



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SCOTLAND BILL COMMITTEE

Tuesday 7 December 2010

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**Tuesday 7 December 2010**

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**SCOTLAND BILL COMMITTEE**

**1<sup>st</sup> Meeting 2010, Session 3**

**CONVENER**

\*Ms Wendy Alexander (Paisley North) (Lab)

**DEPUTY CONVENER**

\*Brian Adam (Aberdeen North) (SNP)

**COMMITTEE MEMBERS**

\*Robert Brown (Glasgow) (LD)

\*Tricia Marwick (Central Fife) (SNP)

\*David McLetchie (Edinburgh Pentlands) (Con)

\*Peter Peacock (Highlands and Islands) (Lab)

\*attended

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Committee Room 5



# Scottish Parliament

## Scotland Bill Committee

*Tuesday 7 December 2010*

[Robert Brown *opened the meeting at 14:30*]

### Interests

**Robert Brown (Glasgow) (LD):** Good afternoon. I welcome everybody to this first meeting of the Scotland Bill Committee. It is my very pleasant task to convene the opening part of the meeting—although my moment of glory will be fairly brief.

Before we begin, I ask members to ensure that any mobile phones, pagers or BlackBerrys are turned off—and I will allow a moment while everybody fumbles about to that end.

The first item on our agenda is the declaration of interests; all members have received a note of the process. All members are here this afternoon, which is commendable given the weather obstacles that we have faced in getting here. In accordance with section 3 of the code of conduct for members of the Scottish Parliament, I invite members to declare any interests that are relevant to the committee's remit.

I will start with myself. I have no interests that are terribly relevant to this committee, but I will declare my former vice-chairmanship of the Steel commission on moving towards federalism. It was a Scottish Liberal Democrat group and it was a very prestigious precursor to the Calman commission.

**Ms Wendy Alexander (Paisley North) (Lab):** In a similar vein, I should declare that I was very keen to see the Calman commission established; I gave a St Andrew's day lecture to that effect in 2007. I also notice in the excellent briefing that we have received from the Scottish Parliament information centre that I was the sponsor of the motion in the Scottish Parliament on 6 December 2007 that proposed that such a commission be set up.

**Brian Adam (Aberdeen North) (SNP):** My interests are shown in the register of members' interests, and none of them is especially relevant to this committee.

**Tricia Marwick (Central Fife) (SNP):** Like my colleague Brian Adam, I have no particular declarations to make. I was never part of the Calman commission—they never wanted me, anyway.

**David McLetchie (Edinburgh Pentlands) (Con):** I refer members to my entry in the register of members' interests. I have no particular interest in this bill, other than ensuring that we achieve the good governance of Scotland in the future.

**Peter Peacock (Highlands and Islands) (Lab):** I echo those comments. I have no interests to which to draw the attention of members, other than those in the register of members' interests.

**Robert Brown:** Maintaining the tone of the good interests of Scotland, we will move on to item 2.

## Convener

14:32

**Robert Brown:** The Parliament has agreed that only members of the Scottish Labour Party are eligible for nomination as convener of the committee, and I understand that Wendy Alexander is the Scottish Labour Party's nominee for the role. I therefore ask the committee to agree that Wendy Alexander be chosen as convener of the Scotland Bill Committee.

*Ms Alexander was chosen as convener.*

**Robert Brown:** I thank everybody for their agreement. My brief moment of glory has come to an end; I congratulate Wendy on her appointment, and now hand over the chair to her for the rest of the proceedings.

**The Convener (Ms Wendy Alexander):** Thank you, Robert. A particular thank you is due to Robert because I know that he froze for two hours at Queen Street station this morning without getting a train, whereas I turned up and simply walked on to one. I thank Robert for making it here.

My notes suggest that I should say a few words on my important role. In light of the weather and the amount of work that we have to get through, I will make only one observation.

It was almost 14 years ago that Donald Dewar embarked on stewarding the first Scotland Bill through Westminster. I think that he would be absolutely delighted at the way in which Holyrood and Westminster have jointly approached the process of reviewing the settlement after 10 years, and that he would feel that such work, which has spanned different Governments at Holyrood and Westminster, has been a credit to the constitutional process.

