

Devolution (Further Powers) Committee

Progress note on the passage of the Scotland Bill in the UK Parliament

Background

1. The Scotland Bill was introduced in the House of Commons by the UK Parliament on 28 May 2015. The Bill received its 2nd Reading on 8 May. Following 2nd Reading (a debate on the general principles of the Bill), the House of Commons agreed that four days be set aside for the Committee Stage, with the Bill being referred to a Committee of the whole House. Committee Stage is where detailed examination of the Bill takes place.
2. The first day at Committee Stage took place on 15 June. The amendments considered related to Part 1 of the Bill (clauses 1 to 11) concerning constitutional arrangements. We reported to the Committee on the outcome of the debate which took place in respect of these amendments for its meeting on 18 June.
3. The second day at Committee Stage is scheduled to take place on 29 June. The amendments to be considered relate to Part 2 of the Bill (clauses 12 to 18) regarding tax.
4. Unlike Stage 2 of a Bill in the Scottish Parliament, not all admissible amendments are taken during Committee Stage in the House of Commons. The selection and grouping of amendments in a Committee of the whole House is decided by the Chairman of Ways and Means (Deputy Speaker). We will provide a link to the full Marshalled List following the outcome of the debate on 29 June.
5. In the meantime, regular updates on amendments being lodged can be found at this link:

<http://services.parliament.uk/bills/2015-16/scotland/documents.html>
6. As with the last note, this note has been prepared by the Clerks to the Committee with support from other Parliamentary officials to provide Members with a regular update on the progress of the Bill through the various stages in the UK Parliament.
7. Since the timing of various stages in the UK Parliament may not exactly coincide with meetings of the Committee, these notes only provide a snapshot at the time of writing.
8. The intention of the Clerks in this note is to summarise the **main** amendments which have been tabled to date in respect of Part 2 of the Bill for debate on 29

June. Further amendments are likely to be tabled prior to 29 June. This note also provides a short commentary on the **main** amendments which have been lodged in respect of other parts of the Bill for consideration at future debates of the House of Commons.

Day 2, Committee Stage, House of Commons, 29 June 2015

Background papers

The most recent list of amendments that have been lodged up to and including Monday 22 June can be found here:

<http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0003/amend/psc032206a.pdf>

Progress note

The table below sets out a brief note of the main amendments which have been tabled for the above-mentioned meeting of the UK Parliament. We will report separately on which of these amendments (including any further amendments tabled before 29 June) are selected for debate and whether those amendments are passed, withdrawn or voted down.

Clause No.	Amendment No. (1)	Brief description of the amendment (2)	Outcome	Other notes/comments
16. Tax on carriage of passengers by air	36 (G. Stringer and K. Jones, Labour)	Leave out Clause 16	The result of this amendment will not be known until 29 June. We will advise the Committee in a future update.	This amendment sought to remove a new devolved tax on the carriage of passengers by air from airports in Scotland from the package of powers devolved to the Scottish Parliament. This would have meant that air passenger duty for Scotland would continue to be collected and managed by the UK.
New clauses in respect of Part 2 of the Bill	NC1 (I. Murray, Labour)	To establish an Independent Commission on Full Fiscal Autonomy	The result of this amendment will not be known until 29 June. We will advise the Committee in a future update.	This new clause would oblige the Secretary of State to establish an independent commission of external experts, appointed in consultation with the Treasury Select Committee and Scottish Affairs Select Committee, to publish a report by 31 March 2016 setting out an analysis of the policy of Full Fiscal Autonomy on the Scottish economy, labour market and public finances.
	NC20 (I. Murray)	Review of operation of VAT refund schemes in Scotland	As above.	Following the amalgamation of the (formerly regional) Scottish fire and rescue services and Scottish police force (Police Scotland) respectively, they are no longer eligible for VAT exemptions under certain VAT refund schemes. This amendment requires the Treasury to carry out and publish a review of the schemes in Scotland, and in particular in relation to the level of VAT payable by Police Scotland and the Scottish Fire and Rescue Services.
	NC21 (I. Murray)	Creation of a Scottish Office for Budget	As above.	This would exercise fiscal and budgetary oversight over Scottish Government

