied in a given year is enshrined in statute or given any legal or constitutional form. This gives rise to uncertainties about the future and disagreement about this application.

The purposes of the devolution of further taxes should be:

- To provide a better balance between the amount of revenue raised and spent by the Scottish Parliament
- To enable the Scottish Parliament to enhance protection and tackle inequality through progressive and redistributive taxation
- To provide a means by which economic success in Scotland can translate into higher public spending and to remove negative incentives towards investing in services and pursuing policies with positive labour market outcomes
- To enable redesign of Scottish tax, including local taxation.

Recommendation

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

¹ The block grant is currently calculated by taking the previous year’s expenditure in Scotland, multiplying by additional (or reduced) expenditure in England, multiplying that by Scotland’s population share relative to England and then adjusting it department by department
Specific Tax powers

The STUC supports the devolution of all forms of income tax.

- The STUC does not support the devolution of Corporation Tax as we support the harmonisation of Corporation Tax across the UK and Europe.
- The STUC also believes that oil and gas revenues should only be devolved in the case of full fiscal autonomy. We believe that recognising the historical and future contribution of oil and gas revenues to the UK economy is best represented by the strong block grant component recommended earlier.
- The STUC has previously rejected the devolution of National Insurance. There are competitive dangers in relation to the employer component and complications with relation to the employee component. We are however open to considering its devolution if a compelling case is put forward during discussions and negotiations post October 31st.
- The STUC recognises that assigned taxes cannot be used as economic levers, but believes that assigned taxation allows the tax base to better reflect economic success and can smooth out the unevenness potentially caused by devolving a large number of income related taxes but few other taxes.

Recommendation

7.2 Devolution of income tax at all bands & other personal wealth related taxes

7.3 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

The STUC believes that ‘behaviours’ taxes and VAT should be assigned, but not subject to variation. The proportion assigned should be 50%.

Recommendation

7.4 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

The full detail of the STUC’s devolved tax proposals is attached as appendix A.
Funding flexibility and Financial Memoranda

By increasing the proportion of revenue raised in Scotland, the Parliament is better incentivised to use its existing spending power to grow the economy and strengthen its labour market interventions. The STUC recalls the arguments during the referendum relating to child care in which the Scottish Government argued with some, if not complete, persuasiveness that without the capacity to benefit from the improved tax outcomes of a stronger labour market created by expanded child care, it would not be able to sustain the policy. Whilst the devolution of significant new taxes partly meets that criticism, it does not address the savings such a policy would effect in relation to UK Government welfare spending in Scotland i.e. Were a free and universal childcare policy to be implemented in Scotland under existing powers, the UK Government would benefit from reduced support for childcare costs of Scottish families as a consequence of entirely devolved Scottish public spending.

This situation already exists with respect to free personal care for the elderly, where there are savings to the UK welfare budget in Scotland pursuant to the universal nature of provision here. Until 2006, this phenomenon was recognised with respect to the Council Tax (devolved) and Council Tax Benefit (then reserved) through the use of a funding agreement between Westminster and Holyrood. Between 1999 and 2006, increases or decreases to Scottish Council Tax, compared to the UK average, which led to a higher or lower than average call for Council Tax Benefit funding in Scotland led to block grant adjustments compensating whichever government suffered a funding detriment as a consequence of the variation.

Whilst the devolution of Council Tax Benefit has now rendered this specific arrangement redundant, it has a wider application in circumstances where it can be demonstrated that specific decisions using devolved funding have a positive impact on the UK welfare budget in Scotland. As an example the STUC cites potential action by the Scottish Government to create jobs for young people as was delivered by the previous Westminster Government’s ‘Future Jobs Fund’. This initiative was partly financed through additional fiscal stimulus, but also funded through benefit savings as a consequence of the newly created jobs which were targeted at young job seekers.

Recommendation

7.5 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

Borrowing

The STUC has already outlined a recommendation for increased borrowing capacity to finance capital investment and direct government investment. However a significant
increase in tax devolution requires a borrowing capacity to match for the purposes of current account management.

Recommendation

7.6 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury
7.7 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits

3. A better labour market and workplace protection

The STUC believes that a central cause of current economic failures, and indeed the financial crisis itself, has been the fundamental inequalities in the labour market rooted in gender and other forms of discrimination; weak protections for workers; and the decline of collective bargaining as a means of ensuring decent wages and lower levels of pay inequality. A number of the key issues are discussed here and Appendix B looks in more detail at this area of policy, which is central to trade unionism.

Only a small number of aspects of employment regulation are currently devolved to the Scottish Parliament – the employment of children and the functioning of the agricultural wages board. However the Scottish Parliament exercises a range of powers which impact upon the workplace, some of which are detailed in Appendix B.

The default position under the current constitutional settlement has been for primary legislation on equalities, employment law, health and safety, trade union regulation and minimum wages to be reserved to Westminster. These are henceforth referred to as ‘workplace protections’ although equalities is also considered in its wider context later.

Whilst this division of powers exists between Holyrood and Westminster, it is not the case across the whole of the UK. In Northern Ireland all of the legislation listed above is devolved to the Northern Ireland Assembly.

In the context of the wide range of powers already devolved to Scotland or potentially to be devolved to Scotland (including a separate legal system, powers on economic development, planning, environmental protection and additional tax and welfare powers) there is a strong case to be made for devolving workplace protection. This is because it is easier to imagine coherent policies on economic development, tackling inequality through public service provision, welfare and active labour market intervention if the Scottish Parliament is empowered to tackle discrimination, poor employment practice, insecure employment, low minimum wages and to create healthier workplaces and promote collective bargaining.

In taking the view that workplace protection should be devolved, STUC has been mindful of the potential for competitive deregulation in the pursuit of investment and of the economic impacts of the creation of separate regulation. The STUC also recognises that in a highly integrated economy with a shared currency and similar taxation system, the potential for
policy divergence is likely to be limited. Much of the law is underpinned by EU Directives which offers both minimum protection and a range of restrictions on workplace protection.

However, the STUC also notes the appetite in Scotland for reducing income inequality and the desire to forge a more positive relationship with trade unions. There are also specific Scottish challenges with respect to health and safety which can be better met with devolved powers.

There is no inherent reason why workplace protection and cannot be devolved, as is the case in Northern Ireland. Devolving these powers has allowed Northern Ireland to pass distinctive legislation with regard to equality, - particularly around religion and political opinion - which has no precedent within the UK setting.

As mentioned earlier there has recently been some divergence in the employment environment with Northern Ireland choosing not to implement some of the reforms that were undertaken at a Westminster level.

There have been examples of delays in implementing equality and workplace protection legislation in Northern Ireland after its implementation in Great Britain and in practice some legislation came into place much later than in the rest of the UK, for example the Race Relations (Northern Ireland) Order was passed in 1997, whereas the Race Relations Act was passed in Great Britain in 1976. However, STUC does not believe that prevailing conditions in Scotland suggest that this would be the case.

The example of Northern Ireland shows, that it is possible to achieve a balance between maintaining a single labour market and devolving employment and equality powers. It also shows, however, that even where an effort is made to streamline provisions were possible, some divergence in the regulatory regimes is also inevitable, but that this divergence can be helpful and can reflect the specific context and needs of that nation.

**Recommendation**

**3.1 The devolution of employment law, health and safety, trade union law and the minimum wage**

Regulation of public sector pension schemes (with the exception of the Civil Service Pensions Scheme) is currently divided between the two legislatures even though these Scottish schemes are subject to separate actuarial valuation.

**Recommendation**

**3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.**
4. Equality

The case for devolving employment law and equality law together

If equality law were to be devolved without employment law, there would be a restriction on the areas that the Scottish Parliament could effectively legislate with regards to equality. In this scenario, it would be possible to have separate Scottish equality law on devolved matters such as housing and health, enforced by the Scottish courts but it would not be possible for the Scottish Parliament to legislate with regard to equality within employment as this would be considered ‘creating an employment right’ and therefore reserved. This creates a situation where equality law within the employment setting would wholly be governed by Westminster as a consequence of their reservation of employment law more generally, while other parts of equality law are governed by the Scottish Parliament.

By coupling employment law and equality law together, however, it is possible to avoid complexities and keep a streamlined approach to equality legislation that is to the benefits of organisations trying to meet the law and individuals trying to access their rights in a variety of settings.

Recommendation

4.1 That employment law and equality law not be separated with respect to further devolution proposals

Other aspects of equality law

Over and above equality issues relating to employment, the STUC believes that certain aspects of equality might better be tackled by the Scottish Parliament. Scotland has very distinct questions around sectarianism, differing demographics and a considerable rural dimension and therefore might benefit from different and distinctive legislative approaches to support equality outcomes for the Scottish people.

Devolution of the Enforcement of Equality Law

In the case that the Commission decides against the devolution of employment law, there is still potential to devolve its enforcement to the Scottish Parliament, even if primary legislative powers on passing the law are reserved to Westminster. This makes sense in conjunction with a wider set of proposals around the devolution of health and safety enforcement and employment tribunals. It also emphasizes the key point around equality. Ultimately equality law is governed by European minimums and therefore there is a level below which no part of the UK can drop. Equally the law as it currently stands is positive and tends to support the advancement of equality. The major barrier to achieving equality therefore is not the law, but practice, culture and indeed discriminatory attitudes. Therefore enforcement is key to advancing equality and major gains could be made if enforcement was carried out in line with Scottish expectations and the needs of the Scottish economy.
The STUC has a strong history of fighting for equality of representation for women. This includes arguing for the mandatory 50-50 representation of women in the Scottish Parliament and the extension of this to local government elections. The STUC also supports a policy of equal representation on company boards.

Recommendation

4.2 STUC recommends the full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

5. Basic Rights for Scottish Citizens

There is a question around how the UK constitutional settlement functions with regard to international law and the signing, amendment or repeal of international treaties. An element of this debate was picked up in section above around the TTIP but a wider question regarding the basic rights of Scottish citizens remains, particularly in light of recent discussions around European exit and the repeal of the Human Rights Act.

Both the European Convention on Human Rights (ECHR) and EU law are incorporated directly into the devolution statutes in Scotland, Wales and Northern Ireland. For example, section 29(2)(d) of the Scotland Act 1998 (SA), provides that Acts of the Scottish Parliament that are incompatible with EU law or with ECHR rights are ‘not law’. Section 108(6) Government of Wales Act 2006 states that any act of the Welsh Assembly incompatible with EU law or the ECHR, falls outside its competence. Section 24 of the Northern Ireland Act prohibits any legislation contrary to EU or ECHR.

In this way the ECHR and EU law are essential parts of the Constitutional settlement of the Scottish people and are often rightly portrayed as the backbone of a Scottish legal system. The Westminster Government has the power to repeal the Human Rights Act but in order to do so effectively it would also have to amend the Scotland Act. The UK Parliament may amend the devolution Acts, but the UK government has stated that it will not normally legislate on devolved matters without the consent of the devolved legislature. In this way, repeal of the Human Rights Act should require a Sewel convention.

In order to solidify the position of the Scottish Parliament in this respect it is necessary to give the Sewel Convention legal force and therefore remove the word ‘normally’ from the UK Government’s commitment not to amend the devolution Acts. As a minimum the STUC would like to see this incorporated into an enhanced devolution package.
It might also be possible to go further than this and provide scope for the devolved Parliaments to have a power of co-decision on constitutional matters. So for example in order to change the UK’s relationship with the European Court of Human Rights the Westminster Government might need consent from the majority of devolved parliaments, or to win a referendum on European exit, there might need to be majorities in every devolved nation.

There are many options for strengthening the rights of Scottish people on constitutional issues. However a basic starting point for this would require a clear understanding of what a ‘constitutional issue’ is within the UK context, a stumbling block which should not be underestimated. Ultimately this kind of ‘co-decision’ approach would strengthen democracy and local decision making (particularly if devolution was pursued within English regions) while also dealing with the current asymmetrical structure of UK democracy.

Extending the franchise for 16 and 17 year olds should also be considered as a matter of priority. It is the STUC’s view that 16 and 17 year olds should have the vote in all UK elections, and the Scottish Government and the UK Government should work together to ensure that all necessary statutes are amended to allow this to happen.

**Recommendation**

5.1 STUC recommends that the Sewel Convention is given legal force.

5.2 In addition consideration should be given to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. The STUC recommends that focus on both the powers of the Scottish Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds

6. Welfare

The STUC is deeply disturbed at the direction of UK welfare policy both in terms of cuts in support; and policies such as workfare and the extreme conditionality in the system. We also believe that there is a strong case for the alignment of powers and spending in health and education with welfare.

The key challenges for a full devolution package are the funding of a devolved welfare system and the creation of a new architecture to support an entirely separate system.

The STUC is doubtful that without an agreement on full fiscal autonomy Westminster will consent to a fully devolved welfare system because it would remove important fiscal stabilisers.
In the context of a challenging financial climate, and the likelihood that additional welfare expenditure in Scotland would rely on additional taxation, it cannot be asserted with any confidence that the overall budget would grow if welfare were entirely devolved. There would however be the potential for better policy with respect to conditionality, workfare and other ‘initiatives’ which are neither cost effective nor humane.

The STUC would need to be convinced that an autonomous welfare system would be sufficiently distinct and better funded to justify the creation of a separate institutional architecture and national insurance system.

The STUC recognises that it might be possible to separate pensions from other functions of the welfare state, with the former remaining reserved.

Short of the full devolution of welfare, the STUC supports the devolution of as many welfare powers as are possible within the UK-wide system of Universal Credit. We also strongly recommend the use of financial memoranda as outlined earlier to enable the Scottish Government to recoup more of the benefit of any interventions reducing the extent to which Scottish people rely on benefits.

STUC supports the devolution of the Works Programme and Jobs Centre Plus to Scotland, allowing the creation of a Scottish Employment Service. Whilst the benefit levels underpinning the systems would endure, as would overall budget constraints, the ability to design back to work support in concert with currently devolved spending budgets such as health and education would be important. It is particularly important that workplace health, equality and decent employment are considered to be integral parts of back to work programmes and these could be more effectively pursued with enhanced devolution. Block grant flexibilities as discussed earlier, would allow a more strategic view to be taken across budgets to enhance the quality of labour market interventions.

**Additional welfare powers**

The partial devolution of welfare can be supplemented by additional powers providing that changes to the Scotland Act are agreed to allow the Scottish Parliament to adopt new Scottish legislation with a social security purpose; and further, to empower it to “top up” UK benefits with a supplementary Scottish rate through the universal credit using devolved Scottish revenues. This would invest in the Scottish Parliament the power to mitigate the impact of benefit cuts as it sees fit, but not to reduce the basic level of support offered through Universal Credit.

This highly persuasive proposal is discussed in detail by Andrew Tickell, Lecturer in Law, Glasgow Caledonian University and is part of a proposal he has submitted to the Commission (Securing greater Social Security autonomy and restating the Union: Submission to the Smith Commission). STUC recommends this approach to additional welfare powers in the strongest possible terms.

**Recommendation**
Section 7 Other powers

Immigration & Asylum

The STUC recognises that the continuation of the United Kingdom implies primary control by the Westminster parliament of immigration and asylum policy. Even with Scottish independence, the STUC foresaw difficulties with an entirely separate Scottish immigration system.

