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Bruce Crawford MSP
Convener
Devolution (Further Powers) Committee
c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
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24 November 2015

Thank you for your letter of 12 November. As I said in the House of Commons at Third Reading, I am very grateful to you and your committee for your scrutiny of the provisions in the Bill. It has provided an invaluable contribution to the process. I also welcome your support for a number of the amendments I made at Report stage in the House of Commons.

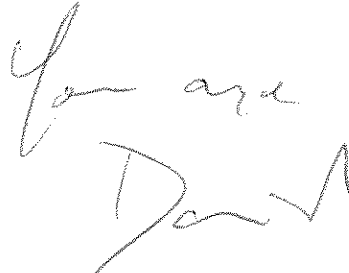
I was disappointed that in your letter you did not feel able to accept that the Bill now delivers the Smith Commission Agreement in full. Subsequently to your letter Lord Smith of Kelvin himself confirmed that the Bill delivered his Commission's agreement in full. Writing in the Daily Record he said: 'I believe the Bill delivers the legislation required to honour the Agreement.' I believe the words of the respected and politically impartial chairman of the Smith Commission carry great weight. He joins voices including Gordon Brown, the Shadow Secretary of State for Scotland and the Daily Record newspaper itself in reaching that view. Smith Commissioners Annabel Goldie MSP and Professor Adam Tomkins have also confirmed that the Bill now delivers the Smith Agreement in full, and have written to John Swinney to express that view.

I note also that Alex Johnstone MSP has made clear that he does not agree with the contents of your letter, and is of the view that the Bill does now deliver the Smith Agreement in full.

The points made by the Committee in its Interim Report were significant in my determinations as to the package of amendments to bring forward at Report stage. Those amendments, agreed by the House of Commons, ensure the Bill devolves the new powers effectively to the Scottish Parliament and the Scottish Ministers as well as putting beyond doubt that the Bill fully delivers the Smith Commission Agreement.

These are historic new powers which will have a lasting and fundamental impact in Scotland. I hope you will agree that the debate has moved on to focus on how the powers can be used for the benefit of the people of Scotland. I am sure that your committee will take as keen an interest in that debate as it has in the Bill.

I have responded to your queries in annex to this letter and would be happy to meet with you to discuss future progress.

A handwritten signature in cursive script, appearing to read 'You are David', written in light blue or grey ink.

**Rt Hon DAVID MUNDELL MP
SECRETARY OF STATE FOR SCOTLAND**

Response To Questions From The Committee

Scotland Bill provisions

Employment support

1. I consider that clause 29 on employment support delivers the Smith Agreement in full, as does the whole of the Bill. Clause 29 devolves the power to create employment programmes akin to the Work Programme and Work Choice, but does not devolve the specific programmes as they currently exist. This is so that Scottish Ministers have the flexibility to provide schemes of their own design within devolved competence.
2. The clause creates a clear distinction between the Jobcentre Plus and the Scottish Government-led elements of the claimant journey, giving both a clear space in which to develop its own support. Jobcentre Plus will remain able to offer short intensive interventions, while the Scottish Government programmes will last a year or more in duration. This is only right, as the Smith Agreement was clear that Jobcentre Plus would remain reserved.

Discretionary housing payments

3. Clause 23 gives the Scottish Parliament the competence to legislate for discretionary housing payments (DHP) for people in Scotland. As you note, the clause provides that, in order to be eligible for a DHP, a person must be entitled to Housing Benefit (HB) or another reserved benefit payable in respect of rental costs. To remove the link between DHPs and receipt of a reserved benefit relating to rental costs would fundamentally alter DHPs and there was no intention in the Smith Agreement for this to happen.
4. The Scottish Government will, of course, be able to provide discretionary payments to individuals to meet short-term needs under clause 24 regardless of whether or not they are entitled to a reserved benefit. The Scottish Government could also consider provision under the new power to create new benefits.

Welfare Fund

5. We have been quite clear that under clause 24, the Scottish Parliament will have the power to legislate for discretionary payments to meet a person's short term need and to avoid risk to the well-being of an individual. This is similar to, but expands upon, the power the Scottish Parliament currently has to make exceptional payments under certain circumstances under which the Scottish Welfare Fund is delivered.
6. Similar to the other discretionary payment clauses, 22 and 23, and clause 26, the power to create new benefits, payments cannot be made solely to off-set a reduction in a reserved benefit. This is because under the Smith Commission

Agreement the sanctions and conditionality policy remains reserved. It is therefore appropriate that discretionary payments, or new benefits, introduced by the Scottish Government can't be used to systematically undermine this reserved policy. The conditionality and sanctions system is an integral driver of claimant behaviour across the whole claimant journey, and as such has clear impacts on the rate at which claimants flow-off out-of-work benefits (which are remaining reserved) and return to work.

