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Convener
Devolution (Further Powers) Committee
c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
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23 June 2015

Thank you for your letter of 4 June which followed the publication of the Scotland Bill. I believe that the Bill represents the fulfilment of this Government's commitment to implement in full the all-party Smith Commission Agreement. The fact that the Bill was introduced on the day after the Queen's Speech and that the Bill was the first to have its Second Reading and to start its Committee stage on the floor of the House of Commons demonstrates the importance which the Government attaches to this work.

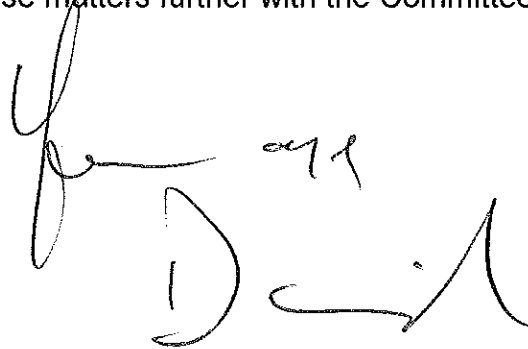
I am grateful for your Committee's thorough interim report on the draft clauses which you published in May. I have annexed to this letter my views on the report. As with any bill, there will inevitably be questions of drafting and differences of emphasis that will rightly be debated. However, I feel we should not lose sight of the fact that the provisions on tax which give Holyrood much greater financial accountability – i.e. the central purpose of the Smith Commission – are not in dispute in any way. We should not forget that the bill gives to Holyrood control of around £11 billion of income tax revenues and £4 billion of VAT. This is an enormous step, and one I am proud to see happen.

I am confident that the Bill reflects the Smith Commission Agreement, as the President of the Law Society of Scotland has confirmed. The Scotland Office will continue to consult widely on the Bill, and the Government will continue to listen to civic Scotland and to the relevant committees of both Parliaments as the Bill progresses. Opportunities remain to refine the Bill in the light of this engagement.

I am also in regular contact with the Scottish Government, particularly the Deputy First Minister, and will continue to engage actively with them during the Bill's passage. One of Lord Smith's personal recommendations was to encourage stronger inter-governmental working, and a number of your Committee's recommendations touch on this point. I regard a productive relationship between Scotland's two Governments as essential to the success of the new devolution settlement that the Scotland Bill will provide for.

In finalising the Bill, significant changes have been made from the draft clauses published in January including in the key areas of tax and welfare. The Bill confirms that the Scottish Parliament will be able to set a zero per cent rate of income tax on earnings if it so decides. This enables the Scottish Parliament to reduce an individual's tax burden significantly, if it can afford to do so and if it makes appropriate spending cuts or tax rises elsewhere. Another important aspect of the Smith Agreement was the ability of the Scottish Government to be able to top up reserved benefits, and clause 21 of the Bill delivers on this commitment. The Bill has undergone significant refinement compared to the January draft, with a number of new clauses added to improve the technical operation of its measures. That refinement is testament both to the complexity of the devolution settlement and to the Government's desire to make the settlement work efficiently.

I look forward to discussing these matters further with the Committee on Thursday.

A handwritten signature in black ink, appearing to read 'David Mundell', is written over the typed name below. The signature is fluid and cursive, with a large 'D' and 'M'.

Rt Hon DAVID MUNDELL MP
SECRETARY OF STATE FOR SCOTLAND

UK Government view on to the interim report from the Devolution (Further Powers) Committee of the Scottish Parliament

1. In progressing the Bill the Government will continue to listen to the views of the Scottish Government, the UK and Scottish Parliaments and their committees and civic Scotland. The comments below are given in the spirit of collaborative working between the two Parliaments and the two Governments.

Constitutional matters

2. The report recommended the removal of the words 'is recognised' from the clause on the permanency of the Scottish Parliament and Scottish Government. The Smith Commission's intention was not that the current constitutional position should be changed, but that legislation should accurately reflect current political understanding. As such, the current draft clause puts on a statutory footing something which has not been in doubt since the Parliament was established by the Scotland Act 1998 ('the 1998 Act'). The inclusion of the words "recognised as" does not cast doubt on the permanence of a Scottish Parliament.
3. Similarly, there is no question of a repeal of the provision establishing a Scottish Parliament or a Scottish Government and so the Government sees no need to add conditions to any future repeal. It would appear to be contrary to the spirit of the Smith Commission Agreement if the UK Parliament were to impose unnecessary conditions on any future Scottish Parliament. To add conditions to the possible abolition of the Scottish Parliament only implies that Holyrood is somehow vulnerable to abolition. That is patently not the case, and was not what has been agreed to by the people of Scotland.
4. As with the matter of permanence, the Government has taken a similar starting position on the Sewel Convention - that legislation should accurately reflect political understanding of the Convention. The Bill therefore adopts the language which formed the basis of the Sewel Convention.
5. The Government notes the Committee's recommendations on the equal opportunities clause. The subject matter of the Equality 2006 Act falls within the equal opportunities reservation of the 1998 Act, as a key role of the Equality and Human Rights Commission (EHRC) is to prevent and eliminate discrimination (which is of course central to the definition of equal opportunities). By referencing the Act in the clause, we are merely reflecting this and also updating the outdated legislative references currently in paragraph L2 of the 1998 Act.

