



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Devolution (Further Powers) Committee**

c/o Clerk to the Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
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12 November 2015

Dear Secretary of State,

### **Re. Views on the Scotland Bill – post-Report Stage**

I am writing to you on behalf of the Committee following our consideration of the latest stage (Report Stage) of amending the Scotland Bill in the House of Commons held on 9 November.

We welcome your constructive engagement with the Committee during the process since then and the obvious improvements that have been made at this most recent stage. Many of the changes that you made are in line with our suggestions and we are pleased that you have agreed with the Committee's view and further improved the Bill. We welcome your comments to this effect made in the House of Commons during Report Stage.

As you are aware from previous correspondence and our Interim Report published back in May 2015, the Committee remains in agreement that we want to see the final Scotland Bill fully respect both the 'spirit and substance' of the all-party Smith Commission agreement. At both introduction of the Bill and at Committee Stage, we stated that, in some of the areas, the legislative proposals met the challenge of fully translating the political agreement reached in the Smith Commission. In other areas, improvements in drafting and further clarification were required. In some critical areas, the legislative clauses fell short.

In particular, the Committee is pleased to see the changes that have been made to some of the welfare provisions, notably the ability to introduce new benefits in devolved areas and to top-up benefits in reserved areas. Whilst there are potentially substantial financial and administrative obstacles ahead in using these powers, the Bill's provisions are an improvement. We also welcome the improved wording of the clause relating to carers and are pleased to see that you have agreed to the Committee's call for greater flexibility to extend this allowance to people under 16 years of age and/or in full-time education.

We also welcome the improvements that have been made in the equalities area, most notably on gender quotas where we had called for greater clarity on the face of the Bill that the Scottish Parliament will be able to introduce gender quotas on public boards.

Furthermore, we are pleased that you have heeded our call that, however unlikely you feel it is the case, the Scottish Parliament should not be abolished without the agreement of the people of Scotland in a referendum. We note, however, that the new clause on permanency still does not provide for parity of esteem between our respective institutions in that process. The Committee had previously called for there to be majority votes in the UK Parliament and the Scottish Parliament, as well as a referendum, before the Scottish Parliament could be abolished. Only two of the three 'locks' have been provided for.

We also note that, at this stage, no amendments have been made to the employment provisions, the clause on disability or placing all three strands of the Legislative Consent Convention into statute. The first is a clear breach of the cross-party agreement in Smith. Whilst we have welcomed your change to the definition of carers, we note that no similar change has been made on the definitions of disability to be used in the Bill. You will recall in our letter to you of 14 September that we said the definition of disability contained in the Bill is overly restrictive and would not provide a future Scottish Government with the power to develop its own approach to disability benefits in the future. Accordingly, the Committee recommended that the definition of disability used in the Equality Act 2010 is also used in the relevant clause. Similarly, we note that, to date, no changes have been made to improve clause 2 of the Bill relating to the Legislative Consent Convention. Similarly, no changes have been made to bring the provisions on the Crown Estate in line with our recommendations.

We note the letter you will have received from the Deputy First Minister dated 10 November relating to the potential for any additional benefits provided by the Scottish Government to be clawed back through reductions in UK benefits or through UK taxation and we will be interested in your reply.

However, we do welcome the improvements that have been made in a number of other areas. These are certainly bringing the Bill closer to delivering on the changes we expect. The language surrounding 'perceived vetoes' is an improvement on the previous text and we welcome your recognition that the previous clause was insufficient. We have set out in an Annex to this letter some points of further clarification that we seek on a range of issues. It should be noted that, in the area of fuel poverty, a construed veto has been removed through an amendment you have made and we are curious why it is possible in this area but not in welfare.

The Annex also sets out some queries relating to tribunals, which is another area where we have seen improvements to the Bill, but where some further progress is still needed.

Finally, you will note that we are not yet in a position to make any comments on many of the financial provisions in the Bill (such as on income tax, borrowing, assignment of VAT etc.). This is because these will be part of the fiscal framework

on which agreement has not yet been reached and looks like being delayed until at least December 2015. We reaffirm our view that an agreement to the non-legislative fiscal framework is vital and of equal importance as agreement on the provisions in the Bill itself. That is why it is critical that this Committee and others are provided with a copy of the final draft agreed between the two governments in sufficient time to enable adequate scrutiny to take place before the question of the legislative consent to the Bill is put to the Scottish Parliament next year.

