



The Scottish Parliament
Pàrlamaid na h-Alba

Devolution (Further Powers) Committee

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Dear David,

Follow-up from appearance at the Devolution (Further Powers) Committee

Thank you again for providing evidence to the Devolution (Further Powers) Committee at the meeting of 25 June 2015. On behalf of the Committee, we welcome the desire you expressed to have productive discussions and to ensure that the Committee is fully aware of the United Kingdom Government's thinking on the Scotland Bill and proposals for further devolution beyond the Scotland Bill.

During your appearance on 25 June, you committed to respond in writing to some specific questions which Members raised with you. These were to provide a response to the Committee on:

- The proposals provided to you by the Scottish Government outlining alternative approaches to the consent provisions in the Scotland Bill at present, and
- The UK Government's position on the inter-governmental relations structures that will be required to deliver the Smith Commission recommendations and the arrangements that will be put in place to enable the Scottish and UK Parliaments to scrutinise these relationships.

With regard to the provisions in the Scotland Bill concerning the Crown Estate you agreed to respond in writing on the following issues:

- At present, the Scotland Bill does not remove the reservation in paragraph 3 (3) (a) of Schedule 5 to the Scotland Act 1998. Why is the UK Government not proposing the removal of this reservation?

- Will the Scotland Bill provide the Scottish Parliament with the power to repeal the amended Civil List Act 1952 and so allow Crown Estate revenues to be directed to bodies such as local authorities and harbour trusts?
- The Smith Commission recommended that 'responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenues generated from these assets, will be transferred to the Scottish Parliament. The Smith Commission did not state that an asset had to be 'wholly and directly owned' by the Crown Estate. In the case of Fort Kinnaird, there are two partners in the partnership namely the Crown Estate Commissioners and the Hercules unit trust. What is the UK Government position on the view that if such an arrangement is governed by English law, then such a partnership is not a legal entity, and rather it is the partners who are the legal owners of the property? Is this your understanding of Fort Kinnaird's legal status? Is it a legal or policy decision for Fort Kinnaird to be excluded from the proposed transfer?

I also note that you meet with the Deputy First Minister following the Committee meeting on 25 June. It would be extremely helpful if you could detail any outcomes that emerged from that meeting, conclusions reached and timescales that were set for resolution of any issues that remain outstanding.

In addition, I also highlighted that there were a range of areas of questioning which Members did not have time to pursue with you last week. I have included the questions which we did not have time to cover in an annexe to this letter. I would appreciate a response to these questions at your earliest possible convenience.

I also welcome the commitment you made that you would wish to return to give evidence to the Committee following the summer recess and my officials will be in contact with you regarding this over the summer period. I look forward to working closely with you and your officials in the months ahead and thank you again for the time you set aside to appear before the Committee last week.

Yours sincerely,

Bruce Crawford MSP
Convener

Annexe – Questions not covered by the Committee during your appearance before the Devolution (Further Powers) Committee on 25 June 2015

As noted above, there were a number of areas of questioning that the Committee did not have time to deal with during your appearance before the Committee on 25 June. It would therefore be greatly appreciated if you could respond, in writing, to the Committee with regard to the questions detailed below.

Inter-governmental relations

The UK Government's Command Paper spoke of the Joint Ministerial Committee (JMC) commissioning work on a revised Memorandum of Understanding (MoU). How is that work progressing?

Concerns have been raised regarding the dispute reconciliation procedures as currently set out in the MoU: when a dispute cannot be resolved bilaterally or through the good offices of the relevant territorial Secretary of State the matter may formally be referred to the JMC. In such a circumstance, the JMC meeting, dealing with the dispute, is chaired by the senior UK Minister who, if possible, will have no direct departmental interest in the issue in dispute. In such a circumstance will it be that case that a UK Secretary of State will make the final decision on any matter than cannot be resolved through other means?

Fiscal framework and borrowing

The Committee's interim report highlighted the need for clarity on the proposed fiscal framework and borrowing powers before the issue of legislative consent could be considered. This includes consideration of how the "no detriment" principles would operate in practice and what method would be used to calculate the block grant adjustment resulting from devolved powers.

Are there any aspects of the fiscal framework which are likely to require legislative amendments (such as the borrowing regime) and, if so, is there a timescale for when such amendments will be tabled?