Work undertaken by this committee will be operationalised over a period of many years, so it, too, will span different Administrations at Holyrood and Westminster. I intend to approach the work of this committee with the interests of Scotland and the United Kingdom as a whole in mind. I hope that we will pursue matters with as much consensus as we can.

## Deputy Convener

14:34

**The Convener:** The next item of business is the selection of a member of the committee to act as our deputy convener. The Parliament has agreed that only members of the Scottish National Party are eligible for nomination as deputy convener. I understand that Brian Adam is the SNP nominee for the role. That being so, I ask the committee to agree that Brian Adam be chosen as deputy convener of the Scotland Bill Committee.

*Brian Adam was chosen as deputy convener.*

## Work Programme

14:35

**The Convener:** The main item of business is a discussion of the committee's work programme. We will have an initial discussion in public about what individual members consider to be the issues that face the committee. I should perhaps say that I hope that we will not delve into the finer details of the work programme or get down to the level of discussing who should or should not appear as a witness. We should, at a much higher level, think about how we want to progress the very tight timetable.

I will say a couple of words to orientate everyone as to where we are. The committee has been established by the Parliament as an ad hoc committee to consider the Scotland Bill and any relevant legislative consent memoranda—or LCMs, as they shall henceforth be called. Rather atypically, two LCMs have already been lodged in recent days, which—in that respect if no other—just goes to prove that this is no ordinary committee. The committee's job is to consider the provisions in the Scotland Bill in so far as they fall within or alter the legislative competence of the Scottish Parliament or the executive competence of Scottish ministers.

It goes without saying that the number of subjects that we could cover is very large. Despite that, I think that we all seek to achieve a detailed, rigorous and balanced report and to find consensus wherever we can. I hope that, based on our discussions today, we can issue a written call for evidence later this week that focuses on the areas on which it is particularly important that we hear views.

The starting point should be the bill and the legislative consent memoranda. We are here to consider the Scotland Bill in detail, and to focus on where we go from here. We will try to provide a report to the Parliament that will stand the test of time and inform all members in advance of the legislative consent motion, which we anticipate will come before the Scottish Parliament in early March.

With those few words of introduction about the process on which we are embarking, I invite members briefly to give their initial thoughts on the committee's work programme, before we move into private session for a more detailed consideration of the witnesses who might support that process.

**Brian Adam:** Any advance in the Scottish Parliament's powers is bound to be welcome, and there is no doubt that the Scotland Bill delivers some advances. Some of those are significant,

particularly in relation to the borrowing powers of the Parliament and some of the taxes that will be devolved to Scotland.

That said, our role is to scrutinise the proposal, which means that we must ask questions about the detail of it. We perhaps ought to consider how it differs from the report of the aforementioned Calman commission and ask why those differences exist.

I do not wish to trivialise the matter in any way, but one thing that struck me was the proposal to re-reserve the powers in relation to Antarctica. On hearing that, I pictured a Scottish expeditionary force sitting in Leith docks, waiting to go down there and plant the saltire. I am sure that that was not quite what the UK Government had in mind; the reasoning behind it might become clear as we look carefully at the detail of the bill.

Several questions need to be asked about the implications of variations in income tax and the borrowing powers. We need to consider how much it will cost to put the measures into place. If the bill comes into effect, we will have no choice but to use the tax powers, so we need to consider what advance will be required if we are to have that kind of thing.

We will want to consider carefully why the powers on some of the detailed proposals, such as those on air guns and drink driving, are not to be devolved fully. Obviously, in the current difficult times, it is key that we know what effect any of the powers might have on economic growth. I touched on the power in relation to Antarctica, but there are probably more important powers that the Scottish Parliament could potentially lose. We need to consider that.

As the convener properly said, the timescale for several of the proposals for change is perhaps a decade or more, which is not terribly ambitious. We need to tease out why the timescale has to be so long. We must also understand why, if powers to deal with financial issues are to be devolved to the Scottish ministers, it is seen to be necessary for the Treasury to retain the capacity to say no.