In conclusion, we welcome your continued constructive engagement with our Committee. We are pleased to see the improvements you have made to the Bill as many of these are in direct response to the recommendations we made (carers, new benefits and top-up benefits). We have a number of other areas where we feel we are making progress and there is potential to reach an acceptable resolution through amendments in the Lords at Committee or Report Stages ('perceived vetoes' in some welfare areas, permanency of the Scottish Parliament and Scottish Government, and tribunals). However, there are still a number of important areas where the Bill still falls short (employment provisions, definitions of disability, Crown Estate, the Legislative Consent Convention and inclusion of the principles of transparency and accountability in inter-governmental relations to be placed in statute in the Scotland Bill). We also reiterate the point made above on the central importance of the fiscal framework.

We trust that you will use the next stage of the Bill in the House of Lords to consider making further changes to the Bill. We would welcome an early meeting with you to discuss how we might make further progress.

Yours sincerely,

Bruce Crawford MSP  
Convener

## **Under occupancy charge/Bedroom Tax & Discretionary Housing Payments**

In its Interim Report, the Committee sought clarity on the issues which have been raised with regard to the inter-play between the power to remove the under-occupancy charge/bedroom tax and discretionary housing payments. The Committee considered that it is essential that the application of these clauses should not have the effect of causing detriment to individuals in receipt of discretionary housing payments (DHPs).

The amendments you gave made to the Bill in this area would potentially give more flexibility to the Scottish Parliament as to how it uses DHPs. However, the clause still restricts eligibility for DHPs to those who are entitled to housing benefit or another reserved benefit to meet rent payments, and, in some situations, restricts payments to those who have been sanctioned. We have heard concerns that because some people's under-occupancy charge/bedroom tax reduction meant they no longer received housing benefit they would not be eligible for a DHP to cover their bedroom tax reduction.

When the Bill was first introduced, DHPs would not have been payable to those who were sanctioned, but the amendments you have made now provide that they could be made to those who have been sanctioned (but they can only be made where the requirements arise from an exceptional event and the need is immediate). So while the clause has been widened in relation to payments to people who have been sanctioned, the fact that there are still some restrictions around that is a concern for some.

The Committee seeks your views on the points raised above.

## **Scottish Welfare Fund**

In its Interim Report, the Committee sought clarification from the UK Government that access to the Scottish Welfare Fund will not be restricted as a consequence of the draft clause provisions in relation to discretionary payments.

It has been suggested to us in the evidence heard that there is still a lack of clarity on this issue and we therefore ask for further confirmation from the UK Government on whether the clause could introduce further restrictions for accessing the Scottish Welfare Fund.

## **Energy**

The Smith Commission recommended the devolution of powers to determine how supplier obligations in relation to energy efficiency and fuel poverty, such as the Energy Company Obligation and Warm Home Discount, should be designed and implemented in Scotland. This provision is to 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.

Amendments you have made at Report Stage to clause 50 clarify that powers not devolved to Scottish Ministers remain reserved e.g. which suppliers the scheme

applies to, and the total amount of benefits to be provided by suppliers. It also devolves an additional power to allow Scottish Ministers to determine the amount provided by an energy supplier under a scheme in relation to Scotland. However, it is not clear to us how this will work in practice, and we would be grateful for further clarification from you.

The Smith Commission also recommended that the Scottish Government and the Scottish Parliament should have a formal consultative role in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which Ofgem must have due regard.

Clause 53 (Renewable electricity incentive schemes: consultation) amends the Scotland Act 1998 to place a duty on the Secretary of State to consult Scottish Ministers when establishing any renewables incentive scheme that would apply in Scotland, or significantly amending any such scheme; including those already established i.e. contracts for difference, feed-in tariffs and the renewables obligation. It does not apply to fossil fuel or nuclear generation. This clause does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme, it is understood that this relates to Contract for Difference - Supplier Operational Levies and Capacity Market - Settlement Cost Levies. These are levy payments made by Suppliers to cover the operational costs of administering Contract for Difference and Capacity Market

We note that the Scottish Government's consultative role in the strategic priorities of the Energy Strategy and Policy Statement is not set out in the relevant clauses, and we would seek your views on how this will be achieved?

## **Tribunals**

The Committee stated in its Interim Report that it welcomed the transfer of powers for tribunals to the Scottish Parliament but noted the views of the Law Society of Scotland about the drafting of the relevant clause and potential limitations. The Committee sought assurances from the UK Government on these matters before a new bill is introduced after the UK General Election.

We note that the relevant clause contains two further categories of cases which are exceptions from the direct transfer of competence. We request clarification from you as to why additional reservations are being included rather than making them subject to qualified transfer.