Taxation

6. The taxation measures in the Bill are critical to the delivery of the Smith Agreement. From a situation where the Scottish Parliament is only responsible for raising around 10% of what it spends, Holyrood will be responsible for raising more than 50% of what it spends once the Scotland Bill comes into effect. This will make the Scottish Parliament one of the most powerful and financially

accountable devolved legislatures in the world. The Government welcomes the support of the Committee and of the Scottish Government for the taxation clauses. It agrees that it will be important that the powers are implemented smoothly.

7. The Bill clarifies the position on income tax and enables the Scottish Parliament to set a zero per cent rate of income tax on earnings if it so decides.
8. The fiscal framework will be agreed between the UK Government and the Scottish Government alongside the passage of the Scotland Bill. In order to achieve this goal, both Governments have agreed to aim to reach an agreement by the autumn of this year.
9. As part of the new devolution settlement, a new fiscal framework for Scotland will be developed. This will need to be consistent with the UK's fiscal position, and discussions on it will consider whether Scotland requires further borrowing powers and what form they should take. The discussions will also consider whether tools beyond borrowing powers can assist the Scottish Government to manage its fiscal position effectively within the UK's fiscal framework.

Welfare

10. The Government believes that the Bill fully meets its commitment to devolve further powers on welfare to the Scottish Parliament as intended by the Smith Commission Agreement.
11. Since the draft clauses were published in January, an additional clause has been added to the Bill, which gives the Scottish Parliament a significant new power to legislate for top-up payments to reserved benefits. The Scottish Parliament will have the freedom to decide whether these top-up payments should be paid on an individual case-by-case basis or to provide on-going entitlement to all benefit claimants or specified groups. The top-up provision in the Bill will enable the Scottish Parliament to make payments to a person who is entitled to a reserved benefit, although they cannot solely be used to offset a reduction to the reserved benefit arising from an individual's conduct (for example a deduction being made to recover an overpayment). This new power is in addition to the original clauses that covered discretionary payments in Scotland and which, together with the power to legislate for new benefits in the other areas of responsibility devolved by the Bill, will enable the Scottish Government to design and deliver welfare provision specifically tailored to the needs of the Scottish people.
12. The Government does not believe that the requirement for UK Ministers to agree the timing of when changes to Universal Credit are implemented acts as a veto. Under the Smith Commission Agreement, Universal Credit remains a reserved benefit overall and will continue to be delivered by the Department for Work and Pensions. It is therefore appropriate for the UK Government to support the Scottish Government in assessing both the practicability and likely timescale for

the delivery of any variation they want to make and for the UK Government to agree when the changes will be delivered. The intention is not for UK Ministers to be able to block any change in perpetuity – the Bill requires that their agreement must not be unreasonably withheld – but simply to ensure proposals can be delivered effectively as part of an integrated delivery plan. UK and Scottish Government officials are already working together constructively on how this will work in practice.

13. We have considered the Committee's recommendations on the scope of other welfare clauses and have had discussions about these clauses with officials from the Scottish Government. Ministers from the UK Government and Scottish Government will continue to work together on the Joint Ministerial Working Group on Welfare and will meet over the summer period. Many of these matters will, of course, be discussed during the Bill's Committee stage on 30 June.