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		Responsibility		
	NC23 (G. Allen, Labour)	Enable local authorities to introduce tax(es) without the need to seek approval from the Scottish Government.	As above.	competencies. The Smith Commission recommended that the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland’s public finances in recognition of the additional variability and uncertainty that further tax and spending devolution will introduce into the budgeting process. Rates and reliefs would be determined locally. The local authority would be granted powers to ensure that those on which the tax is levied have a legal obligation to pay. The local authority would have the discretion to determine how the additional revenue is expended.
	NC24 (G. Allen)	Appointment of Tax and Economy Forum	As above.	To assess the impacts of fiscal devolution proposed within the Bill on Scotland and the rest of the UK.
	NC25 (G. Allen)	UK Commission on fiscal powers	As above.	Appointed 6 months after Act in force to ensure proper consultation between the different parts of the UK so that new Scottish fiscal powers are deployed in a way that does not undermine the cohesion of the UK. The proposed Commission could also make recommendations regarding the future of devolved fiscal powers.

(1) NB. The above list of amendments is not exhaustive as this table summarises progress of the main amendments only

(2) The text provided under “brief description” and “other notes/comments” is mostly drawn from the Member’s own explanatory text provided when lodging the relevant amendment(s).

Amendments that may be considered at future stages in the UK Parliament

Progress note

The table below sets out a note of the main amendments that have been lodged at the time of writing and which may be selected for discussion at future meetings of the UK Parliament.

Clause No.	Amendment No. (1)	Brief description of the amendment (2)	Outcome	Other notes/comments
19. Disability, industrial injuries and carer's benefits	11 (I. Murray)	Devolves housing benefit to the Scottish Parliament.	We will advise the Committee in a future report once the outcome is known.	
	112 (I. Murray)	Removes the requirement in respect of the devolution of disability benefit that any adverse effect or need must not be " <i>short-term</i> ".	As above.	The Committee expressed concern in its report that the definition of " <i>disability</i> " was overly restrictive and would not provide a future Scottish Government with the power to develop its own approach to disability benefits in the future.
	48 (I. Murray)	Carer's benefit is not restricted to a person who is (a) 16 or over; (b) not in full-time education; and (c) not gainfully employed.	As above.	This amendment was proposed by the Scottish Government in its alternative draft clauses. This followed concerns raised by the Committee in its Interim Report that the definition of " <i>carer</i> " was overly restrictive and could limit the policy discretion of future Scottish administrations.
21. Discretionary Benefits: top up of reserved benefits	12 (I. Murray)	Removes the words " <i>This exception does not except discretionary financial assistance in a reserved benefit</i> ".	We will advise the Committee in a future report once the outcome is known.	The purpose of the amendment is unclear. As the Bill is drafted, this aspect of the clause appears to clarify that discretionary financial assistance flowing out of the reserved benefit itself (rather than in addition to the reserved benefit) remains reserved. However, in order to achieve the opposite result, the

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				clause would have required further amendment.
22. Discretionary Housing Payments	13 (I. Murray)	Same amendment as above but in respect of clause 22.	We will advise the Committee in a future report once the outcome is known.	As above, but in relation to discretionary housing payments.
23. Discretionary Payments and Assistance	8 (I. Murray)	Leave out “ <i>short term</i> ” (i.e. any assistance to avoid a risk to the well-being of an individual is not restricted to where there is a short term need)	We will advise the Committee in a future report once the outcome is known.	These amendments were proposed by the Scottish Government in their alternative clauses to deliver the spirit and substance of Smith.
	111 (I. Murray)	Leave out “ <i>occasional</i> ” (i.e. any assistance to establish / maintain a settled home need not be occasional where it is to individuals who are or have been in prison, hospital, residential care or other institution or who are homeless or otherwise living an unsettled way of life).	As above.	As above.
	15 (I. Murray)	Devolves to the Scottish Parliament the creation of new benefits in devolved areas, rather than just in those areas devolved under the Bill.	As above.	As above. This particular amendment aligns with the Committee’s recommendation in its Interim Report that the Scottish Government be given genuine policy discretion in this area.
24. Universal Credit – costs of claimants who rent accommodation	5 (I. Murray)	Removes the requirement for the Secretary of State’s <i>agreement</i> as to when any change made by regulations from the Scottish Ministers is	We will advise the Committee in a future report once the outcome is known.	These amendments were proposed by the Scottish Government in their alternative clauses to deliver the spirit and substance of Smith. In its interim report, the Committee stated

