



The Scottish Parliament
Pàrlamaid na h-Alba

Scotland Bill Committee

1st Report, 2012 (Session 4)

Report on the Scottish Government's Legislative Consent Memorandum

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The Scottish Parliament
Pàrlamaid na h-Alba

Scotland Bill Committee

Remit and membership

Remit:

The remit of the Scotland Bill Committee is to consider the Scotland Bill, proposed amendments to the Bill, responses to the report of the Session 3 Scotland Bill Committee, and to report to the Parliament.

Membership:

Richard Baker
Nigel Don
Linda Fabiani (Convener)
Adam Ingram
Alison Johnstone
James Kelly (Deputy Convener)
John Mason
Stewart Maxwell
Joan McAlpine
David McLetchie
Willie Rennie

Committee Clerking Team:

Clerk to the Committee

Stephen Imrie

Senior Researcher

Scherie Nicol

Committee Assistant

Vikki Little



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The Committee reports to the Parliament as follows—

INTRODUCTION

1. This document is the second report of the Scotland Bill Committee. The Committee has already reported in detail on the Scotland Bill (the Bill)¹ and the various proposals for amendment, publishing its first report in December 2011.²

2. Since the publication of the Committee's report, the Scottish and UK Governments have been discussing whether and how to amend the Scotland Bill in light of the Committee's recommendations and the various proposals for amendments put by the Scottish Government and others. The Bill has also been progressing through the UK Parliament, completing the committee stage in the House of Lords on 21 March 2012.

3. On 21 March 2012, the Scottish and UK Governments announced that they had reached an agreement on how the Bill should be amended in the final stages of the Bill's passage through the UK Parliament and also on a number of non-legislative measures. The detail of the agreement was set out in a Legislative Consent Memorandum (LCM) lodged by the Cabinet Secretary for Parliamentary Business and Government Strategy, also on 21 March. A copy of the LCM can be found here:

http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/General%20Documents/LCM_-_Scotland_Bill_-_Final.pdf

4. In addition to the LCM, the Scottish and UK Governments exchanged a series of letters with further detail and clarification on the agreement reached. Copies of these were sent to the Convener of the Scotland Bill Committee and are available here:

¹ A copy of the Scotland Bill, explanatory notes etc. are available at:
<http://services.parliament.uk/bills/2010-11/scotland.html>

² 1st Report, 2011 (Session 4): Report on the Scotland Bill. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45318.aspx>

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29883.aspx>

5. The LCM has been referred to this Committee for its consideration and this report is the result of the discussions in the Committee, which took place on 27 March 2012.³ A copy of the *Official Report* of the meeting can be found at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29885.aspx>

About the Scotland Bill

6. The following is a description of the provisions in the Scotland Bill as it stood prior to the agreement between the two Governments. It is important to note that, subject to any new amendments being agreed in the UK Parliament and the Bill completing its passage and receiving Royal Assent, some of the provisions described below may vary.

7. The Scotland Bill is a UK Government bill introduced in the House of Commons on 30 November, 2010. The Bill requires the legislative consent of the Scottish Parliament as it alters the law in devolved areas and changes the law-making powers of the Scottish Parliament and the devolved functions of the Scottish Ministers.

8. The Bill is in four parts. The first two deal with non-financial matters. Part 1 concerns the Scottish Parliament and its powers, while Part 2 concerns the Scottish Ministers and their powers. Part 3 covers the financial changes. Part 4 includes a clause on criminal penalties, plus provisions on matters such as interpretation and commencement. There are five Schedules, the majority of which cover consequential amendments.

9. At its core are the financial provisions, which provide the right to set a new Scottish rate of income tax, collect certain other taxes, and borrow. There will be consequential changes to the Scottish block grant.

10. The main financial proposals consist of—

- A Scottish income tax to replace part of the UK income tax;
- The devolution of stamp duty land tax and landfill tax;
- New borrowing powers;
- A Scottish cash reserve to manage fluctuations in devolved tax receipts; and
- Proposals for Scottish and UK ministers to work together on a new UK-Scottish tax committee;
- Ability for the Scottish Parliament to introduce new devolved taxes.

11. In addition to the financial provisions, there are a number of other key components to the Scotland Bill as introduced in the UK Parliament. These include alterations to legislative/executive competence and devolved powers, namely—

³ Scotland Bill Committee, 1st Meeting, 27 March 2012

- Changes to the powers in relation to elections, most notably though the clause in the Bill which transfers certain powers relating to Scottish Parliament elections, which are currently exercisable by the Secretary of State, to the Scottish Ministers;
- Devolution of certain powers to regulate air weapons, drink driving limits and speed limits, and powers to regulate on the misuse of drugs;
- Devolution of powers relating to the appointment processes in the Crown Estate Commissioners and also the BBC Trust;
- Proposals to re-reserve to the UK Parliament certain powers relating to insolvency (namely the winding up of business associations), the regulation of all health professions and the regulation of activities in Antarctica **(NB. the intergovernmental deal will remove re-reservations in the areas of insolvency and health professions)**; and
- A replacement of the title “the Scottish Executive” with “the Scottish Government” in the Scotland Act.