This notwithstanding, the STUC considers there is particular scope for the Scottish Government to pursue migration policies fitted to particular Scottish conditions and the views of its people. These are:

- The tendency for fewer EU and non-EU migrants to wish to come to Scotland compared to some regions of the UK
- The demographic challenges particular to Scotland – its ageing population
- A general (if often exaggerated) tolerance of inward migration amongst those living in Scotland.
- The desire evidenced by successive administrations in Scotland, of different political colours, for a more humane approach to refugees and asylum seekers and the existence of various devolved powers (including child protection) which has clashed in the past with reserved powers on immigration.

The current UK immigration legislation creates and has the powers to create a number of conditions for entry to the UK for EU and non-EU including residency requirements, proof of employer, spousal rights, the treatment of overseas students etc. The STUC believes that agreement should be reached to allow amendments to immigration legislation and, if necessary, the Scotland Act, to invoke a ‘presumption in favour of Scottish Government autonomy’ in which the Scottish Government would be able to direct immigration policy as it affects Scotland. The caveat would be the ability of the UK Government to override such legislation, but only in the case that it demonstrated clear detriment to the rUK in relation to identifiable and significant security or economic issues.

An example of where such a ‘presumption’ would be utilised is the decision of the current UK Government to revoke the Scottish Government ‘Fresh Talent’ initiative without, in the STUC’s view, the provision of objective evidence of detriment to the UK.
There are likely to be severe limitations to the Scottish Government’s ability to conduct an alternative Asylum and Refugee policy, as the ultimate outcome of offering asylum tends for some, to be UK citizenship. However, evidence from Glasgow suggests that once UK citizenship is achieved, new citizens tend to remain in the communities in which they have lived and imaginative approaches should be explored to allow the Scottish Government to offer asylum to particular ethnic groups or those suffering for reasons of war or other oppression.

The STUC does not see any reason why those in the process of seeking leave to remain or citizenship should not be allowed to work in Scotland following the criteria for a discreet approach to migration outlined earlier.

Recommendation

1.2 A presumption in favour of the right of Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

1.3 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

1.4 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

Energy policy

As reflected in our A Just Scotland reports, the STUC believes that energy policy at Scottish and UK level has failed - and is likely to continue to fail - to deliver on the three key social priorities of security of supply, emissions reduction and affordability.

The STUC also agrees with the Scottish Government’s view that ‘currently there is a complex landscape for energy policy across the UK’ and that the division of relevant responsibilities established by the original devolution settlement may not have assisted in delivering the priorities listed above. For instance, there can be little doubt that the regulatory regime has discriminated against Scottish generation; especially low carbon power generated around Scotland’s periphery.

Therefore the STUC is sympathetic to the Scottish Government’s call for Scotland to have a ‘formal role in network regulation and setting reliability standards, including planning, ownership and operation of energy infrastructure and fairer grid charges to ensure secure energy supplies’ and supports the full devolution of the regulation of energy efficiency and additional powers to support low carbon generation. These new powers must be used to build a new approach to energy policy which prioritises community ownership and effectively tackles fuel poverty.

However the STUC notes that the Scottish Government wishes Scotland to remain fully integrated into the UK energy market. The challenges of making a system with separate and distinct approaches to industry regulation work in practice must not be underestimated.
The STUC does not support devolution of the Oil and Gas Fiscal Regime.

Recommendation

1.5 The STUC supports devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

1.6 The STUC is supportive of Scotland playing a more formal role in industry regulation but recognises the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

Broadcasting

As reflected in earlier submissions to the Calman and Broadcasting Commissions, the STUC believes that the broadcasting industry has failed both to provide sufficient quality employment opportunities and to discharge its duty to strengthen and sustain Scotland’s democracy and culture due to low investment, failures of regulatory oversight and a lack of accountability.

The STUC and the Scottish Federation of Entertainment Unions have previously called for the regulatory system to be restructured to create a significantly enhanced role for the Scottish Parliament. It is essential that, for instance, the BBC Trust and Ofcom are much more accountable to the Scottish Parliament. Any additional powers devolved to Scotland as a result of the Smith Commission process must be designed and used to boost the accountability of broadcasting to Scottish citizens through their democratically elected representatives.

Recommendation

1.7 The STUC calls for the Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.
Summary

SCVO welcomes the opportunity to contribute to the Smith Commission. Within the time available, we have undertaken a wide ranging consultation and engagement exercise across the third sector. Our aim has been to involve as many organisations and capture as many views as possible but also to encourage organisations to make their own submissions to the Commission in order to reflect the diversity of interests in our sector. The quality of submissions we have received and the high level of debate and discussion that has taken place has been fantastic and shows the passion and desire in the sector for change based on often detailed experience from working with people and communities. Our members have made it clear to us that it is not good enough for the debate about the future governance of Scotland to be left in the hands of politicians and Party interests. The Commission must draw on the full breadth of experience in civil society when considering the further devolution of powers. It is also clear that consultation with civil society will not be sufficient to deliver the sense of collective ownership which will be necessary for an enduring agreement. This can only come through participative processes which directly involve the people of Scotland. The huge voter registration and extraordinary turnout on 18th September showed that, contrary to popular belief, the people of Scotland are not apathetic. Rather there is an appetite for debating what kind of Scotland people want to see. In debating Scotland’s future people have voiced their aspirations for not only themselves but for their communities and for our society. We must nurture such energy and enthusiasm and find mechanisms for ensuring the continued involvement of people in constitutional change and governance. In developing the devolution settlement it is vitally important that a wide range of different, non-party political perspectives are heard, appreciated and understood. SCVO therefore hopes its submission and the thousands of others the Commission has received from organisations and individuals across Scotland will set the tone and starting point for political discussion and help drive a progressive conclusion. The devolution of further powers to Holyrood ought to help bring about positive change and to improve our ability tackle some of the pressing challenges facing Scotland such as poverty and inequality. We sincerely hope that the work of this Commission and the forthcoming devolution settlement will enable us to do that. Key Principles and Themes The purpose of devolution is to bring power to where it is most appropriate and to help:

- reduce inequality and celebrate diversity
- promote social justice
- create a more inclusive society
- enable and empower people
- promote environmental and economic sustainability

The third sector is strongly of the view that any devolution settlement must be underpinned by a robust set of principles and hopes to see commitments from the political parties on the following themes:

- Ensure people’s views are central to the decision-making process. We need to build on the enthusiasm for participation in democracy that emerged during the referendum.
- Take decisions as closely as possible to people. Scottish political parties should commit to decentralising new and existing devolved powers even further to people and communities wherever possible.
- Commit to an on-going review of Scottish devolution. Devolution is not a one-off event - it is an evolving process. Regular reviews will identify areas for opportunity and improvement.
- Understand the need for coherent policy making. We must create joined-up policies which recognise the links between issues. We need policies that complement each other and act together purposefully and effectively.
- Acknowledge the interrelated nature of powers. A focus on specific powers and responsibilities puts us at risk of a piecemeal devolution of powers which will inhibit our ability bring about real change.
- Enable Scotland to design its own services, not just deliver them. The devolution of powers cannot be merely administrative. Responsibility without the power to effect change is tokenistic, inhibiting and undermining.
- Government at all levels should be responsible for raising the money it spends. The devolution of any new powers to Scotland ought to be accompanied by appropriate fiscal powers to ensure accountability.
- Improve the relationship between UK and Scotland. There is a clear need for better working relations
between the governments. UK Departments and Ministers must make more of an effort to appreciate the views and interests of the people of Scotland.

The Powers: What are we asking for? The specific powers we are calling to be devolved are:

- Welfare – excluding pensions
- Employability
- VAT relief schemes for charities
- Equality law
- The Crown Estate
- Consumer protection
- Energy
- Those aspects of employment law that directly affect devolved powers such as social care and childcare
- The operation of asylum support should be devolved to the Scottish Parliament
- Powers over the Misuse of Drugs Act
- Remaining powers over transport which are not currently devolved
- Powers over Scottish elections and democracy
- Powers to bring about consistency with Scottish charity regulation
- A portfolio of taxes so not place a disproportionate burden on one tax and taxpayer base to generate income

Conclusion

In order to bring about the changes we hope to see in Scotland, to tackle problems such as poverty and inequality, we need a substantial package of devolved powers. These powers cannot merely be administrative. To create solutions that work for Scotland we must be able to design not just deliver. The devolution of further powers cannot be a token gesture, designed to appease. This has to be a genuine transfer of responsibility, which enables Holyrood to strive for, and achieve, the best outcomes for those living in Scotland. The piecemeal devolution of powers will not deliver the change we aspire to and may well hinder, rather than help. In many cases devolving a power in isolation will probably cause more problems than it will solve due to the interconnected nature of policies and political systems. It could be considered futile to transfer the power over, for example, housing benefit as while it makes sense in regards to bringing a devolved power into alignment with its related benefit, its connection to other aspects of welfare would inhibit the ability of any government to use such a power to its full potential. Therefore acknowledging the connections between powers and the need for a coherent package is essential to achieving a mature devolution settlement. Regardless of what settlement is ultimately achieved as a result of the Commissions’ work, we need to foster better working relations between the UK Government and Scotland which recognises the differing circumstances and interests of the people of Scotland. Second, we ought to take this opportunity to reflect on how the powers already devolved have been used and consider how they could be used more effectively now and in the future. This Commission is just the beginning of the next chapter of Scottish devolution. The timetable for this current phase is short but the process of creating an enduring, settlement ought to be a marathon not a sprint. We should take the time, over the next year, next five years, ten years, to review and improve how devolution is working for the people of Scotland. Lastly, we must build on the participative culture which emerged during the referendum campaign. We cannot ignore the views and interests of Scotland’s people. It is imperative that any proposals for devolution are put to a people-led review before they are enacted.

Governance & Democracy

Ahead of discussion about particular powers and policy areas, SCVO considers it key that Scottish democracy and the governance of our country - regardless of what new powers may come it Holyrood in time – is underpinned by the following:

- The entrenchment of the powers of the Scottish Parliament is a necessary development for devolution which can provide added confidence in the parliament’s work and its future.
Devolution is not a singular event; rather it is an evolving process. Consequently, we believe there ought to be a periodic review of the Scottish devolution settlement to make sure that it is optimally designed for the governance of Scotland.

Power ought to be held at the most appropriate level, be this at UK level, Scottish Government, local government, by communities or by the individual. SCVO would like to see a commitment from the Scottish parties to review how more powers can be decentralised to where they are best suited and examine in particular how power can be transferred to people and communities of both place and interest.

It is necessary that people are at the centre of the constitutional debate. The enthusiasm and engagement of people in the referendum was extraordinary and it is vital to build upon this. We must ensure, therefore, that the opportunity people had during the referendum debate to discuss the nature of the Scottish constitutional settlement and the kind of Scotland they want to live in, is also offered to them once the Heads of Agreement has been made. Having been able to exercise their voices on the issue of independence it would be a mistake to exclude them from having their say on devolution. We propose a people-led process of review before any legislation is proposed. Nothing should be ruled out beforehand.

With the extension of the franchise in order to allow 16 and 17 year olds to vote in the referendum, Scotland’s young people demonstrated their maturity, ability and enthusiasm. It is important for the health of our democracy that the power to extend the franchise for all election is rested in the Scottish Parliament. This point is expanded upon later in this document.

Finally, the importance of transparency of and responsibility for decision making, including spending, at all levels of government is paramount. This must be considered when devolving powers to ensure relevant institutions can be held accountable.

Our ambition ought to include the creation of a thriving democracy with high levels of citizen participation, not just in elections but in governance more generally.

Welfare

Key Points:

- SCVO seeks the full devolution of welfare – excluding pensions. We consider that the interrelated nature of welfare with employability and other public services such as care means that should only be devolved in its entirety.

The devolution of powers and associated budgets that affect welfare support, either wholly or in part, has been the most widely discussed area for devolution by the third sector. Many third sector organisations provide a range of services which interact with the benefits system and wider welfare policies, as well as working closely with people who claim in and out of work benefits. In 2013, over 70% of third sector organisations had experienced a significant increase in demand for support as a result of benefits changes and cuts. Within the third sector there is support for the full devolution of welfare to the Scottish Parliament from a wide range of organisations who work with people affected by social welfare policy, such as Enable, Chest Heart & Stroke Scotland (CHSS), Scottish Youth Parliament and the Edinburgh Tenants’ Association. It is important to note that many organisations would still prefer pensions to be retained at the UK level. Many third sector organisations would like Scotland to be able to adopt a more co-ordinated approach to linking welfare to such interdependent areas as health and social care, housing, and childcare. Therefore, organisations for which there is a particular benefit, i.e. housing, that could be devolved in order to align itself with a devolved policy have discussed the possible transfer of power over these. A significant area of discussion has been around harmonising welfare and the powers Scotland has over employability and skills. The devolution of employability powers and related benefits is discussed in detail later in our submission. Yet, if Scotland is to have the coherent, harmonised welfare system to which many in the third sector aspire we need to appreciate the interrelated nature of our benefit system. For example, Carers Allowance interacts with a number of benefits including Personal Independence Payment and Disability Living Allowance. Consequently, devolving a particular benefit in isolation may, instead of bringing clarity create more alignment difficulties than we have at present. This is especially important to consider with the introduction of Universal Credit. Whilst recognising that there may be gains from aligning welfare benefits with devolved powers, there were concerns raised by some members including Inclusion Scotland, regarding the unforeseen consequences of detaching welfare powers from fiscal powers. If powers over elements of taxation such as income tax were to be
devolved in order to help cover demand-led benefits then further borrowing powers or other ways to smooth out uneven income and expenditure profiles need to be considered. Oxfam Scotland and the Scottish Disability Equality Forum (SDEF) both called for wellbeing to be the objective for the welfare system. They pointed out how an integrated health, welfare and housing system that is supported by initiatives like the Humankind Index can help achieve wellbeing.

**Employability**

**Key Points:**

- All powers over employability, and their accompanying benefits, ought to be devolved to the Scottish Parliament in order to enable the development of a coherent, integrated, approach to employment.