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		to start to have effect (such agreement not to be unreasonably withheld). Replaces it with an obligation on the Scottish Ministers to <i>consult</i> with the SoS as to when any change is to start to have effect.		that “ <i>there is a case to be made that the draft clauses [...] could be considered or perceived as a veto.</i> ” It also expressed the view that new powers to make discretionary payments in any area of welfare should be without the need to obtain prior permission from the DWP, whilst recognising that there will be a need for the Scottish Government to provide the DWP with early notification of its intentions because of the potential for overlap with the administrative responsibilities of the UK Government in welfare.
25. Universal Credit – persons to whom, and time when, paid	6 (I. Murray) 7 (I. Murray)	Same amendment as above but in respect of clause 25. The Scottish Ministers would be obliged to consult “ <i>the Secretary of State about the practicability of the <u>delivery mechanism for implementing</u>” any regulations made under this power.</i>	We will advise the Committee in a future report once the outcome is known. As above.	As above. This amendment reduces the scope for the Secretary of State to input on the substance of any regulations made by the Scottish Ministers by restricting consultation to the proposed mechanism for delivering any change.
26. Employment Support	113 (I. Murray)	Allows the provision of employment programmes where assistance is for less than one year.	We will advise the Committee in a future report once the outcome is known.	This aligns with the Scottish Government’s alternative clauses to deliver the “spirit and substance” of Smith and the recommendations of the Committee’s Interim Report. The member’s explanatory note states

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	114 (I. Murray)	Insert “(b) provision of support for disabled persons in the form of non-repayable payments to enable them to access employment, remain in employment, or move into self-employment or start a business.”	As above.	that the Scottish Government could develop support programmes for those who repeatedly move in and out of short periods of work, or admit people to the Work Programme early. The member’s explanatory note states that this amendment would provide for the devolution of the Access-to-work scheme. This aligns with the Committee’s recommendation in its Interim Report that this should be secured.
	10 (I. Murray)	Insert “(d) temporary jobs paid at least the national minimum wage providing a route back into further work.”	As above.	This appears to be a related amendment to the one above to secure the devolution of the Access-to-work scheme.
31. The Crown Estate	23 (A. Carmichael, Lib Dem)	Obliges the Treasury to make a scheme transferring all the existing functions of the Crown Estate to the Scottish Ministers (rather than the making of the scheme being discretionary (or at least only enforceable following successful court action))	We will advise the Committee in a future report once the outcome is known.	In line with the recommendations of the Committee in its Interim Report.
	52 (I. Murray)	The scheme made by the Secretary of State transferring the existing Scottish functions of the Crown Estate	As above.	It appears that this amendment is not comprehensive as the alternative remains that the scheme could be transferred to a person nominated by

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	57 (A. Carmichael)	Commissioners would be made to the Scottish Parliament (rather than the Scottish Ministers). Insert Clauses 31(1A) and (1B) which would require the relevant functions of the Crown Estate in the Shetland Islands, Orkney and Na h-Eileanan Siar (the “Western Isles”) to be transferred to the councils for those areas.	As above.	the Scottish Ministers. In line with the Committee’s Interim Report.
	24 to 26 (A. Carmichael)	Changes the making of the transfer scheme from affirmative procedure before both Houses of Parliament (known as the type C procedure) to the negative procedure (known as the type A procedure).	As above.	
32. Equal opportunities	91 (I. Murray)	Ensure continued progression toward achieving gender balance on boards of public authorities.	We will advise the Committee in a future report once the outcome is known.	It is worth noting that any legislation passed by the Scottish Parliament in this area would need to conform to the requirements of EU law (i.e. proportionality, etc).
33. Tribunals	53 (I. Murray) and 27 (A. Carmichael)	Devolves the power to transfer to a Scottish tribunal the reserved functions of an employment tribunal or the Employment Appeal Tribunal which relate to Scottish cases (the Bill without the	We will advise the Committee in a future report once the outcome is known.	