Given the concerns expressed over the practicalities of implementing the "no detriment" principles, what is the UK Government's view on how this principle, in particular the second 'no detriment' principle contained in the Smith Commission report, might operate in practice?

How might agreement between the two governments be reached on the long term consequences of a policy change?

Welfare

Given the range of the Committee's unanimous concerns that the welfare clauses did not yet meet the spirit and substance of the Smith Commission's recommendations why has there been so little substantial change to the welfare clauses in the Scotland Bill, from those contained in the draft clauses, beyond the inclusion of a clause to provide a power to top-up benefits?

Discretionary Payments: top-up of reserved benefits

Clause 21 will provide the Scottish Parliament with legislative competence to introduce discretionary top-up payments to people in Scotland who are entitled to a reserved benefit. Payments can only be made to people who have been sanctioned if the requirement for it also arises from some exceptional event or exceptional circumstances and the requirement for it is immediate. Why does clause 21 restrict the payment of top-ups to people who have been sanctioned? How will this clause allow Scotland to have genuine policy discretion in this area?

Scottish Government's alternative welfare clauses

The Scottish Government proposes a new clause (23A) which will give the Scottish Parliament powers to create new benefits in areas of devolved responsibility. The Scotland Bill would only allow new benefits to be created in the new areas of welfare to be devolved under the Bill. Is the UK Government likely to introduce any amendments to give effect to the Scottish Government's proposed alternative clause 23A which would give the Scottish Parliament powers to create new benefits in all areas of devolved responsibility?

The Scottish Government propose alternative clauses in relation to:

- clause 19: remove the definition of carer so that there are no restrictions on age, employment or education
- clause 20: (regulated social fund) to allow the Government to provide other support (in addition to financial support) in the regulated social fund areas
- clause 22: (DHPs), clause 23 (discretionary payments) to remove restrictions

What is the UK Government's position on each of these proposed alternative clauses?

Employment Support

Smith proposed the devolution of employment programmes currently contracted by DWP. How does the Scotland Bill clause 26 distinguish between contracted and non-contracted programmes?

Crown Estate

Can the UK Government confirm the Crown Estate legal position, set out by representatives of the Crown Estate on 17 June to the Rural Affairs, Climate Change and Environment Committee, that the Scotland Bill was drafted to allow for Scottish Ministers not to be bound by the requirements of the Crown Estate Act 1961?

The Committee has heard the legal arguments for Fort Kinnaird not being considered an economic asset in Scotland. What has the UK Government done to explore how it could be reconfigured as such?

Gender quotas

The Smith Commission report proposed that the Scottish Parliament would have powers to introduce gender quotas. Can you explain how the provisions at Clause 32(3) in the Scotland Bill would allow for gender quotas?

What is your view of the Scottish Government's position that provision to introduce gender quotas must be made more explicit in the Bill?

Tribunals

Clause 33 allows the functions of reserved tribunals (so far as they relate to Scotland) to be devolved to the Scottish Parliament. This would mainly be via a process of Orders in Council (paragraph 2A(4)), the powers for which are provided for in paragraph 2A(5) and also paragraph 2A(6) which states that orders, "may make any provision which Her Majesty considers necessary or expedient for the purposes of ... the transfer of the function and its exercise by the Scottish tribunal".

The Scottish Government's alternative clause also envisages transfers being effected by separate Orders in Council. However, the powers noted above in relation to such orders are omitted. In addition, there is a new clause which provides that a Scottish tribunal's practice and procedure and its fees and expenses are not reserved. The Scottish Government's view is that this better reflects the Smith Commission's recommendation with regard to tribunals. What is the UK Government's position on the Scottish Government's alternative clause?

Competition Policy

The Smith Commission recommended that Scottish Ministers have the power to require the Competition and Markets Authority to carry out a full second phase investigation (in the same way as UK Ministers), after an initial market study has been completed, in relation to particular competition issues arising in Scotland.

Clause 55 allows the Scottish Ministers and Secretary of State to make joint references to the Competition and Markets Authority to carry out a full second phase investigation, whereas the Scottish Government's alternative clause allows Scottish Ministers to make such references without the involvement of the Secretary of State.

What is the rationale for requiring the Scottish Ministers and the Secretary of State to make joint references to the Competition and Markets Authority when they wish it to carry out a full second phase investigation?

What is the UK Government's position on the Scottish Government's alternative clause in this area?