The third sector in Scotland delivers a range of support and employability services to help people in Scotland find and remain in work. Consequently, there is significant interest in the devolution of powers relating to employment and this has been reflected in the responses received by SCVO. Moreover, given the sector’s plentiful experience in this area, it is well placed understand the complexities and interrelated nature of employment with other issues, such welfare and equality which are currently reserved but also in devolved areas such as housing and health and social care. Both governments have responsibility for skills so the landscape is confused. Specific current employability programmes have been referenced by the sector as possible areas for devolution, most notably the Work Programme, mandatory activity. Work Choice and the Access to Work scheme have also been highlighted as possible schemes to be devolved with third sector organisations such as Scottish Association of Mental Health (SAMH), noting that it would be inappropriate to devolve the Work Programme alone. The reasoning behind the devolution of job support has primarily been around creating integrated employability services and the opportunity for developing and delivering more personalised and locally responsive support. The disconnect between UK and Scottish Government approaches in the area of employment has been recognised for some time. Due to the compromising effect the current split between reserved and devolved employability powers has ‘the full devolution of competence for job search and support to the Scottish Parliament to achieve the integration of service provision in the area of employability was recommended by the Christie Commission back in 2011. It ought to be noted that reference has also been made to the current operation and failings of UK Programmes and how by devolving these powers to the Scottish Parliament this could see the end to, for example, the sanctions regime. Furthermore the devolution of employability services would allow the Scottish Government to develop policies linking employability to areas such as housing, where an individual’s ability to find and sustain employment is key. Importantly, it has often been emphasised that the devolution of powers cannot be merely administrative. In order to create the integrated, coherent, whole government approach we desire to help people into work, Scotland must have the power to both design and deliver employability services. Administrative power over the Work Programme would not support this ambition. Following quite naturally from discussions about the devolution of employability has been the proposed devolution of Jobcentre offices and services and of those benefits currently paid to those seeking work or unable to work, such as Job Seekers Allowance (JSA) and Employment and Support Allowance (ESA). It has been considered inappropriate for Westminster to retain powers over job related benefits if the conditionality of their payment resides with schemes operated by the Scottish Parliament. The rational way forward is, we believe, to fully devolve adult benefits, Job Centres, the Work Programme and all associated programmes.

**Fiscal Accountability & Taxation**

**Key Points:**

- Government at all levels must be fiscally accountable. Any potential devolution of taxation must be across the portfolio of taxes and not place a disproportionate burden on one tax and taxpayer base to generate income.

The principle that any level of government ought to raise the money it spends, ensuring its fiscal accountability, is broadly supported by the third sector. Consequently, in many discussions about the devolution of further powers...
reference has been made to the ability for Holyrood to raise the related funds. However, to date the third sector has not explored what any financial settlement may look at, hence, many in the sector have expressed their feeling that they lack the expertise to assess the full impact that, for example, whole or partial devolution of income tax – which has been proposed by some of the parties - may have on the ability to finance policy in their area of interest. Nevertheless, some have noted that the devolution of income tax alone would place a disproportionate burden on a certain tax base. If the Scottish Government could only raise funds through income tax, it would in fact inhibit the ability of the government to generate income because a percentage of tax payers would be disadvantaged. It is considered that the devolution of a nominated percentage across a basket of different taxes would ensure an appropriate balance. This would allow any future government to pursue the more progressive, redistributive tax system to which the sector aspires, should the political will exist.

Charity Tax & Regulation

Key Points:

- SCVO supports the devolution of VAT relief schemes for charities.
- SCVO favours consistency with Scottish charity regulation and considers Scotland requires the relevant powers devolved in order to achieve this.

Charity Tax

The issue of charity tax is one where the third sector is able to speak with confidence. We consider that supporting charitable activity through the tax system is an important principle for any modern democratic society. Significantly, any tax reliefs for charity must go hand in hand with the powers over the taxes they are connected to. Charity tax relief is currently reserved to the UK level and deployed by the UK HMRC department. Some charity utility reliefs such as water rates, non-domestic rates and property transaction fees are already devolved. If income tax were to be devolved, as it proposed by some political parties, then powers over income tax reliefs for charitable donations which follow personal taxation must also be devolved to ensure consistency. This includes Gift Aid, Social Investment and Inheritance Tax reliefs. These reliefs would need to be devolved in full, giving Scotland the power to redesign the schemes and not just deliver the existing UK systems. In discussion with the UK Charity Tax Group, of which SCVO is a management committee member, there was recognition that Scotland should have the power to design a different, perhaps better scheme of charitable tax reliefs if it wishes. This could perhaps then inspire improvement and therefore better use of the schemes in other parts of the UK. The only parameter would be that as part of the European Union, any devolved personal tax relief scheme would also need to recognise and provide relief for donations from Scottish tax payers to charities in other EU member states as well as to the rest of the UK. VAT, including partial and zero-rates on certain products is subject to EU rules and therefore there is limited opportunity to devolve reliefs from the UK. However, many activities undertaken by charities are regarded as non-business and therefore, unlike most private businesses, the associated VAT costs must be absorbed by the charity. At present VAT rebate schemes are the only mechanism to offer relief and a number of charity relief schemes supporting academy schools, national museums and galleries and to a lesser extent air ambulances and mountain rescue are in operation at UK level. We believe that the devolution VAT relief schemes offers a real opportunity to better reflect Scotland's unique geography, demography, public service mix and national ambitions. Importantly, this approach would be consistent under EU rules so long as the Scottish schemes reflected State Aid rules.

Charity Regulation

If any organisation wants to be a charity in Scotland or to undertake substantial charitable activities in Scotland, they need to follow register with the Office of the Scottish Charity Regulator (OSCR) and Scottish charity law and regulation. This has been devolved since 1999, was codified in 2005 and in its implementation has followed a different trajectory to the rules governing charity law and regulation in England and Wales. This means it is possible, albeit unusual, for a charity in England and Wales to fail the charity test in Scotland, and therefore be prevented from carrying out charitable operations in Scotland. Many third sector organisations were involved directly in informing the scope and nature of the Scottish charity laws and regulations. It is evident that we need to give primacy to Scottish legislation when it comes to ensuring public trust in the charity brand in Scotland. One
complication is that the HMRC maintains its own rules on who it recognises for charitable purposes independently of any of the charity regulators including OSCR. However, the HMRC has, in practice aligned its approach with the laws and regulations that are maintained by the England and Wales Charity Commission. The clear implication is that if substantial income taxes are devolved to Scotland, then the third sector in Scotland would want to see the rules around charity recognition for tax purposes to be fully devolved to Holyrood. This would maintain the alignment between tax and charity, but would also further support alignment with charity status under Scottish law.

Regulation of fundraising is one area where there is debate within our sector. Some aspects of fundraising are devolved, for example, the regulations around street collections. However, fundraising standards are currently self-regulated through the UK Fundraising Standards Board. If fundraising standards were to be taken back for direct regulation by UK Government, then this would raise questions around the devolved competencies. Potentially, the HMRC would take an interest with respect to tax avoidance and its rules around ‘fit and proper’ persons running charity finances. In addition, the charity regulators, including in Scotland, would take an interest with respect to charity brand protection. Therefore, we favour consistency with Scottish charity regulation and consider we need the relevant powers devolved in order to achieve this. However, it must be recognised that some charities have an interest in maintaining UK-wide consistency for fundraising rules, in some cases to support cross-border fundraising.

**Equality**

**Key Points:**

- SCVO calls for the full devolution of equality law to better align equality with devolved policy areas such as housing, health, education, employment & justice, to account for the different demographics in Scotland and to build on the strong relationships which exist between equality organisations and the Scottish Parliament.

A number of submissions identified the need to create greater coherence between the devolved policy areas that are connected to equality law such as housing, health, education, employment and justice. The Equality Network has suggested that Scotland’s demographics are different from England and Wales and therefore we have distinct characteristics that require different responses. For example, Scotland includes rural local authority areas with small populations that have relatively small numbers of some groups sharing protected characteristics. It has also been noted by Engender and the Equality Network that Scotland has a strong equalities sector and therefore the ability to positively influence equality law would be improved by its devolution to the Scottish Parliament. Although the Equality and Human Rights Commission acts as the regulator for equalities in Scotland, and is responsible for all human rights issues related to reserved matters, it is not accountable to the Scottish Government or Parliament.

A power should be established to create a Scotland-specific equalities regulator, akin to the Equality Commission in Northern Ireland. Currently the Scottish Government and Parliament have the power to set out in secondary legislation the “specific equality duties” required of Scottish devolved public bodies. This is a very useful power, but it is limited because it is detail applied to the framework of the “general equality duty” on public bodies, set out in the Equality Act. Scotland has no power to amend the overall general equality duty that applies to the devolved public sector bodies in Scotland. Careful consideration needs to be given to the unintended consequences of devolving equality law, particularly in relation to employment law. Stonewall Scotland have stated in their submission that there is a risk of creating a two tier system if one is devolved without the other since this would only allow the Scottish Parliament to legislate on equality law only insofar as it did not relate to employment. On a practical level and as noted in our interim submission, the devolution of equalities would bring EHRC and SHRC into alignment and prevent the current confusion and disparity that arises from having two such organisations operating in parallel in Scotland reporting to different parliaments.

**Human Rights**

It has been noted that that there is now significant policy divergence between the Scottish and the UK Parliament’s on human rights as seen in the UK government proposals to replace the Human Rights Act 1998 with a UK Bill of Rights. In contrast the Scottish Parliament has consistently expressed its support for the Human Rights Act, the European Convention on Human Rights and Scotland’s National Action Plan for Human Rights (SNAP), a
partnership that has cross-party support and extensive commitment and backing from across Scottish civil society. Were it to be devolved power over human rights legislation would allow Scotland to show greater cognisance of the level of support for human rights based approaches in Scotland.

**Consumer Protection**

- SCVO calls for the devolution of consumer protection to Holyrood.

The devolution of powers over Consumer Protection as set out under section C7 of Schedule 5 of the Scotland Act 1998 has been raised by some within the sector. Discussions here have revolved around alignment and the power to promote citizens’ rights meaningfully. The devolution of the regulation of the sale and supply of goods and services to consumers, and guarantees in relation to such goods and services, would give Scotland the opportunity to simplify the current consumer protection framework, possibly by integrating some of the existing consumer institutions in Scotland. It would also give greater assurance to the right of redress.

**Employment Law**

**Key points:**

- SCVO calls for all aspects of employment law that directly affect devolved powers such as social care and childcare to be devolved.
- If Equality Law is devolved the appropriate employment laws would also have to be devolved in order to ensure there is no disparity.

Reference has been made to the devolution of employment law in its entirety, although in some instances the use of the term employment law has not been defined. Therefore, this has been inferred as encompassing all of those employment related acts currently reserved under section H1 of Schedule Five of the Scotland Act 1998. Specific references have been made to the devolution of the minimum wage, as highlighted by Nourish Scotland which suggested bringing this power into alignment with the Scottish Parliament’s authority over agricultural wages. The main argument behind the devolution of the power to set the minimum wage has been the potential for any Scottish Government to use the minimum wage as a means of tackling poverty (the Edinburgh Tenants Association made particular reference to using the Minimum Wage to tackle fuel poverty) and creating a more socially just society. If employment law were to be devolved it could be considered inconsistent to reserve the National Minimum Wage Act. Another area discussed under the scope of employment law has been the devolution of powers concerning maternity/paternity pay and parental/carer leave. Children in Scotland framed its argument for the devolution of these powers as part of creating an integrated and coherent approach to childcare, which while a devolved issue, interacts with reserved areas such as employment rights. Engender also raised the point that the power to determine the fees for accessing the Employment Tribunal Service in Scotland is reserved to Westminster and cited that introduction of fees to access the employment tribunal service in Scotland has resulted in a 75 per cent drop in sex discrimination cases. In order to ensure access to justice and to protect the rights of employees we would like to see the devolution of employment tribunals, including any powers to set any fees to be applied. As noted in the Equality Network response, some examples of changes to equality law that the Scottish Parliament might choose to make, if equality law were devolved, include: gender quotas for boards and political gender quotas, and other positive action measures, for example to address severe under-representation of minority ethnic people; recasting equal pay law, including for example allowing hypothetical comparators in equal pay cases and setting pay audit requirements; provision to deal with dual discrimination (for example, on grounds of race and gender together), with an appropriate comparator.

**Asylum**

**Key Points:**

- Asylum and the right to remain should remain reserved but the operation of asylum support should
be devolved to the Scottish Parliament

The overall sense is that the determination of asylum and the right to remain is likely to remain reserved; however, the operation of asylum support should be devolved. Under this system, as stated by the Scottish Refugee Council, the UK government would in effect ‘contract’ the Scottish Government to deliver accommodation, advocacy & advice and welfare to those asylum seekers located in Scotland. The latter is predicated upon the devolution of welfare to Scotland. The Scottish Refugee Council has also argued for the devolution of all reserved tribunals operating in Scotland including the Immigration and Asylum Tribunal. Its paper ‘Improving the Lives of Refugees in Scotland after the Referendum’ discussed the devolution of powers relating to the ability to execute ‘return and removal’ measures for people refused asylum and other aspects of immigration control such as the granting of temporary or permanent residence permits. British Red Cross pointed out the importance of an integrated welfare and support system for those fleeing persecution. They highlighted the experiences of refugees who face delays when moving from asylum seekers support to the mainstream benefits system. In the event of the devolution of welfare to the Scottish Parliament they call for this issue to be an immediate priority.

International development

Key Points:

- There needs to be a formalisation of the Scottish Government’s ability to operate an international aid programme

The devolution of international development assistance and co-operation powers has been discussed by international aid organisations in Scotland not least because of particular international relationships that have been established since devolution, for example, with Malawi. A number of international development groups have long campaigned for 0.7% of gross national income to be spent on international development. This has now been achieved. Whether power for international development rests at Scottish or UK level we hope this continues in the same vein. The Scottish Government has the flexibility to introduce International Development and Climate Justice Funds. This has had very positive benefits and is additional to UK Government international development spending. As noted in Oxfam's response, consideration should be given to formalising the Scottish Government’s ability to operate an international development programme. The use of any further powers devolved must take account of the potential impacts beyond Scotland, including climate change, to ensure a coherent approach to international development. For example, if tax powers are devolved every effort must be made to ensure tax avoidance and evasion does not disadvantage developing countries. NIDOS asked in their pre-referendum paper ‘Scotland’s Place in Building a Just World’ that the Scottish Government considers the impact on international development in all of its policies, regardless of the outcome of the referendum. Again the ability to create joined-up approaches is important, but we would also commend the idea that DFID could and should do more to engage with the people of Scotland on policies and priorities for their work.

Legislative Competence

Key Points:

- SCVO calls for the powers over Scottish elections to be devolved to allow the franchise to be extended to 16 and 17 years olds
- The sovereignty of the Scottish Parliament should be enshrined by removing the requirement for final assent on devolved laws by UK Parliament.

There is strong support from the third sector for the power over elections to be devolved to the Scottish Parliament. This would allow the franchise to be extended to 16 and 17 year olds - something which has been supported for a long time by the Scottish Youth Parliament, Young Scot, the ‘Votes at 16’ coalition members, and SCVO. Moreover, gaining control over the management of Scottish elections would also allow a more supportive approach to the campaigning activity undertaken by third sector organisations in the run up to elections than that currently enforced by the Electoral Commission through the Lobbying Act. More generally, there is also support for
entrenching the existence of the Scottish Parliament and the powers which are agreed. However, in the absence of a written constitution there are many questions over how this might be achieved. In their response Environment LINK has suggested that Scottish Ministers participating as part of UK delegations to the European Union and other international bodies and conventions should be properly defined in legislation, in order to ensure that Scottish interests are properly represented.