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	28 (A. Carmichael)	amendment currently reserves this). Reserved functions of future tribunals are capable of transfer to a Scottish tribunal following legislation by the Scottish Parliament.	As above.	Without this amendment, the reserved functions of these future tribunals can only be transferred to a Scottish tribunal following legislation by the UK Parliament.
	29 (A. Carmichael)	Removes the mechanism in the Bill which would allow specific reserved functions of certain specific tribunals which relate to Scottish cases to be devolved by Her Majesty by Order in Council.	As above.	
	54 (I. Murray)	The Scottish Ministers, in conjunction with the Advisory, Conciliation and Arbitration Services (ACAS) shall establish and oversee a process, involving Scottish businesses and trade unions, to end the current employment tribunal fee system in Scotland	As above.	
43. Consumer advocacy	30 (A. Carmichael)	Devolves the regulation of estate agents to the Scottish Parliament.	We will advise the Committee in a future report once the outcome is known.	
45. Gaming machines on licensed betting premises	31 and 32 (A. Carmichael)	Leave out “ <i>for which the maximum charge for use is more than £10</i> ” (i.e. allows the Scottish Parliament to regulate	We will advise the Committee in a future report once the outcome is known.	Generally, the Committee committed in its Interim Report to taking more detailed oral evidence considering Fixed Odds Betting Terminals.

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	<p>33 (A. Carmichael)</p> <p>34 (A. Carmichael)</p> <p>35 (A. Carmichael)</p>	<p>the number of gaming machines authorised under a betting premises licence irrespective of the charge for use).</p> <p>Applies the devolved power to regulate Fixed Odds Betting Terminals to licenses issued before the Bill comes into force (i.e. not just new licences).</p> <p>Devolves: (a) the law on partnerships and unincorporated associations; and (b) the creation of (i) new forms of cooperative enterprise; (ii) new forms of mutual enterprise; and (iii) economic interest groups where the European Economic Interest Group is not available because the members do not come from more than one member state.</p> <p>Devolves health and safety regulation.</p>		<p>This accords with submissions made to the Committee by the Law Society of Scotland.</p> <p>This aligns with the Committee’s Interim Report and submissions made by the Law Society of Scotland.</p> <p>Amendment tacked at end; i.e. does not relate directly to the regulation of Fixed Odds Betting Terminals.</p> <p>In its Interim Report, the Committee reaffirmed the view of the Smith Commission that this issue (among others) needed to be the subject of discussion between the two governments.</p>
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				Again, amendment tacked at end; i.e. does not relate directly to the regulation of Fixed Odds Betting Terminals.
New clauses	NC22 (I. Murray)	Offences relating to parking on pavements can be enforced by the Scottish Parliament.	We will advise the Committee in a future report once the outcome is known.	Other offences would be unaffected. This amendment is based on Mark Lazarowicz's Private Members' Bill from the last Parliament, which was supported in principle by the then Secretary of State for Scotland. This also relates to the member's bill promoted by Sandra White in the Scottish Parliament. The Presiding Officer issued a certificate stating that, in her opinion, that Bill was beyond the competence of the Scottish Parliament.
Remaining clauses (46 to 64)	NC12 - 19 (G. Allen)	Introduces a general power of competence for Scottish local authorities.	We will advise the Committee in a future report once the outcome is known.	Puts it beyond doubt that local authorities may do anything that is not expressly prohibited by law. It seeks to go further than the power of wellbeing already afforded to Scottish local authorities. The proposals seek to give councils the capacity to do anything that an individual can do. Therefore, this would not enable a local authority to introduce a tax or wage war, but it would ensure that local government has the ability to use the power of general competence in the most sensible and constructive way for the

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				benefit of the people and communities whom they serve.
63. Commencement	1 and 2 (I. Murray)	Part 1 (including section 1) of the Bill (Constitutional arrangements) will come into force within one month of the publication of the report of the Constitutional Convention, as outlined in NC2 (required to report by 31 March 2016).	We will advise the Committee in a future report once the outcome is known.	See our previous report to the Committee on NC2.
	3 (I. Murray)	Part 2 (Tax) will come into force at the end of two months beginning with the publication of the report of the Independent Commission on Full Fiscal Autonomy appointed under NC1, which would be required to report by 31 March 2016 (rather than Part 2 coming into force at the end of two months beginning with the day the Act is passed),	We will advise the Committee in a future report once the outcome is known.	See our previous report to the Committee on NC1.
	NC4 (I. Murray)	Encourage the promotion of gender equality in the Scottish Parliament by requiring the Scottish Ministers to publish and lay a report on the measures which the Scottish Government is taking to promote gender equality within the membership of the Scottish Parliament	We will advise the Committee in a future report once the outcome is known.	