One small clause in the bill suggests that we can have Scotland-only taxes, and there was speculation at the weekend about whether there could be a bed tax or whatever. We need to tease out exactly what the UK Government has in mind on that and what the implications are for Scotland. I do not know whether we are going to have salt or windae taxes—the sort of things that have been tried and tested in the past and abolished. We will not have powers to vary any of the taxes that are not devolved, but we appear to be being given the power to introduce new ones. We might wish to tease that out.

I share the convener's view that we need to seek written responses to a consultation. We ought to give some thought today to the questions, but any decision on them ought to be made in public at our next meeting. We do not have a lot of time, but it would not be appropriate just to send out the questions today. We should have a mechanism by which we have a quick way of agreeing the detail of the questions, but make that known publicly. Perhaps we could do that next week.

**Robert Brown:** I have been a supporter of home rule for Scotland within a federal United Kingdom all my political life. The detail of the bill that we are considering takes the framework a good deal further in that direction. It is important that there is consensus across political and civil society in Scotland in favour of the proposals as they proceed. We all have individual views and nuances, but I am encouraged by the comments that colleagues have made to date on the issues. The very fact that the committee is considering the detail of the bill will draw us together on some of the issues and the things that need to be checked out.

Our most important task is to ensure that the proposals from the Calman commission and those in the Scotland Bill and its associated documents are workable, do not have unforeseen consequences and, in particular, provide a stable and secure future for Scotland's finances—that is the most important issue. The relationship between the powers of the Westminster Government and the Scottish Government and Parliament, and exactly how the powers will work in practice, are the central and biggest issues that we want to be involved in.

I make no bones about it that, in broad terms, the powers of the Parliament, other than financial ones, have been established as broadly satisfactory. The changes that are being made in that regard are not unimportant, but nevertheless they are not as substantial as the financial changes. We should concentrate our efforts on the financial changes, such as those on borrowing powers and tax-raising powers.

14:45

The mechanisms and timescales are important, and they must be adequate—the timescales are important for ensuring that this whole thing works. We do not want hiccups and sudden ups and downs in the finance that is available to the Parliament, and our most important job is to avoid that being the case.

We can do a useful job of work on the bill, which should make a considerable contribution towards securing a stable and satisfactory future for the

Scottish Parliament within the United Kingdom. That is the direction that we should be going in, and we need to ensure that the mechanisms work successfully.

**David McLetchie:** You are right, convener, that we must focus our work on the bill. We certainly do not have the time to have a rerun of the Calman commission or a review of devolution, or of the overall constitutional settlement within the United Kingdom. In that context, we should bear it in mind that the test of the bill and its measures is whether it works within the framework of the United Kingdom. That is the framework that was given by the Parliament to the Calman commission when the Parliament approved its establishment in 2007, and that is the theme that runs through the Calman report. I say that with respect to SNP colleagues, who clearly have a different view as to Scotland's constitutional future, but the point is that the bill must be seen in the context in which it is presented, not in the context of a drive for an entirely different, separate constitutional structure. We must bear that in mind when considering the bill over the next two to three months.

As regards specific proposals, some adjustment is required around the edges with regard to the legislative competence of the Parliament, as Robert Brown indicated. Indeed, we should confine our focus to the edges, rather than examining what other powers might or might not have been devolved or re-reserved. Calman had a fairly thorough review of that, so we do not need to consider all the specifics that came up. I do not think that there is any need to take evidence from penguins in Antarctica or people who are associated with them, although I am sure that they are heartily relieved to know that we will not be legislating for their future.

As Robert Brown rightly said, the financial aspects—the taxation proposals—are probably the meat of the bill. I would like our deliberations to resolve some of the problems that arise from the nomenclature that flits around the debate. All manner of expressions have been bandied around, including “full fiscal freedom”, “fiscal autonomy”, “fiscal devolution” and “financial responsibility”. We would perform a great service to the Parliament and to public debate in Scotland if we separated out what is meant by those terms. We should examine our witnesses very carefully as to what they mean by that terminology. I am of the opinion that it is partly a product of sloppy and woolly thinking. I am also of the opinion that some people use those terms interchangeably, as a deliberate deceit. We would perform a great service if we sorted all that out and made clear exactly what it is that we are talking about.