**Energy**

**Key Points:**

- The full devolution of energy to the Scottish Parliament would help align energy policy with devolved areas such as housing, energy efficiency and planning and address the current conflicting mix of devolved and reserved powers relating to energy

The devolution of powers over energy has been referred to in a number of different contexts such as tackling fuel poverty, the ability to meet climate change targets, and promotion of community energy/benefit. In relation to fuel poverty, respondents have commented on the opportunities to better align energy policies which are to a large extent reserved with measures which are currently in full or partly devolved. For example, winter fuel payment, cold weather payment and aspects of consumer protection law are currently reserved but energy efficiency initiatives are devolved. This leads to a lack of coherence or misalignment in the strategies adopted. There is a recognition of the economies of scale which apply with respect to energy generation and supply including renewables, however there may also be scope for greater devolution of the retail side of the energy market in order to better dovetail with Scottish Government programmes such as the energy assistance package, energy efficiency initiatives or planning policy. Environment LINK raised in their submission the possibility of devolving reserved areas such as energy licensing, generation and transmission and grid connectivity to create better policy alignment with planning which is currently devolved. Changeworks have advocated for devolution of energy policy to tackle climate change and fuel poverty and provide the renewable industry with greater confidence. They have identified the following weaknesses with the current approach:

- the Energy Company Obligation the methodology for calculating the carbon and cost savings are based on average English housing stock and climatic conditions
- there is no appropriate feed-in-tariff for hydro which is a real opportunity in Scotland but of limited viability in England and so is not supported.
- the simplification in tariff structure greatly limiting the options for householders with electric heating especially heat pumps.

Concerns have also been raised, especially by Friends of the Earth Scotland, about fracking and the UK Government’s position on removal of rights to object to fracking underneath homes. Planning consents for fracking ought to be entirely devolved.

**Transport**

**Key Points:**

- Devolving the remainder of transport to the Scottish Parliament would allow for the creation of more coherent policy making over transport issues

Although transport is ostensibly already a devolved matter certain powers such as control of the rail network remain reserved. The charity Living Streets (which campaigns for better consideration of the needs of pedestrians) has highlighted that the current settlement can cause confusion and inhibit the ability of the Scottish Government to create coherent transport policies. For example, despite Scotland’s independent justice system and the devolution of transport, road traffic offences remain a reserved issue. This has caused some uncertainty over which body is responsible for legislating on matters such as pavement parking. The devolution of all powers related to transport could resolve issues such as this. Another particular concern expressed by organisations which represent and work
with disabled people, such as Inclusion Scotland, relates to the reserved nature of public transport vehicles. The power to define access standards for buses, trains, taxis etc. remains reserved to Westminster, thereby limiting the ability of the Scottish Parliament to introduce initiatives to increase the accessibility of public transportation for disabled people. Given that transport is a devolved matter the retention of powers such as the above appears incongruous. Moreover, the full devolution all of transport powers would allow for the creation of more coherent policy making over transport issues. This, it has been argued by organisations such as Stop Climate Chaos Scotland (SCCS), could contribute to the development policies that would help Scotland achieve its climate change targets.

Justice

Key Points:

- Giving Scotland powers over the control of illegal drugs would allow Scotland to adopt a different approach to our particular substance abuse problems

There are concerns in the sector that the reservation of powers regarding illegal drugs prevent Scotland from creating a coherent response to its particular problems with the misuse of drugs. Addaction Scotland have called for legislation for illegal drugs to be wholly under the control of the Scottish Government as this could allow Scotland to move from the current criminal justice focus to adopt a health, social care and community approach.

The Crown Estate

Key Points:

- SCVO calls for the devolution of the Crown Estate to the Scottish Parliament to make it accountable to a democratic institution

The prospect of devolution of the Crown Estate has long been on the agenda in Scotland. Indeed, the devolution of the Crown Estate was recommended by the House of Commons Scottish Affairs Committee in its 2012 report on ‘The Crown Estate in Scotland’. The Committee stated that the devolution of the Crown Estate to Holyrood:

‘should be conditional upon an agreement between the Secretary of State for Scotland and the Scottish Government on how such a scheme of subsidiarity to local authority and local community levels should be implemented.’

The devolution of the Crown Estate to the Scottish Parliament was advocated by SCVO in its 2011 response the Scottish Affairs Committee inquiry. Community Land Scotland in its submission highlighted the need to align the strategy of the Scottish Parliament with that of the Crown Estate activity and improve the accountability of its management. Environment LINK also supports the devolution of the Crown Estate to enable greater protection of Scotland’s marine environment and to ensure sustainable development. The devolution of the Crown Estate is very much seen by the third sector as an interim measure until further devolution can take place to communities. Given the recommendation of the Committee but the lack of progress on this since 2012 the issue is still very much current.

Additional points for consideration

The following points have been made throughout discussions with the sector and we hope there is scope for their consideration in Lord Smith’s response.

- Powers need to be devolved further to communities. Decisions about people’s lives ought to be made by them or as near to them as possible. This has always been a strong message from our sector and it is in no way diminished by the prospect of more powers to Holyrood.
Regardless of any further devolution there is a clear need for better working relations between the UK Government, the Scottish Government, and local government. For example, the Scottish Refugee Council has raised the point that the UK Government should formally recognise Scottish authorities such the Scottish Legal Aid Board who exercise competence in areas which are integral to the delivery of an effective asylum decision making process. Similarly, the differing needs of urban and rural Scotland need to be better understood by the various administrations.

The importance of transparency and accountability, at all levels of government, has consistently been raised by the sector.

It has been raised several times that an alternative approach would be for the Smith Commission to go back to the original devolution principle and to re-examine Schedule 5 of the Scotland Act to determine those powers that Westminster should retain, with all others being resolved to Holyrood. The Scottish Parliament is a mature institution and has generally improved the stewardship of funds and the accountability of public services within its responsibilities. Further powers, as set out above, which improve the coherence and effectiveness of its functions would be a positive step forward for Scotland.

SCVO engagement activity

Despite the tight timescale SCVO has facilitated a number of discussions with third sector which have contributed to this response. A full list of attendees can be found in Annex B. They include:

- SCVO Policy Committee with observers from the Scottish Government and the Scotland Office, 25 people - 24 September 2014
- Dinner with 100 third sector Chief Executives, directors and senior staff - 24 September 2014
- Joint event hosted with Scottish Government Third sector Division, 12 people - 1 October 2014
- SCVO Roundtable on Smith, 17 people - 1 October 2014
- Policy Officers Network, 16 people - 21 October 2014
- Third sector employability forum, 80 people - 8 October 2014
- Lord Smith discussion event, 40 people - 26 October 2014

SCVO representatives also attended third sector Smith Commission focussed events in Stirling and Inverness.

Submissions Received


Constitution Roundtable - 1 October 2014
Lord Smith discussion event - 24 October 2014

Adam Lang, Shelter Scotland Alan Staff, Apex Scotland Amy Dalrymple, Alzheimer Scotland Andy Lee, Prince's Trust Scotland Angus Hardie, Scottish Community Alliance Bill Scott, Inclusion Scotland Carolyn Roberts, SAMH Claire Stevens, Voluntary Health Scotland Daniel Aldridge, Stonewall Scotland David Clark, Chest Heart and Stroke Scotland David McColgan, British Heart Foundation Scotland Derek Young, Age Scotland Ella Simpson, Edinburgh Voluntary Organisations' Council Fraser Kelly, Social Enterprise Scotland Gillian Wilson, NIDOS Gordon MacRae, Which? Graham Martin, SCVO Hamira Khan, Scottish Youth Parliament Helen Macneil, GCVS Ian Welsh, Health and Social Care Alliance Scotland Jamie Livingstone, Oxfam Scotland Jeanette Campbell, Citizens Advice Scotland

Jenny Bloomfield, SCVO Jim Sweeney, Youthlink Scotland John Brady, One Kind John Downie, SCVO John Paul Fitzpatrick, University of Strathclyde John Wilkes, Scottish Refugee Council Kate Wane, SCVO Kerry Reilly, YMCA Edinburgh Kim Atkinson, Scottish Sports Association Lily Greenan, Scottish Women's Aid Lynn Williams, SCVO Lynne Carr, Impact Arts Martin Tyson, OSCR Mary Taylor, SFHA Nicolas White, Breast Cancer Care Penny Brodie, Lead Scotland Rhona Cunningham, Fife Gingerbread Satwat Rehman, One Parent Families Scotland Simon Hodgson, Carers Scotland Susan Archibald, The Poverty Alliance Teresa Bray, Changeworks

Policy Officers Network - 21 October 2014

Alexa Morrison, RSPB Beth Reid, Crisis David McColgan, British Heart Foundation Derek Young, Age Scotland Duncan Thorp, Social Enterprise Scotland Emma Dore, Shelter Gareth Brown, Scottish Youth Parliament Heather Noller, Carers Janine McKenna, Scottish Churches Parliamentary Office Martin Docherty, Volunteer Scotland Mike Andrews, ASH Scotland Pauline Nolan, Inclusion Philippa Faulkner, HIV Scotland Rob Gowans, CAS Rosalind Greig, Inclusion Scotland

Dinner with Chief Executives – 24 September 2014


John Downie, SCVO John Ferguson, SCVO Kate Mavor, National Trust for Scotland Kate Wane, SCVO Katherine
Scottish Parliament’s Devolution (Further Powers) Committee
OPFS Submission to Evidence Session on Smith Commission Report.
12.1.15

1. Introduction
OPFS welcomes the opportunity to submit written evidence to the Scottish Parliament’s Devolution (Further Powers) Committee as part of its discussion on the Smith Commission Report. Our consultations with parents indicate that there is still great enthusiasm for the devolution of major, welfare, employability, employment, equality and fiscal powers.

The OPFS submission to the Smith Commission was based on focus group discussions with single parents and our experience as an organisation working with parents and children in local communities across Scotland. Our research shows that the areas in Scotland which have the highest levels of child poverty are also where high numbers of one parent families live – Glasgow, Lanarkshire, Fife and Dundee for example. It is those families living on the lowest incomes, facing the impact of Westminster austerity policies, suffering cuts to their benefits, and sometimes having to turn to foodbanks, who have told us they are desperate for change to help them escape poverty.

It is estimated that there are over 169,707 single parents in Scotland1. By 2033, the number of households containing one adult with children is projected to rise to 238,000 (24% to 38%)2. Over four in every 10 (43%) children in single parent families are poor, compared to just over two in 10 (22%) of children in couple families3. OPFS supports and enables lone parents to believe in themselves, to participate in our organisation, enter education, training or employment, and take up new opportunities. OPFS also delivers vital childcare services – allowing parents to work, learn, and take part in training. With local offices in Edinburgh, Dundee, Glasgow, Lanarkshire and Aberdeen, OPFS:

- Provides services to over 5,000 families and 12,000 children
- Is the biggest at home childcare provider in Scotland - allowing parents to take up training, education and paid work.
- Gives active support to 2,500 families and their children.
- Provides information and advice through its helpline to over 3,000 families.
- Gives one to one welfare rights & money advice to over 300 lone parents bringing financial gains of £850,000 to families
- Attracts almost 97,000 hits to its website - helping visitors find vital connections to services and valuable contacts
- Enables 1500 parents to enter training, education or employment.

2. Summary of OPFS Recommendations to Smith Commission
OPFS has a vision of a Scotland in which all families, without exception, can prosper from life’s opportunities. OPFS believes it is time for a social security system which prevents poverty, treats people with respect, and supports children to flourish and achieve their potential. However, alongside improvements in the benefits system, single parents need support from a transformation of childcare provision, access to training, education and sustainable

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1 Scotland’s Census 2011 - Table KS1075C - Lone parent households with dependent children
2 Household Projections for Scotland, National Records of Scotland, 2008
3 Households Below Average Income (HBAI) 1994/95-2011/12, Table 4.5db. DWP, 2013
employment paid at a living wage, as well as a framework of family friendly legislation and expanded leave benefits.

OPFS has been campaigning for many years, promoting policies that would support single parents to escape poverty and achieve a better future for themselves and their children. We are therefore keen to contribute to the discussion about extended powers, which would then enable policy options to transform a situation where too many families face poverty; whether the parent is in or out of paid work, and where some are forced to queue at foodbanks to feed their children.

In our submission we highlighted the following key areas:

2.1 Welfare Benefits
2.1.1 Scottish Parliament should have full powers over work age benefits, including Universal Credit, and the appropriate financial powers to make substantive policy changes with the aim of tackling child poverty and reducing inequality.

2.1.2 The Scottish Parliament should be fully financially compensated for ‘opting out’ of UK social security programmes.

2.1.3 The Scottish Parliament should be given additional powers to mitigate the impact of benefit cuts and welfare reform including additional powers to top up benefit levels.

2.2 Taxation
2.2.1 For Scotland to get the benefit of the better use of powers, it’s not only by lifting more people out of poverty, but by retaining tax takings through full fiscal powers. We believe that full powers to raise and organise taxation should be devolved to the Scottish Parliament

2.3. Childcare
2.3.1 There should be a correction in the balance between direct cash transfers to families, and funding direct provision of services to favour the latter.

2.3.2 Full control over taxation and benefits would enable the recognition that the ‘preschool’ (like the school) is a public service, which is supply funded mainly by taxation.

2.4. Employability /Welfare to Work /Training
2.4.1 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus.

2.4.2 Job Centre Plus should be fully devolved, including policy, design and delivery, under the control of the Scottish Parliament

2.5. Employment
2.5.1 The devolution of employment law, health and safety, trade union law and the minimum wage legislation. 
2.5.2 Increased powers of Scottish Parliament, to enable the implementation of the Scottish Government’s working group on welfare proposal of a series of above inflation rises, in order for the minimum-wage to reach the level of the Scottish Living Wage

2.6. Rights and Equalities
2.6.1 OPFS supports devolution of powers over equalities legislation - powers to legislate and regulate around equality.

3. Context
OPFS response to the Smith Commission Report focused on how its proposals relate to the above recommendations. Families headed by a Single Parent (92% women) are a high proportion of Scotland's population. Almost 2 in 5
Children are being brought up in single parent households and four in 10 live in poverty, so for OPFS this is a key driver of our policy response which is based on the following:

- The challenges and barriers facing single parent families.
- The key policy areas which can make a difference to children and their parents.

3.1 The challenges and barriers facing single parents

3.1.1 The facts about lone parents
- There are 169,707 single parents with 281,000 children in Scotland.
- By 2033, Lone Parent Households are set to rise to 238,000 (from 24% to 38%)
- Less than 2 per cent of lone parents are teenagers
- Over 92% of single parents are women
- The median age of lone parents is 38.1
- 59.2% of lone parents are in work in Scotland, up 14.5 percentage points since 1997

3.1.2 Single Parent Families and Poverty
- Around 4 in 10 (41 per cent) children in lone parent families are poor, compared to just over two in every 10 of children in couple families
- The poverty rate for one parent families where the parent works part time is 23% and 18% where the parent works full time

3.2 Key Policy Issues affecting Single Parents in Scotland

Single Parents are one of the groups targeted by the range of welfare to work reforms. The key issues for families are:

- High level of poverty amongst parents on benefit
- Increasing impact of benefit sanctions and food poverty
- Poor heath of both parents and children
- Low level of qualifications & training
- Lack of affordable, flexible, accessible, high quality childcare
- Financial insecurity in an out of employment
- High and increasing housing costs
- In work Poverty & Low pay-high turnover economy
- Work-family balance (combining care and paid employment)
- Place: Local opportunities and other area based factors

Single Parents have told us that many of the barriers and challenges they face while claiming benefit continue to face employed single parents. These barriers are interconnected and require a joined up, holistic policy response. Policies to enable this crucial interaction are important to eradicate child poverty, and support lone parents into sustainable employment. Our consultations with single parents have highlighted that, as they live their everyday life, they often find the impact of policies from Westminster & Holyrood are at odds with each other.