The Crown Estate

14. The Government believes the Crown Estate clause in the Bill devolves the management and revenues of the Crown Estate in an effective way. This is because the transfer scheme will allow for rights and liabilities to be identified properly; for strategic UK assets to be protected; and for the employment rights of transferring staff to be protected.
15. The clause is clear that the power of the Treasury to make the scheme is subject to the approval of that scheme by the Scottish Ministers. It would be inappropriate for the Treasury to be obliged to make a scheme, as it may only make the scheme if the Scottish Ministers agree. In agreeing the scheme it will be for the Scottish Ministers to take forward the Smith Commission Agreement in relation to further devolution to local authorities.
16. The management of all the Crown Estate's wholly and directly-owned Scottish assets will be transferred under the transfer scheme. The Fort Kinnaird shopping centre is not wholly and directly-owned by the Crown. It is held by an English limited partnership in which the Crown Estate Commissioners manage an interest alongside other commercial investors. The partnership owns property in other parts of the United Kingdom.
17. The Crown Estate Commissioners will still be able to make commercial investments in Scotland as and when opportunities arise that are in line with its investment strategy, just like any other business. Taking a different approach would be to turn away potential inward investment in Scotland.

Further provisions

18. In relation to the proliferation of payday loan shops, the UK Government is clear the recommendation in the Smith Commission Agreement relates to planning powers. Such powers are already devolved in Scotland.

19. On fixed odds betting terminals (FOBTs), the Smith Commission Agreement refers to the prevention of the “proliferation” of FOBTs. The Government has interpreted this as to mean an increase in the number of FOBTs authorised by a betting premises licence and therefore the clause applies the power to new premises only. It will enable Scottish Parliament and the Scottish Ministers to vary the number of FOBTs authorised by a betting premises licence.
20. In relation to tribunals, the Government notes the comments of the Law Society of Scotland. The Order in Council process set out in the clause enables the transfer of reserved tribunals functions to specified tribunals in Scotland. This will ensure transfers under an Order in Council can be dealt with in a structured and managed way. The Order in Council approach will also allow for proper regard to be given to the specific policy considerations, technicalities and required safeguards for each tribunal. This approach has been taken to complement the development of the Scottish Tribunal system under the Tribunals (Scotland) Act 2014.
21. The Smith Commission Agreement recommended further work between the UK and Scottish Governments on a number of additional issues for consideration, including food labelling, levy raising and certain health reservations. In addition, there are a number of areas in the report which require non-legislative action to progress them, such as the recommendations relating to the BBC.
22. Since the Smith report’s publication, UK and Scottish Government officials have had substantive discussions on all of the additional issues for consideration and this work is on-going. Significant progress has already been made in a number of areas.
23. This includes the Smith recommendations relating to the BBC, which the Command Paper published by the UK Government in January set out would be delivered by a Memorandum of Understanding. The Secretary of State for Culture, Media and Sport wrote to the Cabinet Secretary for Culture, Europe and External Affairs on 17 June confirming that agreement had been reached between the two Governments on the wording of the Memorandum.
24. The Scottish Government has requested the removal of the limit on the recovery of the proceeds from crime. Currently the limit for Scotland is set at £30 million, in practice the Scottish Government ordinarily recovers and retains around £8 million. The UK Government supports the removal of the limit in principle and work continues to progress this. The UK Government supports the recommendation that fines, forfeitures and fixed penalties imposed by Scottish courts and tribunals should be retained by the Scottish Government and work continues to progress this.
25. Welfare foods was another of the areas for further discussion between the UK and Scottish Governments identified by the Smith Commission. Key aspects of the Welfare Foods policy are already devolved to Scotland (e.g. the Scottish

Government has powers to decide upon what foods can be purchased with Healthy Start vouchers in Scotland), and since the publication of the Smith report an official-level working group has agreed a process for considering further devolution of Welfare Foods policy. The Cabinet Secretary for Health, Wellbeing and Sport wrote on 12 June formally requesting devolution of welfare foods policy and Department of Health Ministers are considering their response.

26. Red meat levies was a further additional issues for consideration raised by the Smith Commission. The power to collect and distribute the levy is already provided to the devolved administrations under the Natural Environment and Rural Communities Act 2006. The four UK levy bodies are currently working up proposals to ensure it is more equitable for all and we are waiting for them to present the four administrations with their options to address this.

Inter-governmental relations

27. All four administrations should work more closely to deliver for the people of the UK. The Government is committed to doing so. A joint process between the UK and Scottish Government is already up and running to ensure the arrangements we have in place make for effective working relationships. We are committed to exploring jointly a range of options for enhancing intergovernmental relations with the Devolved Administrations and will work together to make collective improvements
28. Following publication of the Smith Commission Agreement in November, the Joint Ministerial Committee met just a few weeks later on 15 December 2014. At that meeting, the Prime Minister, the First Ministers of Scotland and of Wales, and the First Minister and the deputy First Minister of Northern Ireland agreed to commission work on a revised Memorandum of Understanding between the four administrations. Officials in those administrations have since held constructive meetings to discuss this work and coordinate next steps. Further official level discussions will take place over the coming weeks.