Following those observations, I am happy to consider the programme in detail.

**Peter Peacock:** As other members have indicated, this is a significant moment in the development of Scotland's and the UK's democratic structures. The bill represents a significant move forward in many respects, and it opens up some major issues. It deserves the closest scrutiny that can be given, and I am delighted to be part of that process.

I am acutely conscious that our time is very short, as other members have said. We require to be very focused on what we do, and we cannot have a process that is open ended in any way. We have a specific set of tasks in mind.

As David McLetchie said, this is not about a rerun of Calman or alternatives to Calman but a Scotland Bill that is before the UK Parliament. We need to focus on the specifics of the bill and the two LCMs. As you said, convener, the situation is rather novel and unusual. The three party leaders who represent the majority in the Parliament submitted a second LCM on the background to Calman. That LCM requires to be given appropriate weight in that context.

Like others, I believe that we need to take evidence. The questions that we put in our call for written evidence need to be focused. I am not entirely clear why it may be necessary to delay approval of the questions; there must be a mechanism for clearing such matters between meetings. Brian Adam alluded to that. I do not want to see delay in the process; the quicker we put out the core questions, the better for everybody. The same is the case in arranging our oral evidence taking. It is not worth while spending any time on matters that the Standards, Procedures and Public Appointments Committee has already debated and approved. Those procedures have already been scrutinised by the Parliament; perhaps we can put them to one side.

Also like others, I think that the tax powers require close scrutiny, as do the borrowing powers. We need to be satisfied that those mechanisms will work in everyone's interests, given the shared interests and responsibilities. We will also have to spend time on the transfers of what were previously reserved issues. I think that there is pretty broad consensus that the transfers are going in the right direction although, as Brian Adam rightly said, some things are heading in the opposite direction. Those matters also require scrutiny, but perhaps they are of a lesser order than the tax and borrowing powers.

I look forward to being part of the scrutiny process. We have a big job to do. We should get on with it.

**Tricia Marwick:** The Scotland Bill is a step forward in terms of powers to the Scottish Parliament. I look forward to being part of the committee.

The Scottish Parliament has its own processes and procedures. I am mindful of the fact that the UK Government did not consult on the bill. It is therefore incumbent on this committee to scrutinise the bill as much as we can within the timescale that we have been given. We would not wish any lack of scrutiny to lead to unintended consequences. What the Parliament does now is important not only in the next year but the next 10 years. We must ensure that our scrutiny is as close as we can possibly make it, particularly given the UK Government's lack of consultation.

Other colleagues have raised the important point of the financial aspects of the bill, which are, indeed, key. Regardless of the party that we come from, we all recognise that the financial aspects of the bill—as is the case for the financial aspects of any bill that comes before us—must work in the interests of the people of Scotland. We need to examine carefully the impact or potential impact that these new financial arrangements might have, particularly on the Scottish budget. We would be failing if we did not do that. Of course, there are aspects that we want to see, but we need to look at the implementation costs. For example, what amount of money will HM Revenue and Customs require to make a register of Scottish income tax payers? We need to be careful in finding out the impact of implementation on Scottish budgets.

I look forward to looking more closely at some of the proposals on air guns and drink driving. We all seem to be mindful of the impact of all of this on the economic growth of Scotland, particularly whether financial considerations will help to bring about economic growth in Scotland.

I look forward to being part of the bill committee. I hope that we can do as much as possible in a consensual manner. I speak for myself when I say that I am looking forward to working with colleagues, and I hope that the report that we eventually make to the Parliament will be one in which we agree on most, if not on all, aspects.

**The Convener:** I thank all members for their contributions and will say a word or two before we move into private session.

I will say a word on the work programme. As people who are familiar with the work of the Scottish Parliament will know, we usually do not invite Government ministers until the end of an evidence-taking process but, given the nature of the bill and its antecedents, I think that it might be wise to consider hearing from both the UK and Scottish Governments early in our evidence consideration. We might look to do that shortly.