In particular, the implementation of harsh welfare reforms has cut across key policies of the Scottish Government. Welfare Reform fails to take sufficient account of the individual rights or interests of children, which is in contrast to an approach where the United Nations Convention on the Rights of the Child (UNCRC) lies at the heart of the government’s policy and practice.

4. Response to Smith Commission Report

Family policy is a cross cutting issue that is dispersed across several policy areas, such as education, health, social security, employment, social services and housing, and spans both devolved and reserved policy areas of the Scottish and UK Governments. A family’s access to resources is principally reliant on their earned income and/or state benefits. These are to a great extent affected by Westminster macro-policies in relation to the economy, employment, taxation and income redistribution. We were, therefore, disappointed that the Smith Commission
Recommendations stopped short of full devolution of welfare benefits and the NMW, which would have offered the opportunity to reform a broken system that leaves so many single parents and children in poverty.

The proposals for piecemeal devolution of powers means a lost opportunity to create a more integrated and holistic approach, with the capacity to be proactive and to deliver fundamental changes and greater social justice that so many people in Scotland want. Although we welcome the further welfare and employability provision which will be devolved, capping benefits to UK levels and retaining draconian benefit sanctions in effect keeps existing poverty and inequality traps for the most vulnerable in Scotland.

4.1. Welfare Benefits
Main Challenges
While Scotland already has control over small areas of welfare, the most important powers affecting the type of social security system we have in Scotland will continue to be under UK Government control. OPFS believes Scotland should use its welfare resources creatively and flexibly in conjunction with skills policy, the employability framework, childcare strategy and employment law. Job Centre Plus, the key agency delivery the benefits system, is showing signs of systemic failure. Staff are under pressure implementing a policy agenda which aims to "throw lone parents at the labour market", with no consideration of their unique status as sole carers and economic providers for their family.

Scotland needs to have a welfare system that acknowledges that single parents are already working hard bringing up their children, and should not be put under enormous pressure to take up paid work which is not compatible with family responsibilities. The majority of single parents do want to take up sustainable employment, working the hours and at times that enables them to meet their family commitments, and which doesn’t impact on their family’s wellbeing.

Response
The Smith Commission has recommended that a small number of benefits should be devolved (Attendance Allowance, Carer’s Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance, Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment, and Discretionary Housing Payments). All others will remain reserved. Powers to vary some of the practical arrangements around benefit delivery are welcome including: Universal Credit, including frequency of payments, paying housing elements directly to landlords, and varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents.

We believe it is crucial that new powers for the Scottish Parliament are used together with exiting powers to prevent, as well as ameliorate, child poverty. Whilst most benefits for families both in and out of work will remain reserved, powers over disability benefits and the ability to create and top up wider benefits creates opportunity to ensure financial support for families keeps pace with the cost of living.

New administrative powers over Universal Credit could be used to make certain that the main carers (mainly women) are paid directly, and that payment cycles are made in ways that help families budget. Powers over housing costs should enable the Scottish Government to ensure families get the support they need to retain their homes. However, the conditionality based sanctions regime, which OPFS opposes, will remain in place – an approach which punishes rather than supports single parents to escape poverty and achieve the best for their family.

On the proposed devolution of benefits for carers and disabled people, we agree with CPAG that the commitment that any new benefits must provide additional income and not result in reduction in entitlement to reserved benefits, which will be crucial to ensuring additional support is not lost through means-testing of carers’ and disabled peoples’ UK. It is also vital that the design and administration of new Scottish disability related benefits protects them as a key source of direct income, and that they are not lost to individuals through any potential pooling with social care budgets.

4.2. Tax raising powers
Main Challenges
Scotland is a very unequal society. Oxfam has highlighted that in Scotland the richest 10% of households have 900 times more wealth than the poorest 10%. An increasing number of single parents and their children live in poverty, with reducing benefit levels and low pay, rapidly rising prices, insecure jobs and benefit reforms. Too many single parents are going hungry and being forced to rely on food banks to feed their families.

Lower inequality reduces social problems. If people perceive there is vast inequality in society, it breeds resentment and increase the prevalence of crime, vandalism and general dissatisfaction.

**Response**

Control of full tax raising powers would have enabled political parties in Scotland to argue for a more redistributive tax system to reduce inequality and tackle child poverty. A more equal society means children can gain better opportunities. If children are brought up in poverty it affects their health and education.

However, although Smith recommended Scotland should get new powers to set the rates and bands of income tax, the tax itself is not to be devolved. We are also disappointed that inheritance tax is to remain reserved at UK level, as it has the potential to support the redistribution of wealth. Taxation of investment income, National Insurance, inheritance tax and capital gains tax will remain reserved to Westminster. The Scottish Parliament’s new power to vary income tax bands and rates in Scotland apply only to earned income, and not to income from savings and dividends.

The Scottish Government review of local government finances may have the potential to enable Scottish local authorities to raise more of their own revenues, and then the tax base could be broadened and made more progressive, and accountability for public spending improved.

### 4.3. Childcare

**Main Challenges**

Effective access to appropriate, affordable and high-quality childcare is not only key to enabling working parents to achieve the work-life balance that best suits their own circumstances and needs. It also makes a major contribution to improving gender equality and participation rates in the labour market - both essential to economic growth - and to ‘making work pay’. Conversely, a lack of access to such childcare creates a real barrier to work.

In Scotland, provision of any early learning and childcare service over and above the statutory minimum, as well as all out of school care provision, including holiday care schemes, is funded through a cocktail of parents’ contribution, childcare vouchers and tax credits. The latter two elements are reserved to Westminster and complicate effective service planning and undermine the potential to provide the best possible benefit to children and families.

**Response**

The few countries in the world that have achieved successful early years services, for example Denmark and Sweden, have done so by creating a comprehensive and fully integrated system which is based on a holistic view of the child and his or her needs, and is designed so that care, socialisation and learning together form a coherent whole.

Delivering a fundamental transformation of childcare will require a coherent long term vision, long term political commitment, and substantial investment.

We want to see the provision of childcare in Scotland transformed so that it becomes part of our infrastructure and is free or affordable, high quality and accessible to all.

**In terms of outcomes** we believe a transformed system should:

- Reduce socio-economic inequalities
- Reduce child poverty
- Improve outcomes for all children

OPFS argued in its submission that there should be an adjustment in the balance between direct cash transfers to families, and funding direct provision of services to favour the service provider and that full control over taxation and
benefits would enable the recognition that the ‘preschool’ (like the school) is a public service, which is supply funded mainly by taxation. We were disappointed that these levers will not be devolved.

We concur with JRF that it’s extraordinary that not a single mention of childcare is made in the Smith report, even though we know that this is an area which lacks a joined up approach across both governments. We agree that the Scottish Government should have the ability to vary childcare allowances via Universal Credit in the same way as plans for housing allowances. A more generous approach to childcare for low-income families is needed and Scotland could trial how to do that.

4.4. Employability /Welfare to Work /Training & Education
Main Challenges
Improved educational and training opportunities are key to enabling single parents to improve their employability, progress in work, and support their wider ambitions for themselves and their families.
Improving job retention is essential for the Government if it is to meet its objectives on child poverty and employment rate targets. Lone parents are entering jobs at the same rate as the average, but leave employment at about twice the rate. A 20 per cent reduction in lone parent exit rates from work would lift 44,000 children out of poverty.6

The Work Programme, the Coalition Government’s flagship welfare to work programme for benefit claimants, distinctive features include contracting out delivery to prime contractors in the private and third sectors, and a ‘Payment by Results’ funding model. Just one in 10 people have been helped back to work by the government’s £5 billion flagship scheme, leading to accusations that the programme is “worse than doing nothing”.
The Work Programme is still failing lone parents, and failing badly. The government missed every single one of its minimum targets and in nearly half the country, the Work Programme is literally worse than doing nothing.

We believe the Work Programme, as currently designed, is insufficient to tackle the problems faced by lone parents wishing to move into paid work. Single Parents have told us they wanted good, well resourced help and assistance with finding and moving into work. They do not need to be threatened with sanctions and would make use of services provided on a voluntary basis.
Scotland has a proven track record of delivering very successful voluntary welfare to work schemes delivered by voluntary sector / local authority partnerships such as ”Working for Families”, Big Lottery funded ”Making it Work” programmes and the SCVO Community Jobs Programme.

Response
OPFS supported the devolution of the Work Programme and Job Centre Plus to Scotland. We felt the ability to design back to work support in partnership with currently devolved spending budgets, such as health and education, would make services more joined up and with the capacity to be proactive.
We are pleased that devolution of employability programmes has been recommended. The current Work Programme, in particular, is not able to be adapted to meet the needs of single parent service users for a tailored service. However, we are very disappointed with the decision that conditionality and draconian sanctions will remain. We are not convinced that it will be compatible for the Scottish Government to be responsible for the operation of the Work Programme and be accountable for its performance, but that providers will be expected to apply the Westminster sanctions regime and implement cuts to already poverty level benefits.
Devolution may allow better links to be made with local area based employability initiatives, as well as economic development activity in Scotland. However, although the administration of the Work Programme is to be given to the Scottish Government, it will not have the power to link welfare, labour market and economic development policies together effectively.

4.5. Employment & Employment Law
Main Challenges.
Single Parents have told us that a job is no longer enough to pay the bills. We have also seen a rise in working poverty among single parent families in the last few years, with one in five children (22 percent) whose single parent works full-time living below the poverty line.

A lack of flexible jobs that pay a decent wage - combined with expensive childcare and rising bills - means many single parents say their finances are a constant struggle at best. For single parents, trying to break into the jobs market and inflexible working hours stop them from applying jobs, all or most of the time.

OPFS supported the Scottish Government’s Working Group on Welfare proposal of a series of above inflation rises, in order for the minimum-wage to reach the level of the Scottish Living Wage. Single Parents have told us they believe a Living Wage would reduce in-work poverty, as well as cutting the benefits bill by reducing the subsidy to employers paid through the tax credit system.

Response
We are disappointed that employment remains entirely reserved, including the power to set the minimum wage. We believe that this could have presented an opportunity for the Scottish Parliament to bring the Minimum Wage into line with the Living Wage.

4.6. Equalities Legislation
Main Challenges.
Research shows that 92% of single parent households are headed by single mothers:
- that women have a higher incidence of poverty than men;
- that their poverty is more severe than that of men;
- that there is a trend to greater poverty among women, particularly associated with rising rates of female headed households.

Single Mothers, as with women in general, face greater difficulties than men in gaining access to labour markets, credit, housing and basic services, and there are sometimes additional layers of discrimination against single mothers.

Response
OPFS was strongly in favour of devolving powers over Equalities legislation to the Scottish Parliament, therefore we are disappointed that only one shift of powers is recommended to enable gender quotas on the boards of public bodies. However, the lack of any additional devolution means that Scotland cannot make any amendments to anti-discrimination law, introduce mandatory equal pay audits, or change the fundamentals of the public sector equality duty.

Conclusion
Scotland’s economy, including the social security and taxation system, should be used as positive tools to support and promote policies and outcomes which prevent poverty, enable families to live with dignity and respect, to tackle inequality, and enable all to achieve their potential. Whilst tax and benefit levels remain reserved, other efforts which cut the cost of living for families still play an important role. These include, for example, Free School Meals and other assistance with the costs of education, affordable transport and housing, as well as measures to tackle food and fuel poverty. Many of these measures will also support those in ‘in work’ poverty.

Given the rising numbers in ‘in work’ poverty, the introduction of a Living Wage is essential, and the real barriers to employment should be the main focus of improving participation in the labour market - affordable, flexible childcare; access to training & education; family friendly employment conditions. Sanctions are causing increased poverty and hardship, and do nothing to address the real barriers that single parent’s face which would enable them to escape poverty. In order to develop a social security system which prevents poverty and treats all with dignity, we will need an entirely new approach.

In addition to effective programmes at an operational level, we need public policy tailored to support single parents to overcome the structural barriers and inequality they face, to enable them to achieve their potential. To:

- Challenge the effectiveness of a “Work First” approach which has replaced a “Human Capital” model of supporting single parents along the employability pathway.
- Support effective policies to challenge employment discrimination.
• Recognise that the majority of single parents are women and that the challenges they face are often gender-related.
• Support a transformation in early year’s services to enable all families to access the early education, childcare and out of school care they require.
• Support the Living Wage to become a legislative requirement.

The level of poverty faced by Lone Parents across different countries is remarkably different. Lone Parent poverty does not depend on the prevalence of one parent families, but on the type welfare state each country has.

- **The UK has an “Adult Worker Model”**. This policy approach is based on the view that all able adults should be in employment independent of the type of family. The UK has almost 1 in 4 families headed by a single parent and the second highest child poverty level in Europe.
- **The “Parent-Worker Model”**. Prevalent in Scandinavian countries, this approach recognises families are diverse and adults should be supported as workers and parents. These countries also have high numbers of one parent families but the lowest child poverty levels.

_The added challenges that lone parents face should be recognised through good quality childcare, family friendly employment opportunities and reasonable parental leave._

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Written Evidence on Smith Commission Proposals

1. Powers for a Purpose – Disabled People’s Priorities

1.1. Inclusion Scotland is a network of disabled peoples’ organisations (DPOs) and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those issues throughout Scotland.

1.2. As the national network organisation for DPOs, Inclusion Scotland has attempted to ensure that disabled people have been enabled to engage in the constitutional debate. Our normal practice would be to engage with disabled people, provide accessible information about the issue in question, gather their views and base our response on what they told us.

1.3. The timetable for the Smith Commission prevented us from completing this engagement prior to submitting our written submission to the Commission. Our submission therefore relied upon previous engagement activity and the resulting ‘Vision for an Inclusive Scotland’, published in advance of the Referendum.

1.4. Inclusion Scotland and partner organisations have now held two engagement events, one in Glasgow and one in Inverness. These were attended by over 100 disabled people. We have also received the views of over 100 more disabled people, through a members’ survey. We asked disabled people to discuss the powers that they would like to see devolved to Scotland. We also set the challenging task of deciding which powers constituted the top 3 priorities for devolution.

1.5. We found that those we consulted were keen to see more powers devolved to Scotland. There was unanimous agreement about this at our engagement events, and 91% of our survey respondents felt that more powers should be devolved. Overall the preference of our members was for ‘devo-max’, (i.e. essentially the devolution of all powers other than defence, foreign affairs and the constitution).

2. Welfare

2.1. Welfare powers featured as the biggest priority during our consultation. 87% of survey respondents wanted to see welfare devolved and 81% listed it as a priority

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1 Submission B00205 https://www.smith-commission.scot/resources/
2 http://www.inclusionscotland.org/documents/AVisionBooklet_000.pdf
3 Scottish Disability Equality Forum; Glasgow Disability Alliance, Glasgow Centre for Inclusive Living; and Scottish Campaign for a Fair Society
power for devolution. The devolution of disability and working age benefits was given the most priority with significantly less support for the devolution of pension benefits.