12. The non-financial provisions also cover a number of alterations to the powers and procedures in the Scottish Parliament, namely—

- The ability to appoint more than two Deputy Presiding Officers and the timing of these appointments;
- More flexibility on the number of members of the Scottish Parliament Corporate Body;
- Alteration to the Members’ Interest provisions; and
- Changes to require all bills, not just government bills, to have a statement of legislative competence.

13. Finally, the Scotland Bill also proposes a number of other provisions, as set out below—

- A clause to enable certain provisions within a Bill agreed by the Scottish Parliament to be referred to the UK Supreme Court for its consideration without affecting the remainder of the Bill **(NB. the intergovernmental deal affects this provision)**;
- The creation of a mechanism to allow the temporary grant of legislative competence to the Scottish Parliament so as to allow, by agreement, legislation on reserved matters to be pursued in the Scottish Parliament, just as the Sewel Convention allows legislation on devolved matters to be taken in the UK Parliament **(NB. the intergovernmental deal affects this provision)**;
- The creation of a statutory time limit for bringing proceedings under the Scotland Act alleging a breach of Convention rights by the Scottish Ministers. This also ensures that the same time limit applies regardless of whether proceedings are brought under the Scotland Act or the Human Rights Act 1998. **(NB. the intergovernmental deal affects this provision)**
- Broadening of current powers allowing UK Ministers to act concurrently with Scottish Ministers to implement other international obligations on a

UK-wide basis **(NB. the intergovernmental deal affects this provision)**;

- A clause to alter the maximum penalties which may be specified in subordinate legislation **(NB. the intergovernmental deal affects this provision)**; and
- Finally, there is the intention to remove acts of the Lord Advocate in his capacity as head of criminal prosecutions and investigation of deaths in Scotland that are incompatible with any rights conferred by the European Convention on Human Rights or European Community law from the ambit of section 57(2) of the Scotland Act and also the creation of a statutory right of appeal from the High Court of Justiciary sitting as a criminal appeal court to the Supreme Court in relation to matters where it is alleged that the Lord Advocate has acted incompatibly with any such Convention right or Community law to replace the existing devolution issue procedure that currently applies in such cases. **(NB. the intergovernmental deal affects this provision)**

CONCLUSIONS AND RECOMMENDATION

14. As highlighted above, the Committee met on 27 March to discuss the contents of the LCM. A copy of the *Official Report* of this meeting is available on the Committee's webpage. Due to the fact that the Committee has already reported in some detail on its views on the Scotland Bill as it stood in advance of the agreement reached between the two Governments, this report does not contain any new detailed analysis of the Bill. However, having discussed the Scottish Government's legislative consent memorandum and the draft motion, the Committee concludes as follows.

15. The Committee welcomes the discussions that have taken place between the two Governments following the publication of our report. We are pleased that an agreement has been reached which, subject to final agreements by both Parliaments, will see the Scotland Bill being passed.

16. A majority of the Committee (Linda Fabiani, John Mason, Nigel Don, Adam Ingram and George Adam) welcomes the new changes that will now be made to the Scotland Bill but is disappointed that the UK Government has not been prepared to make further changes in line with the Committee's recommendations. The majority of the Committee agree that the Bill is still a missed opportunity and we urge the Scottish and UK Governments to continue to discuss these matters and deliver these new powers beyond the passage of the Scotland Bill.

17. A minority of the Committee (Richard Baker, James Kelly, David McLetchie and Willie Rennie) also welcomes these new changes and believes that the Scotland Bill represents a step change in the fiscal powers and financial accountability of this Parliament. They believe that the Bill provides the right

package of measures to be transferred to the Scottish Parliament at this stage of devolution.⁴

18. All of the Committee notes the contents of the Legislative Consent Memorandum and a majority recommends that the Parliament gives its consent to the legislative consent motion on the Scotland Bill. One member of the Committee (Alison Johnstone) makes no recommendation to Parliament on the issue of consent.

⁴ Two members of this view (Richard Baker and James Kelly) believe that it would also have been beneficial if powers over air passenger duty had been devolved and limits on borrowing powers set out in the Bill extended. Nevertheless they believe the Bill generally provides the right package of measures to be transferred to the Scottish Parliament at this stage of devolution.

ANNEXE A: EXTRACT FROM THE MINUTE

1st Meeting, 2012 (Session 4)

Tuesday 27 March 2012

Present:

George Adam (Committee Substitute)	Richard Baker
Nigel Don	Linda Fabiani (Convener)
Adam Ingram	Alison Johnstone
James Kelly (Deputy Convener)	John Mason
David McLetchie	Willie Rennie

Apologies were received from Stewart Maxwell, Joan McAlpine.

The meeting opened at 3.03 pm.

1. **Decision on taking business in private:** The Committee agreed to take item 3 in private.
2. **Scotland Bill (UK Parliament legislation):** The Committee considered the legislative consent memorandum lodged by Bruce Crawford MSP (LCM(S4) 8.1).
3. **Report on the legislative consent memorandum (in private):** The Committee considered and agreed a draft report on the Scottish Government's legislative consent memorandum.

The meeting closed at 3.40 pm.

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