I will also say a word on the call for evidence. We are very privileged to have both the bill and two comprehensive LCMs before us, and I hope that it will be possible for us to agree a call for evidence that invites people to focus on issues in the bill or in either of the LCMs. That fits with the essentially stage 2 character of this committee's consideration.

Is there anything else that members want to put on the record before we move into private session?

**Tricia Marwick:** I would like to discuss in public whether we have an adviser to the committee—not who that adviser may be, but whether we need one in the first place. I cannot see any reason for moving into private to have such a discussion.

**The Convener:** Sure—I am happy to hear your views.

**Tricia Marwick:** I want the committee to consider whether we need an adviser. My own view is that we have a lot of expertise in the Parliament through the financial scrutiny unit, which I hope will help us to look at the financial aspects of the bill.

I do not see the purpose of having an adviser. On the committee we have six members of the Scottish Parliament who have been here since 1999, so collectively we have a great deal of experience. It is my personal view that a committee adviser would not bring anything to the table. I think that we should progress by seeking factual analysis from the financial scrutiny unit, which was set up fairly recently and has expertise. I think that we should dispense with having an adviser to the committee.

**The Convener:** Thank you. Does anyone else have a view?

**Peter Peacock:** I take exactly the contrary view. I appreciate Tricia's point that we are all experienced parliamentarians in the Scottish Parliament context, but I am acutely conscious of the immense complexity of some of the finance issues that we will engage with.

In part of my past, I was convener of a regional council finance committee for about 12 years, and if I learned anything about the complexities of local government finances, it was that the day I thought I had mastered them was the day that I found a further complication or qualification that I had not yet mastered. I have exactly the same sense about the financial provisions in the bill. In many ways, they have the characteristics of the very complex grant arrangements that have existed in local government for many years. We would be wise to take specialist advice on those aspects.

There are also constitutional matters on which it might be appropriate to get advice. In fact, I

wonder whether we may require more than one adviser because we are talking about specialist areas, not just in the finance equation but in how the revenues operate, all that is implied in the future relationships, macroeconomic discussions and cross-border issues. There is a series of issues that we will have to tease out and it would be wise to have the advice available, day by day, so that all members can ask offline the daft questions that we require to ask of advisers and so that we have the extra expertise that none of us possesses. That is not meant in any sense to diminish the role that can be played by SPICe and the Parliament's financial scrutiny unit, but they are different from the specialist advice that I think that we will require.

15:00

**Robert Brown:** I broadly agree with Peter Peacock, who identified the two most important issues: finance and the constitution. Neither I nor any other colleague around the table has served at Westminster and we do not know anything about, for example, the workings of relationships with the Treasury and the many fairly arcane and extraordinarily complex issues associated with them.

We could perhaps draw a parallel with committees that examine our own budget's financial implications, which for the most part see fit to appoint advisers to assist their scrutiny. Our budget is complicated but I am not sure that it is as complicated as the interrelationship between this Parliament and Government and the Westminster Parliament and Government with regard to certain implications of Calman and the Scotland Bill. Those issues go beyond our own quite considerable expertise and it would be useful to have some outside input. I do not have an overwhelming view on the matter, but the approach that has been suggested seems to me to be the right one.

**David McLetchie:** I agree with the sentiments that Peter Peacock and Robert Brown have expressed. The Local Government and Communities Committee, of which I am a member, has certainly appointed advisers to help with budgetary matters every year in which it has considered the budget and I do not think that such an appointment is in any way disrespectful to the Parliament's own research facilities. They will play a complementary role. Indeed, on a bill of such importance, it would be remiss of us not to have the strongest possible team to help our deliberations, particularly given the tight schedule that we will have to work to if we are to deliver a report to the Parliament by the end of February.

**Brian Adam:** I hear what colleagues have said, and I am sympathetic to Tricia Marwick's view. It

might well be very difficult to find advisers, especially on constitutional and economic matters, who have not already been involved or had a particular role in the process and who can bring objectivity to scrutiny. We must separate out those who support the bill's proposals because, after all, our job is to scrutinise the legislation and it might be quite difficult to find someone who is objective.