2.2. At present benefits policy is reserved to Westminster but benefits policy interacts with many other policy areas, including those devolved to the Scottish Parliament. For example, it can have an impact on: supporting people into employment; volunteering; serving on public bodies; housing; education; and transport (e.g. eligibility for concessionary travel). Unless welfare benefits policy is coordinated with other policies, barriers and traps which increase disabled people’s social and economic exclusion cannot be eliminated.

2.3. There is clear evidence that disabled people have been unfairly singled out for a disproportionate amount of the cuts to benefits. The cumulative impact of the benefit cuts on Scots disabled people’s incomes is staggering with an estimated total loss of over £1 billion a year by 2015. These cuts will drive tens of thousands of disabled people into poverty and deepen the poverty that many already experience.

2.4. The Expert Working Group on Welfare’s report on benefits in a future Scotland has many positive suggestions but much remains to be worked through with disabled people. However overall, there was a genuine sense of hope that the scope to design a Scottish welfare system would mean ensuring that disabled people have “enough money to live on, in or out of work” and would be “empower[ed] to lead active and productive lives”.

2.5. Therefore, Inclusion Scotland welcomes the Smith Commission proposals that the Scottish Parliament will have increased powers over benefits for disabled people. It is possible that the transfer of Disability Living Allowance and Personal Independence Payment to Scotland will allow the development of a more sympathetic and supportive PIP/DLA assessment regime. Over time it might even be possible, through working in co-production with disabled people, to reconfigure disability benefits with a new benefit being created from DLA, PIP and Attendance Allowance.

2.6. However disabled people’s key concerns on Welfare Reforms are - the transfer of DLA claimants to PIP and the delays in processing PIP claims; Work Capability Assessments and the delays and destitution resulting from ESA Mandatory Reconsiderations and the impact of benefit sanctions.

2.7. **DLA to PIP Transfer:** This week a UK Government Minister close to the Prime Minister stated that the full transfer of powers to the Scottish Parliament would not occur for another 3 years. By that time nearly all of the current recipients of DLA will have been assessed for and (if they retain entitlement) transferred to, Personal Independence Payments.

2.8. If DWP and Scottish Government projections are correct over 90,000 current recipients of DLA will have lost entitlement by 2017 including nearly half of those on the Upper Rate Mobility Component. In other words the damage will have already been done before the Scottish Parliament obtains the powers needed to protect disabled people.

2.9. In the meantime disabled people are experiencing extremely lengthy delays in receiving PIP assessments (without which they cannot be awarded benefit payments). The latest figures show that nearly half of PIP claims (excluding those

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*Quotations are from comments made at our engagement events.*
made by someone with a terminal illness) are still outstanding. Currently there are 245,000 new claimants and 46,600 DLA reassessment claimants still waiting for a decision on whether they will receive their benefit. Again these delays cannot be tackled by Scottish Government until powers have been transferred.

2.10. The transfer of DLA recipients to PIP is also supposed to result in savings of 20% of current DLA expenditure. If the cuts to DLA/PIP spending are implemented before devolution of these benefits, this will also restrict the flexibility of the Scottish Parliament in reconfiguring these benefits to improve the options for independent living available to disabled people.

Recommendation: Given all of the above Inclusion Scotland fully supports a moratorium on Scots disabled people being transferred from DLA to PIP until powers over DLA and PIP have been fully devolved to the Scottish Parliament.

2.11. **Work Capability Assessments & Mandatory Reconsiderations:** Although the Smith Commission states that “disability benefits” are being devolved to the Scottish Parliament one key disability benefit is not – Employment & Support Allowance. That means that the Work Capability Assessment regime will remain in place.

2.12. According to figures obtained through a Freedom of Information (FOI) request\(^5\) between August 2010 and June 2013 Atos found 158,300 benefit claimants fully fit for work after a Work Capability Assessment only for the DWP to reverse the decision on review. These figures are on top of over 100,000 ESA claimants who have had their Atos assessment overturned on appeal to an independent tribunal.

2.13. The Smith Commission proposals will do nothing to halt the impact of these assessments nor will they prevent the indeterminate, and very lengthy waits, that sick and disabled people are experiencing due to Mandatory Reconsiderations of their cases – during which time they receive no ESA whatsoever. Although the recommended time for Mandatory Reconsiderations is 2 weeks CAS report that sick and disabled people are waiting up to 6 months for their cases to be reconsidered.

2.14. **Sanctions:** DWP statistics show that the use of benefit sanctions is increasing and that disabled people are disproportionately impacted by this increase.\(^6\) Between 22 Oct. 2012, when the new sanctions regime for Job Seekers Allowance came into effect, and 30 June 2014, nearly 1.5 million sanctions were applied. Of these over 300,000 (21%) were applied against disabled people.

2.15. In Scotland, 132,074 sanctions were imposed suggesting that nearly 30,000 JSA sanctions were applied against disabled people in Scotland. A further 3,800 people in Scotland in the Work Related Activity Group for Employment Support Allowance (ESA) were sanctioned between Dec. 2012 and June 2014. Referral for sanctions can cause serious stress and hardship for disabled people, even if the sanction is eventually overturned.

2.16. **Partial Devolution of Welfare Powers:** Devolving some welfare powers to Scotland with others still reserved to the UK raises the risk of one system working against the other. The way that means-tested, disability, carers and passport benefits inter-act is

\(^5\) [http://www.mirror.co.uk/news/uk-news/atos-wrongly-assessed-thousands-sick3159343#ixzz2uovqYph8](http://www.mirror.co.uk/news/uk-news/atos-wrongly-assessed-thousands-sick3159343#ixzz2uovqYph8)

complex and can result in losses in one when gains are made in another. We note that the Smith Commission report states that any new benefits introduced by the Scottish Parliament “must provide additional income for the recipient and not result in automatic offsetting in their entitlement to other benefits”. However it does not state how this is to be achieved. There needs to be much more clarity about how this will work in practice.

2.17. For example, as benefit rules currently stand, any rise in Carers Allowance made by the Scottish Parliament would result in a subsequent pound-for-pound loss in Income Support/Universal Credit. As the rules, and budget, for means-tested benefits will continue to reside at Westminster how is the Scottish Parliament to influence budgetary decisions made there?

3. Taxation

3.1. Tax raising powers, or powers over business and the economy were also a priority during consultation. They were selected by 84% of survey respondents, with 77% listing them as a priority. During discussion this largely went hand-in-hand with welfare powers as people realised that independent fiscal powers are needed in order to support a truly independent welfare system – after all, “how can we talk about one power when they all connect?” Taxes people thought should be devolved included income tax, VAT and corporation tax.

3.2. There was more at stake however than just welfare – if Scotland has tax-raising powers, this creates the potential to improve, for example, the NHS, health and social care, and transport.

3.3. For example, Scotland spends £2.93bn on social care. As social care budgets have been squeezed, the focus has moved to meeting only critical and substantial need. This can prevent disabled people from going to work, getting an education and even from leaving their own home and participating in their community. It leads to illness and the indignity of having to be taken from your own home and community and cared for elsewhere.

3.4. In addition to managing demand through stricter criteria for people to receive social care, local authorities have increased the amount disabled people are charged to receive those services. Scottish Government figures show that over the last three years, care charges throughout Scotland have risen on average by 12%. Increases by some local authorities have been far more than that. Disabled people are being forced into poverty as charges for social care rise.

3.5. Disabled people agreed that substantially more fiscal powers were needed to create a fair and progressive tax system, and that more fiscal powers would improve the accountability of the Scottish Parliament for its policy decisions.

4. Employment Law & Employability

4.1. Although Inclusion Scotland welcomes the proposals to devolve employability schemes (such as the Work Programme and Work Choice) we have grave concerns that the UK Government is retaining control over conditionality and benefit sanctions. So although the Scottish Government will fund the Work Programme and be accountable for its performance, providers will still be expected to apply the UK
sanctions system run by the DWP. That means that a system which punishes disabled people for being workless will remain in place and continue to damage efforts to build the confidence that they need to enter the labour market or contribute to community life in other ways.

4.2. Support for the devolution of employment law was also high – 88% of survey respondents favoured this, and 71% listed it as a priority. Disabled people felt that this would help to deliver their right to suitable employment and give Scotland the ability to design a system of employment support which works for disabled people.

4.3. Only 44% of Scots disabled people of working age are in work compared to 80% of non-disabled people. This drops to 13% for people with learning disabilities. By age 19 young disabled people are three times as likely to not be in Education, Employment or Training (NEET) as their non-disabled peers.

4.4. Another possibility disabled people attributed to the devolution of employment law was the establishment of the living wage. It was pointed out that this would also mean that more people would be able to pay taxes and so there would also be a boost to the economy.

4.5. One major omission from the Smith Commission Report is whether Access to Work Scheme (AtW) is to be devolved or remain reserved. AtW can help pay for practical support and adaptations to support disabled people to start work or to stay in work if they acquire an impairment, or if an existing condition deteriorates. However, take-up of AtW in Scotland is low and it only supports a tiny proportion of working age disabled people (just over 2%) to access and maintain employment.

4.6. For every pound spent on Access to Work support the Treasury receives £1.60 in tax revenue. Investment in opening out the Access to Work programme could thus be self-financing and would also, over time, increase the number of workplaces accessible to disabled people. Better promotion of Access to Work to employers and to disabled people would also re-assure medium and small employers that assistance was available to employ disabled workers, thus overcoming a major attitudinal barrier.

4.7. Inclusion Scotland believes that disabled people in Scotland would benefit if the Access to Work Scheme was devolved so that a comprehensive joined-up approach to improving the employment opportunities for disabled people could be designed in coproduction with disabled people.

5. Equalities and Human Rights

5.1. Disabled people also told us that they wanted to see Equalities and Human Rights law devolved to Scotland. It was recognised that human rights are relevant to every single area of life. If they are embedded in society and policy, then disabled people are more likely to be able to participate and better social and political systems are more likely to follow. It was suggested by disabled people, that any new powers for Scotland should be looked at in the light of what powers would be needed to assist disabled people in achieving their full human rights.
6. Transport

6.1. Although much of Transport policy has been devolved to Holyrood key elements remain at Westminster. For example the powers to define access standards for buses, coaches, railway carriages and taxis are all retained by Westminster limiting Scottish Government initiatives to increase the accessibility of transport to disabled people.

7. Energy Regulation

7.1. Disabled people also proposed the devolution of energy regulation, and felt that this may create opportunities to overcome some of the difficulties disabled people experience with high fuel prices. Those who spend more time at home due to an impairment or health condition necessarily have higher fuel consumption, and some impairments require recharging powered machinery and higher use of a washing machine.

7.2. Energy Action Scotland recognises that older people, those with disabilities or long term illnesses which keep them at home, low income families with young children, and others on a low income are all especially at risk of fuel poverty, and that of the three main policy areas affecting fuel poverty, two of them ie household income and energy regulation, are matters reserved to the UK Government7.

8. Conclusion

8.1. Inclusion Scotland is disappointed that the Smith Commission proposals fail to address the key concerns and aspirations of disabled people, particularly in relation to powers on welfare and taxation. We tend to instead agree with the Joseph Rowntree Foundation that “…the Smith proposals land someway short of a great leap forward for poverty reduction in Scotland”8.

8.2. The proposals, as they stand, will also fail to prevent tens of thousands of Scottish disabled people losing benefit entitlements that reduce poverty and support their ability to live independently in the community. That we believe is also a breach of disabled people’s human rights under the UN Convention on the Rights of Disabled People. However we believe that opportunities still remain to design a fairer disability benefits system that promotes the right to Independent Living.9

8.3. Any further devolution of powers should occur in clusters which cross current policy “silo” areas and thus enable effective and efficient policy development. This is particularly for policies addressing disabled people’s needs where the policy clusters would need to be wide in order to address the interconnected barriers that they face.

7 http://www.eas.org.uk/key_issues_fuel_poverty.php
8 "Time for action: will the Smith Commission help reduce poverty?”, Jim McCormick advisor to the JRF, Holyrood Magazine, 24/12/14
9 Disabled people have defined Independent Living as: “Disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life”. Our Shared Vision of Independent Living In Scotland” 22 April 2013 http://www.scotland.gov.uk/Publications/2013/04/8699
8.4. However, to ensure that disabled people benefit from the new powers there will need to be a willingness amongst politicians and government to exercise these new powers. Even after the passage of the new legislation a great deal of policy work will need to be done in coproduction with disabled people. Inclusion Scotland looks forward to involving disabled people in that process.

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SUBMISSION TO THE DEVOLUTION (FURTHER POWERS) COMMITTEE FROM THE SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS (SFHA)

15th January 2015
1. Who We Are

1.1. SFHA exists to lead, represent and support housing associations and co-operatives throughout Scotland, in all their diversity. There were 160 Registered Social Landlords (RSLs) across Scotland at the start of 2014, mostly in the form of housing associations, large and small, urban and rural. Their housing provision ranges across general and specialist need with around 280,000 homes, and over 5,000 places in supported accommodation. They currently add to new supply of housing, mainly for rent to people in need and at rents below market levels. Associations also provide housing for sale, part sale and mid-market rent, reaching people and families that the private market doesn’t reach.

1.2. Housing associations and co-operatives operate and have strong roots in some of the most deprived communities of our country, providing housing which is safe, warm, dry and affordable. But their wider role goes far beyond bricks and mortar. Housing associations tackle inequality, for example alleviating fuel poverty through energy efficiency measures to new and existing homes, and renewable energy developments. They prevent expensive hospital and care solutions, by providing and promoting independent living with support at home for older, disabled and vulnerable people. They help tenants at times of need with food banks and financial inclusion services, and assist people to work their way out of poverty through employment and training projects. They build and support communities through various activities – creative arts, children and family projects, outdoor projects, providing venues for meetings and events. Housing associations serve as the anchor for services in their communities, adding value and vitality to those communities, wherever they are.

1.3. SFHA’s role is to assist and support housing associations and housing co-operatives across Scotland to meet a diverse range of housing need, to provide high quality genuinely affordable housing and to develop sustainable communities. To this end, we wish to see Scotland develop a well-functioning housing system that is able to make a significant and effective contribution to tackling poverty, inequality and deprivation across Scotland. Currently over 55% of all rental income of housing associations and co-operatives is sourced from Housing Benefit, making the changes proposed by the Smith Commission are vital to the interests of our members.

2. The Smith Commission and the Smith Agreement

2.1. The SFHA worked to engage with the Smith Commission throughout its deliberations in pursuit of a more coherent set of powers around housing. We provided a written submission, attended public meetings with Lord Smith, and gave evidence in person to the public plenary held by the Commission on 13th November.

2.2. In all our contributions to the Smith Commission the SFHA argued for the Scottish Parliament to have a further package of devolved powers encompassing all of the social security system (excluding pensions), borrowing and fiscal powers along with certain powers relating to energy supply to enable the Scottish Parliament to fund the policies that will deliver a well-functioning housing system. See Annex A.

2.3. The reason for this argument is that since devolution handed powers over housing to Holyrood, Housing Benefit has grown in significance across Great Britain as rents have risen, and as more and more tenants need support to pay rents. This has had the unintended consequence that the balance of control over housing funding has been shifting back towards Westminster. As Housing Benefit costs overall have risen, the annual value of rent support (reserved to Westminster) is almost twice the value of annual housing investment (devolved to the Scottish Parliament): see Annex B.
2.4. The Smith Agreement does not go as far as we – and many others - had proposed. However, it did recommend significant powers over elements of welfare, energy and fiscal powers that could have a significant impact on tenants and social landlords. The SFHA is on the Stakeholder Group set up by the Scotland Office to advise the Draft Clauses bill team. We are committed to engaging with the entire process that follows on from the Smith Agreement, to draft, pass and enact legislation giving new powers to Scotland.

3. Areas of Concern in the Drafting of the Act for Further Powers for Scotland

3.1. Annex C provides extracts of the Smith Agreement that SFHA views as vital to social housing and tackling poverty, and relates to the paragraphs below.

3.2. The aim of the SFHA is to see that the potential for positive change in issues affecting social housing, that we recognise in the Heads of Agreement, makes it through to the final Act. The new powers on varying the housing cost elements of Universal Credit do not mean the abolition of the ‘Bedroom Tax,’ but they could lead to it. The power to allow for rent to be paid directly to social landlords would be significant in tackling the financial difficulties that the Universal Credit system has already been creating in its pilot area in Scotland. The powers to ensure the Scottish Parliament has a role in regulating Ofgem and to give Holyrood control over Energy Company Obligations and the Warm Home Discount could make significant inroads into fuel poverty, which is as high as 71% in parts of Scotland. However, these powers need to be made real and then funding priority given by future Parliaments in Scotland.

3.3. Vital to the impact of the final legislation will be how “the power to vary” elements of Universal Credit is defined – see Annex C. SFHA is currently taking steps to clarify our position on this. The Devolution (Further Powers) Committee may wish to explore this in oral evidence.

3.4. A key concern for the SFHA is that in the layout of the Smith Agreement the powers to tackle some key issues – such as fuel poverty highlighted in Annex C – are spread between different areas of the document with no indication of their potential interconnection. As experts in housing and aspects of social security, we are concerned that connections that are obvious to us will not be so to others.

3.5. We would urge the Devolution (Further Powers) Committee to consider how the Draft Clauses and the later Bill can be worded to ensure that these links are highlighted and reinforced, so that these powers are not unintentionally weakened or lost through the redrafting and bargaining that are an inevitable part of the legislative process.

3.6. The proposed changes to welfare will increase the already complex mix of devolved and reserved powers that effect social housing, rather than creating a more streamlined system of housing and benefit. So the SFHA would add its voice to the many urgent calls for a much more structured and collaborative intergovernmental way of working between Holyrood and Westminster, and between the Scottish Government and Whitehall.
4. The inherent instability of Social Security and Housing Benefit System

4.1. There is an inherent instability in the current system. The SFHA does not regard the status quo as acceptable in terms of powers, on the basis that control over policy and administration of Housing Benefit needs to be able to align with the already devolved powers over housing policy and legal arrangements for housing in Scotland. The Smith Agreement recommendations do not achieve this, but create the opportunity to improve on the current arrangement. This opportunity must be taken.

4.2. Annex D outlines the logic of SFHA’s position on social security, housing benefit and the housing system.

4.3. As the Draft Clauses and then Bill are drawn up, giving detail to the recommendations of the Smith Commission on areas such as detriment, it is important to consider the example of devolution of social security on the parity principle in Northern Ireland. This does not serve as a useful prototype as it restricts freedom to make policy in line with local needs and circumstances. ¹ Northern Ireland has the powers outlined in paragraphs 44 and 45 of the Smith Agreement – see Annex C – but mostly elects not to use them, for reasons of cost due to the parity principle. Further devolution on this basis in Scotland would represent responsibility without power and would not represent a significant improvement on the status quo. (See Annex E for Housing Scotland article What will greater powers mean for benefits? Lessons from Northern Ireland)

4.4. In looking at the issue of ‘no detriment,’ it is also important to consider that any new system must not just be of no detriment to governments, it should be of no detriment to users. This is a particular issue in terms of transitions between benefit systems. SFHA has led a call from Civic Scotland for the suspension of the roll-out of Universal Credit in Scotland, pending further devolution – see Annex F. Any new system must be better than the one it replaces.

4.5. Key to that is improved intergovernmental working – a key recommendation of the Smith Agreement. We would reinforce the recommendation of the Commission to develop a framework for liaison between Westminster and Holyrood to ensure much more efficient, collaborative and effective working.

4.6. Housing Benefit will cease to exist as and when Universal Credit is fully rolled out in Scotland, and so it will be essential for new legislation to take into account how the proposed powers will affect people on Housing Benefit AND during and after their transition to Universal Credit.

Fiscal and Borrowing Powers

4.7. The Scotland Act 2012 granted the Scottish Parliament a significant range of fiscal powers in respect of some land taxes, setting a Scottish rate of income tax, and extended borrowing powers. The Act also gave the Scottish Parliament the power for existing UK-wide taxes to be devolved and/or new taxes to be created using the order-making process in both the UK and Scottish Parliaments.

4.8. We encourage the bill leads to consider recommendations in a report for IPPR in respect of placing the entitlement to a block grant, the fundamental principles concerning its calculation and the arrangements for changing it onto a statutory footing. The Commission could usefully recommend arrangements to ensure that it is beyond the authority of the UK Government to alter the block grant distribution unilaterally. As the IPPR report states, “The UK is exceptional in conferring limited revenue-raising capacity on its devolved Governments, although their spending responsibilities are at least as extensive as those of state or regional – level Governments in many federal systems.”²
4.9. SFHA also welcomes the recommendation that borrowing powers are increased, and would argue that the Draft Clauses should give maximum powers in this area, to provide further levers with which to balance priorities with resources. The Scotland Act has recently increased the cap on borrowing by the Scottish Government to £500 million. For purposes of comparison this is only slightly more than the annual value of public investment in housing and significantly less than the combined borrowing capacity of the SFHA’s members. This is insufficient for the country to be able to effectively manage new powers. The ability for the Scottish Parliament to make genuine long-term strategic decisions in line with current devolved powers is compromised by the lack of flexibility with respect to borrowing for capital investment.

Energy and fuel poverty

4.10. In order to be able to tackle fuel poverty effectively, and to ensure tenants can afford to heat their homes, the Scottish Parliament also needs powers relating to the regulation of energy supply. Fuel poverty is an especially acute problem in remote and rural parts of Scotland, from Dumfries and Galloway to the Highlands and Islands. For example, in the Western Isles a shocking 71% of households are affected by fuel poverty.iii Two issues need to be addressed as a matter of urgency:

- Inequitable and excessive energy unit prices in remote and rural Scotland;
- Limited Energy Company Obligation (ECO) funding coming into remote rural areas and the need for new and much better focused initiatives to tackle problems of hard to heat and hard to treat homes.

4.11. It is therefore our view that the Scottish Parliament should have:

- Power to shape, direct and co-ordinate ECO activities in Scotland, given the specific challenges of the Scottish climate, rurality issues such as the number of properties that are off the gas grid and the incidence of hard to treat properties that require more expensive solutions than the current ECO arrangements permit;
- Effective powers in order to ensure the equitable pricing of energy supply across Scotland, wherever the customer lives.
5. Concluding Comments

5.1. It is essential to the SFHA’s role to represent the experience of our members, of tenants and social landlords throughout the entire process of devolving further powers to Scotland, as its impact on their lives and work cannot be overstated. We are keen to engage with The Scottish Parliament, The Scottish Government, and the UK Government, through the Scotland Office, to help channel the experience and expertise of the social housing sector into the future stages of drafting and passing legislation on further powers.

5.2. While the process of legislating for new powers takes place, SFHA believes it is imperative that the planned accelerated roll-out of Universal Credit is suspended in Scotland, pending legislation of further powers for Holyrood.

5.3. We urge the Devolution (Further Powers) Committee to consider our case for how to ensure the powers recommended in the Smith Agreement are enacted in a way that enables Scotland to be better placed to make a significant contribution to tackling a range of social and economic issues, including deprivation, poverty, fuel poverty and unemployment. The current settlement continues to present conflicts with reserved powers that restrict the Scottish Parliament’s ability to develop a coherent and co-ordinated policy response to these issues. The new powers must improve on that.

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ANNEXES:
Annex A – Table of Existing and Potential Powers  
Annex B – Housing Investment versus Housing Benefit Expenditure graphic  
Annex C – Excerpts of the Smith Agreement  
Annex D – The Logic of SFHA’s Position on the Social Housing System  
Annex E – Article on Lessons from Northern Ireland  
Annex F – Letter to Iain Duncan Smith from Civic Scotland re Universal Credit

END NOTES


Annex A: Existing and Potential Devolved Powers

<table>
<thead>
<tr>
<th>Category</th>
<th>Existing Powers</th>
<th>Potential Additional Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security</td>
<td>Scottish Welfare Fund</td>
<td>Housing Benefit</td>
</tr>
<tr>
<td></td>
<td>Power to raise the cap on DHP expenditure</td>
<td>All other powers relating to social security, except pensions (this includes Child Benefit, Income Support, Attendance Allowance, Job Seekers' Allowance, Disability Living Allowance/ Personal Independence Payment, Carer's Allowance, Employment and Support Allowance). Also, powers relating to Working Tax Credits, Child Tax Credits and the Minimum Wage.</td>
</tr>
<tr>
<td></td>
<td>forthcoming via a Section 30 Order</td>
<td>Establish a coherent, co-ordinated approach to housing, health and social care and employment</td>
</tr>
<tr>
<td></td>
<td>Council Tax Benefit (from April 2013)</td>
<td>Establish coherent national welfare and employment policy that has effective connection with Scottish housing system.</td>
</tr>
<tr>
<td>Fiscal</td>
<td>Land and Buildings Transaction Tax (effective from April 2015)</td>
<td>Income tax – power to set rates, bands, reliefs and personal allowances</td>
</tr>
<tr>
<td></td>
<td>Landfill Tax (effective from April 2015)</td>
<td>Powers over property and land related taxation, e.g. inheritance tax, capital gains tax</td>
</tr>
<tr>
<td></td>
<td>Scottish rate of Income tax (with no upper lower limit) – to apply equally to all of the reduced main UK income tax rates.</td>
<td>Assignation of a share of Corporation Tax revenue</td>
</tr>
</tbody>
</table>

SFHA SUBMISSION TO THE DEVOLUTION (FURTHER POWERS) COMMITTEE
## Annex A: Existing and Potential Devolved Powers

<table>
<thead>
<tr>
<th>Event Type</th>
<th>Description</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>From April 2015, current borrowing powers of up to £500 million will be extended and a new Scottish cash reserve will be created to help manage the new tax receipts.</td>
<td>Assignation of a share of VAT revenue</td>
<td>To add to the fiscal levers that will be needed to manage risk and raise funds</td>
</tr>
<tr>
<td>From April 2015, there will be a new £2.2 billion capital borrowing power for the Scottish Parliament, with a limited version of the power in place from April 2013 to allow the Scottish government to fund £100 million of pre-payments for the Forth Road Crossing.</td>
<td>Freedom to make borrowing decisions</td>
<td>To add to the fiscal levers that will be needed to manage risk and raise funds</td>
</tr>
<tr>
<td>Power for existing UK-wide taxes to be devolved and/or new taxes to be created using the order-making process in both the UK and Scottish Parliament (from May 2012 but not used to this date)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Energy</strong></td>
<td>Managing the Renewables Obligation in Scotland</td>
<td>Power to shape, direct and co-ordinate Energy Company Obligation activities</td>
</tr>
<tr>
<td>Consents for power stations &gt;50 MW onshore and &gt;1 MW offshore</td>
<td>Effective powers in in relation to the pricing of energy supply</td>
<td>To address the excess unit cost prices in remote and rural Scotland</td>
</tr>
</tbody>
</table>
Prior to devolution in 1998, Housing Benefit costs were less than investment in housing. But since devolution Housing Benefit costs have risen to the point where the annual value of rent support (reserved to Westminster) is almost twice the value of annual housing investment (devolved to the Scottish Parliament). According to the Institute of Fiscal Studies, the lack of alignment in powers (and policies) means that capital investment by the Scottish Government accrues to the Westminster Government in the form of lower Housing Benefit payments.

SFHA SUBMISSION TO THE DEVOLUTION (FURTHER POWERS) COMMITTEE
Annex C – Extracts of the Smith Agreement that are Key to Social Housing

**On welfare**, the sections that we see key potential for social housing and poverty issues affecting tenants in Smith Agreement Paragraphs 19, 43 – 49, 94-95-5:

**Heads of Agreement: Introduction**

19. Where the agreement provides that powers or competence in relation to a matter will be devolved, this is intended to mean a transfer of full legislative competence to the Scottish Parliament along with that of the associated executive competence to the Scottish Government. Where the agreement states that administrative powers should be devolved, only executive competence is intended to be transferred.

**Universal Credit**

43. Universal Credit (UC) will remain a reserved benefit administered and delivered by the Department for Work and Pensions (DWP). Within this framework, the Scottish Parliament will have the powers outlined in paragraphs 44 to 45 in relation to UC.

44. The Scottish Government will be given the administrative power to change the frequency of UC payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland.

45. The Scottish Parliament will have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents.

46. The power to vary the remaining elements of UC and the earnings taper will remain reserved. Conditionality and sanctions within UC will remain reserved.

47. Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 will be met by the Scottish Government.

**Benefits devolved outside Universal Credit**

49. Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:

(1) Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer’s Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance.

(2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment.

**Scotland’s Fiscal Framework**

94. The devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.

95. Scotland’s fiscal framework encompasses a number of elements including the funding of the Scottish budget, planning, management and scrutiny of public revenues and spending, the manner in which the block grant is adjusted to accommodate further devolution, the operation of borrowing powers and cash reserve, fiscal rules, and independent fiscal institutions. The parties agree that the Scottish and UK Governments should incorporate the following aspects into Scotland’s fiscal and funding framework.

(5) Borrowing Powers: to reflect the additional economic risks, including volatility of tax revenues, that the Scottish Government will have to manage when further financial responsibilities are devolved, Scotland’s fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework. The Scottish Government should also have sufficient borrowing powers to support capital investment, consistent with a sustainable overall UK fiscal framework. The Scottish and UK Governments should consider the merits of undertaking such capital borrowing via a prudential borrowing regime consistent with a sustainable overall UK framework.
(a) The Scottish Government’s borrowing powers should be agreed by the Scottish and UK Governments, and their operation should be kept under review in conjunction with agreement on the mechanism to adjust the block grant to accommodate the transfer of taxation and spending powers. The Smith Commission Heads of Agreement: Pillar 3 27
(b) Borrowing powers should be set within an overall Scottish fiscal framework and subject to fiscal rules agreed by the Scottish and UK Governments based on clear economic principles, supporting evidence and thorough assessment of the relevant economic situation.

On energy the SFHA sees the potential of powers set out in three different sections of the Heads of Agreement that together could create the power to tackle fuel poverty. These powers are outlined in paragraphs 41, 49-2, and 68:

**Energy Market Regulation and Renewables**

41. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which OFGEM must have due regard. OFGEM will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

**Benefits devolved outside Universal Credit**

49. Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:

   (2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment.