I accept Peter Peacock's point that there are two sides to the matter, but it is difficult to see where we can find the necessary experience. It is one thing to study such issues; as Peter Peacock, who was leader of a regional council, knows, it is quite another to practise them. Having over the past 11 years served on the Finance Committee, the Audit Committee, the Economy, Energy and Tourism Committee and other committees, I have come to the view that external advice is founded not always on experience but on study. That is not to dismiss the involvement of academics, but we are trying to reach a practical solution. Earlier, members made it absolutely clear that this has to work. It might well be useful to study what happens elsewhere but, as far as I am concerned, the experience of having done it is more important. If members wish to have advisers, they should bear that in mind. Any adviser will need to have the wisdom of Solomon and a position that is clearly objective as far as the proposals are concerned. Finding someone like that will be—to put it as carefully as I can—a challenge.

**The Convener:** Given that Tricia Marwick has, quite properly, raised the matter in public, we should probably make a decision in public. I hesitate to look at the clerks or SPICE, who know that I have never sat on a committee and not asked for a specialist adviser of some sort. This occasion will be no different.

When a number of politicians, who are generalists by definition, are looking at matters of all sorts and have two or three hours a week to consider immensely complicated issues of whatever hue, it is almost always an advantage to bring some of the most expert specialist input to bear on those considerations. That is not to say that members are, in any sense, bound by that input but, looking at the operation of the Parliament, it is almost always the case that seeking out the most knowledgeable and most informed in the business can help generalist politicians to do justice to the issues at hand. On that basis, and on this bill as on so many others, my view is that having an adviser will aid proper parliamentary scrutiny, particularly when time is constrained.

That said, we need to move to a conclusion. I invite Tricia Marwick to say whether she is happy to go along with the feeling of the meeting or

whether she wants to press the question to a division.

**Tricia Marwick:** It is quite clear that other members have no desire to follow my suggestion that we do not have a committee adviser. It would be positively unhelpful to the consensus that I hope we will build over the next weeks and months to end our first meeting with a division, so I will not press it to a vote.

**The Convener:** I am grateful.

**Robert Brown:** On a different matter, convener, I want to introduce a wider context. I know that we want to stay focused, but we sometimes take the view that examples in this field come only from the United Kingdom and its own expertise and experience. Of course, it has been a centralised country and its expertise is not all that great.

Calman looked at a number of alternative systems in other countries, as did the Steel commission, and although we do not want to embark on a wide examination of those matters, we want to keep in context and have available to us, perhaps through the expert advisers, some feel of the sort of mechanisms that have been used in Germany, Spain or Canada to deal with the relationships between central and provincial Government, under whatever name. That is an important aspect that we should have at the backs of our minds.

**Peter Peacock:** I concur with what Robert Brown said. The question is how much time we spend on it. When we come to the detailed work programme, we should think about looking for a witness or two who can give such a perspective. My sense is that the Calman recommendations and the subsequent bill fit firmly within the broad family of quasi-federal and federal systems, and there are one or two international examples that, some would argue, fit within that too, although I am not sure that they do. We need to have some sense of confirmation, if that is what Robert Brown is suggesting. Are we in the mainstream or are we not?

**Robert Brown:** It is about where we fit. Does what the Scotland Bill proposes fit within the family of similar nations abroad?

**Peter Peacock:** Exactly.

**Tricia Marwick:** I am not sure that I understand Robert Brown correctly. Are you talking about an adviser who has that expertise or about witnesses?

**Robert Brown:** I am primarily talking about keeping the context in mind. That will be helped by witnesses who have some sort of perspective and depth in those issues, because they might know how the mechanism works between the Canadian federal and provincial Governments, or between

the Länder and the federal Government in Germany. That is an important point because we do not always pick up the nuances with our UK-centred approach.

## **Decision on Taking Business in Private**

15:09

**The Convener:** On that note, we should end the public part of the meeting. I invite the committee to agree that the remainder of our agenda, which is about the detail of the work programme, witnesses and the appointment of an adviser, should be taken in private.

**Members** *indicated agreement.*

**The Convener:** Thank you, and thank you to all those who braved the snow.

15:09

*Meeting continued in private until 16:26.*

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