**Energy Efficiency and Fuel Poverty**

68. Powers to determine how supplier obligations in relation to energy efficiency and fuel poverty, such as the Energy Company Obligation and Warm Home Discount, are designed and implemented in Scotland will be devolved. Responsibility for setting the way the money is raised (the scale, costs and apportionment of the obligations as well as the obligated parties) will remain reserved. This provision will be implemented in a way that is not to the detriment of the rest of the UK or to the UK’s international obligations and commitments on energy efficiency and climate change.
Annex D – The Logic of SFHA’s Position on Social Housing System

1.1. On the basis of the best available figures, over 55% of all rental income of housing associations and co-operatives is sourced from Housing Benefit. The majority of tenants are eligible for rent support currently in the form of Housing Benefit. Almost all tenants mandate Housing Benefit payments received from DWP direct to their landlord. This funds associations’ rental income, which in turn funds the repayment of capital borrowing (existing and new), management services and repairs and maintenance necessary to meet modern energy efficiency standards, which in turn helps to address fuel poverty. Housing legislation and strategy in Scotland has been governed by the Scottish Parliament since 1998, when housing policy was formally devolved, with the notable exception of Housing Benefit which remains controlled from Westminster and has grown in significance.

1.2. For SFHA and its members the future of rent support for tenants, in the form of Housing Benefit, is therefore an issue of the utmost strategic importance, underpinning the annual financing of 11% of all housing in Scotland. Tenants understand this and share our concerns around the current devolution of housing, and the further complexities that could be created with the devolution of further powers, as recommended in the Smith Agreement.

1.3. Since devolution handed powers over housing to Holyrood, Housing Benefit has grown in significance across Great Britain as rents have risen, and as more and more tenants need support to pay rents. This has the unintended consequence that the balance of control over housing funding has been shifting back towards Westminster. As Housing Benefit costs overall have risen, the annual value of rent support (reserved to Westminster) is almost twice the value of annual housing investment (devolved to the Scottish Parliament): see Annex B.

1.4. According to the Institute of Fiscal Studies, the lack of alignment in powers (and policies) means that the beneficial effects of capital investment by the Scottish Government accrue to the Westminster Government in the form of lower Housing Benefit payments. The converse situation could also apply where less capital investment in affordable housing by the Scottish Government pushes up the Westminster Government’s Housing Benefit expenditure.\(^1\) We are keen to see an allocation of powers which allows coherent, coordinated policy positions to be adopted around housing issues within the same jurisdiction.

1.5. SFHA has argued for devolution of Housing Benefit since housing was first proposed to be formally devolved to the new Scottish Parliament, and while Housing Benefit was a relatively small budget. That position was confirmed in our response to the Calman Commission in 2009. Calman recommended that the UK Government should consult the Scottish Government if it was proposing changes to Housing Benefit. This was not adopted by the UK Government\(^2\) and the practice around the reform of welfare has not honoured the principle of consultation.

1.6. The coalition Government’s proposals in 2010 which became the Welfare Reform Act,\(^3\) cut across the powers on housing devolved to the Scottish Parliament. The only concession to concerns in the Scottish Parliament about welfare reform have been moves, coming into effect 6th November 2014, to permit the Scottish Parliament to raise the cap on mitigation funding for those adversely affected by the changes.

1.7. We reviewed our position in 2012, co-commissioning research from Professors Gibb and Stephens, who concluded in 2012 that devolving Housing Benefit on its own would not be safe because of the interconnections with other areas of welfare and social policy.\(^4\) At that time it was argued that social security needed to be devolved in its entirety. We note that this has become the position of the Scottish Government.
1.8. More recently the IPPR has published proposals which suggest that social security should not be devolved in full and that HB should be devolved on its own. This resonates with proposals from Labour and the Conservatives which the Commission is considering, and with which we disagree.

1.9. On the basis of due consideration of the arguments above, the SFHA argued to the Smith Commission in favour of devolving social security to the Scottish Parliament. This would have allowed the Scottish Parliament to exercise full authority over budgets, priorities, systems in line with the legal framework of tenancy rights, best use of stock, demand, and related to local strategies in relation to fuel poverty, regeneration and investment. Full devolution would have meant that those who need support from social security would benefit from an aligned system with single administration of a range of benefits that intersect.

1.10. We and our members are committed to making the best use of the systems and powers in use.

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ii The Calman Commission’s Recommendation 5.19 stated that “There should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing Benefit and Council Tax Benefit systems (as they apply in Scotland) when these are connected to devolved policy changes, and for the UK Government – if it agrees – to make those changes by suitable regulation.”


What will greater powers mean? Lessons from Northern Ireland

JOHN MCPEAKE, former Chief Executive
Northern Ireland Housing Executive

Unlike in Scotland and Wales, in Northern Ireland, social security is a transferred matter. Under the Northern Ireland Act 1998, responsibility for most social security, child support and pensions matters transferred to the Northern Ireland Executive. In the context of Westminster’s ‘vow’ to provide Scotland with greater devolved powers, it is tempting to look to Northern Ireland for potential insights. Perhaps the most important insight is that having delegated powers is one thing; using them is quite another.

In Northern Ireland, the parity issue has been and remains a major stumbling block. Notwithstanding the delegation of powers, the Belfast Agreement recognises that social security is a devolved area where parity is “normally maintained.” And the Concordat Between the Department for Work and Pensions and the Department for Social Development makes clear that should the Northern Ireland Executive decide to depart from parity, it must inform DWP in order that the consequences can be assessed. The financial consequences would likely feature strongly in such an assessment which itself would be conducted in line with Treasury Guidance. Herein lies the rub.

Although social security is a transferred matter, HM Treasury guidance makes clear that any changes which would increase Annually Managed Expenditure (AME) would require prior approval. The working assumption in Northern Ireland is that any increased AME would have to be met from savings in other AME areas and/or from within existing Department Expenditure Limits. On the other side of the coin, there is a concern that, if by design or good fortune, a revised Northern Ireland welfare arrangement proved less costly than the current arrangement, the savings may be clawed back as opposed to being retained within the Northern Ireland block. Such concerns are likely to generate inertia rather than innovation.

The recent comment from former Minister for Social Development Nelson McCausland underpins this position:

“fundamentally, the agreement that Northern Ireland social security spending is funded direct from the Treasury is that Northern Ireland spending will be met only if we maintain the same systems.”

Collectively, such matters have been central to the stalled introduction of large elements of the welfare reform programme in Northern Ireland, and the frustration at Westminster is palpable. True, Northern Ireland has negotiated significant operational concessions, including maintaining direct rent payment to the landlord, split payments within the household and payments on a two-weekly basis.

But despite this, the Welfare Reform Bill remains stalled - the Northern Ireland Executive is currently being fined some £7 million per month for its failure to enact the legislation. The fine relates principally to the loss of ‘savings’ anticipated through the introduction of Personal Independence Payments and Employment Support Allowance. But there are many other elements of the welfare reform agenda that are not yet in operation in Northern Ireland, including the hugely unpopular ‘bedroom tax’, and the fear is that the financial penalties are likely to increase. Indeed, Northern Ireland’s First Minister Peter Robinson has raised the spectre of a reduction in the Northern Ireland block of £1 billion because of the failure to fully implement the welfare reform agenda. The dispute between the two main political parties over welfare reform is deeply
mean for benefits?

It’s difficult to reform benefits at the best of times. If the amount of money going in stays the same, then someone can be made better off only if someone else is worse off. That means that the only way to reform benefits is to spend more; anything else, and some people will suffer.

Many of the promises made in Scotland’s Future hemmed the Scottish Government in. The document committed it to keeping pensions, Housing Benefit and disability benefits and tax credits and uprating them with inflation. Taken together, that is most of the cost of the benefit system. The White Paper signed up to some of the excesses of the current programme of welfare reform – conditionality, even if it was going to be kinder and gentler than sanctions are now, and linking benefits with “programmes designed to help people find work”. And then the Scottish Government committed itself to respecting all of the established rights of existing pensioners - a pledge which would have locked up parts of the pension system for the best part of a century.

Now that independence is not happening, the Scottish Government has an opportunity to rethink its priorities. The ‘vow’ that has been made by the Westminster parties does seem to offer Scotland the prospect of more powers over tax and ‘welfare’. It’s not clear what the new powers will be, but the most likely candidates for devolution - identified in an IPPR paper on Devo More and Welfare - are Housing Benefit, Attendance Allowance and the Work Programme. The Work Programme is an obvious choice - local employment initiatives should be locally managed and integrated with other services. Attendance Allowance makes less sense. There is a case for tying it to free personal care, but the benefit has a huge overlap with the care component of Disability Living Allowance (DLA)/Personal Independence Payment, and a full third of DLA claims have been extensions given to older people in preference to their claiming Attendance Allowance. Housing Benefit is administered locally, so devolution is practical, but taking it out of the national system would have some side-effects: it would lock us into the use of benefits to support housing finance, and it would completely mess up the integration of Universal Credit. We all know Housing Benefit is a pig’s breakfast, and no-one designing the system would want to start from here, but we don’t know how to get out of the bind without hurting vulnerable people.

The Northern Irish example tells us that devolution is not enough to guarantee control. The Northern Ireland Assembly, unlike the Scottish Parliament, has full devolved powers to deal with benefits. The ‘parity principle’ should mean that benefits are equivalent in value. In practice, as John McPeake explains, the Assembly treats this as if benefits have to be just the same. Its reluctance to use its powers is reinforced by an assumption that it cannot legitimately incur any additional expenditure - and by the fines imposed by the Treasury. In Scotland, by contrast, the Scottish Government has supplemented funding for Council Tax Reduction, the Scottish Welfare Fund and Discretionary Housing Payments, even though social security is a reserved power. If there is a brighter hope, it’s that Scotland may be more ready to use the powers it already has.

PAUL SPICKER
Professor of Public Policy
Aberdeen Business School, Robert Gordon University

www.paulspicker.wordpress.com
11 January 2015

The Rt Hon Iain Duncan Smith MP
Secretary of State for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

Dear Mr Duncan Smith

Civic Scotland Call to Suspend the Roll-Out of Universal Credit in Scotland

We – the undersigned – are writing with a united voice from across Civic Scotland to call on the UK Government to immediately suspend the further implementation of Universal Credit in Scotland until the process of legislating for new powers for the Scottish Parliament is complete.

We know from the Smith Agreement that the bill for further powers that is currently being drafted will include significant new welfare powers. The detail of how these powers will interact with the Universal Credit system will be complex and require careful consideration and planning. The legislation around welfare is complex and is regularly being adapted: since the enactment of the Welfare Reform Act 2012, there have already been over 40 Statutory Instruments passed by Westminster to bring into force many of its provisions.

Any system of welfare has to be safe and secure. Driving through Universal Credit in Scotland at this stage will create unnecessary administrative complication in an already complex process.

The sensible way to roll-out Universal Credit in Scotland is to do it once, when the Scotland-specific elements have been carefully planned and incorporated into it. This would avoid wasting precious time and scarce resources, and would protect vulnerable people in our society from bureaucratic change that could wreak havoc.

A key recommendation of the Smith Commission was to significantly improve intergovernmental working between Westminster and Holyrood, this is a golden opportunity to do just that.

So we ask you to act immediately to suspend the next phase of the roll-out of Universal Credit in Scotland, before it is scheduled to start in February.

Our diverse, united voices demonstrate that our call is not about politics. It is about protecting the most vulnerable people in our society and creating an effective, robust new system for delivering welfare. Our call is about responsible, effective governance.

We would welcome the opportunity for dialogue with you on this important matter.

Yours sincerely,

Mary Taylor, Chief Executive, SFHA on behalf of my 56 co-signatories listed below:

Age Scotland - Brian Sloan, CEO
Business for Scotland - Brandon Malone, Interim Chair
Church of Scotland - Rt Rev John Chalmers, Moderator of the General Assembly
Coalition of Care Support Providers in Scotland - Annie Gunner Logan, Director,
Common Weal - The Board

Continued overleaf
Constitutional Commission - John Drummond, Chairman
Council of Mortgage Lenders - Kennedy Foster, Policy Consultant, Scotland
Cyrenians - Ewan Aitken, CEO
Development Trusts Association - Ian Cooke, Director
East Lothian Tenants and Residents Panel - Mark Ormiston, Chair Person
Edinburgh Tenants Federation - Betty Stevenson, Convener
Engender - Emma Ritch, Executive Director
Food Train - Michelle McCrindle, CEO
Glasgow & West of Scotland Forum of Housing Associations - David Bookbinder, Director
Health & Social Care Alliance Scotland - Ian Welsh, CEO
Inclusion Scotland - Bill Scott, Director of Policy
Money Advice Scotland - Yvonne MacDermid OBE, CEO
Quarriers - Alice Drife, CEO
Scottish Association of Social Work - Trisha Hall, Country Manager
Scottish Children's Services Coalition - Sophie Pilgrim, Member
Scottish Community Alliance - Angus Hardie, Director
Scottish Council for Voluntary Organisations - Martin Sime, CEO
Scottish Out of School Care Network - Irene Audain MBE, CEO
Scottish Trade Unions Council - David Moxham, Deputy General Secretary
Scottish Women's Aid - Lily Greenan, CEO
Sense Scotland - Andy Kerr, CEO
Social Enterprise Scotland - Fraser Kelly, CEO
Social Firms Scotland - Pauline Graham, CEO
St Martins Parish Pastoral Council, Tranent - Fr James Smith. Parish Priest
The Equality Network - Tim Hopkins, Director
The Jimmy Reid Foundation - Bob Thomson, Convener
The Poverty Alliance Peter Kelly, Director
The Wise Group - Laurie Russell, CEO
The Trussell Trust - David McAuley, CEO
Turning Point Scotland - Martin Cawley, CEO
Who Cares? Scotland - Duncan Dunlop, CEO
Voluntary Action Scotland - Calum Irving, CEO
Voluntary Health Scotland - Claire Stevens, CEO
YouthLink Scotland - Jim Sweeney, CEO
Zero Tolerance - Laura Tomson, Co-director

Signatories from Housing Associations in Scotland that are due to be part of the next stage of the Universal Credit roll-out:

ARK Housing Association - Jane Gray, CEO
Barony Housing Association - Rebecca Wilson, CEO
Bield Housing & Care - Brian Logan, CEO
Blackwood - Fanchea Kelly, CEO
Cairn Housing Association - Jason MacGilp, CEO
Castle Rock Edinvar Housing Association - Alister Steele, Managing Director
Dunedin Canmore Group - Ewan Fraser, CEO
Hanover (Scotland) Housing Association – Helen Murdoch, CEO
Knowes Housing Association - Pierre De Fence, Director
Lister Housing Co-operative - Alistair Cant, Director
Manor Estates Housing Association - Lynn McDonald, Director
Melville Housing Association - Andrew Noble, CEO
Prospect Community Housing - Brendan Fowler, Director
Trafalgar Housing Association - Paul McShane, Director
Trust Housing Association - Bob McDougall, CEO
West Granton Housing Co-operative - Gerry Gillies, CEO