7. However, this does not mean that sanctioned claimants cannot be given discretionary payments. A discretionary payment may still be made if the need arises due to some other exceptional circumstance or event not related purely to the reduction in the benefit.
8. As is the case now, under Exception 8, the Scottish Parliament will be able to continue to make provision for occasional payments to help vulnerable people needing to establish or maintain a settled home.

Offsetting benefits

9. The UK Government agrees with the principle of not automatically off-setting new benefits with reductions elsewhere, as set out in paragraph 55 of the Smith Commission Agreement. This position was set out in the Command Paper (Cm 8990) published in January 2015 and has not changed.

Disability definition

10. The difference between the definitions of disability benefits in clause 20 and that used in the 'Employment support' clause 29, is in order to accommodate different devolution issues. The Government's view is that the Equality Act 2010 definition of a disabled person would not be appropriate for clause 20. Indeed, it could serve to limit the Scottish Parliament in determining who will, or who might not, be covered by their provisions in relation to disability benefits.
11. The definition for disability benefits used in clause 20 covers the adverse effects or needs arising from an individual's health condition or disability – the common key feature to the benefits – with the proviso that these effects or needs must not be short-term.
12. However, by including the phrase "normally payable" the provision gives the Scottish Parliament the necessary flexibility to create exclusions or to create special categories, for example to enable provision for people who are terminally ill.

Energy

13. With regard to changes to the fuel poverty clause (new clause 55) the further power we have devolved to the Scottish Ministers allows them to determine the amount of any benefit provided by an energy supplier to a Scottish consumer under the fuel poverty support scheme. This means that, not only are the Scottish Ministers able to set the monetary value of a rebate within a defined envelope for

Scotland, but also the value of any other benefit that the Scottish Ministers may wish to form part of the rebate. So, for example, instead of a £140 rebate on Scottish consumer bills, as is the current arrangement under the GB Warm Home Discount scheme, the Scottish Ministers could design a scheme that provides a measure instead of a monetary rebate, such as a boiler, or combinations. The new power would allow the Scottish Ministers to translate that measure into a benefit for the purposes of scheme design and reporting. In much the same way, The UK Government prescribe 'scores' for measures installed under the Energy Company Obligation to allow energy companies to know how much each measure achieves against their target. The aggregate amount of the benefits to be provided by the Scottish Ministers must remain within the overall cost limit set by the Secretary of State.

14. In relation to amendments to remove the requirement under the fuel poverty clause for the Scottish Ministers to seek the consent of HM Treasury, this is because the overall GB-wide cost limit is set by the Secretary of State, and the Secretary of State seeks consent from HM Treasury already for that limit. Therefore, we concluded that the duplicate consent requirements were not necessary as protections were already in place.
15. As regards clause 58 I can confirm that it does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme. As the Capacity Mechanism is not a renewable electricity scheme it is not engaged by the clause.
16. Turning to the Scottish Government's consultative role in the strategic priorities of the Energy Strategy and Policy Statement, the Energy Act 2013 already gives the Scottish Ministers a clear formal consultative role in the development of the Strategy and Policy Statement (SPS). The process in designing the SPS requires two rounds of consultations where the Scottish Ministers can provide their views on the draft document before it is designated. Therefore, as legislation already exists which addresses paragraph 41 of the Smith Commission Agreement, no additional provisions have been included in the Scotland Bill.

Tribunals

17. The Smith Commission specifically agreed that the Special Immigration Appeals Commission and Proscribed Organisations Appeals Commission, which deal with national security issues, should continue to be reserved on national security grounds. As set out in the Command Paper published on 22 January, the UK Government also considered that similar considerations applied to the Pathogens Access Appeals Commission and the Investigatory Powers Tribunal and took the view that to the extent that national security matters may be handled by any other tribunal, whether generally, or in individual cases these should also continue to be reserved.

18. The Command Paper also confirmed that the clause would not be used to transfer responsibility where the tribunal in question was an integral part of a national regulatory body operating in a reserved area where it also provided an appellate function intrinsically linked to that regulatory function. Examples of these are:

- Competition and Markets Authority (CMA);
- Office of the Rail Regulator (ORR);
- Traffic commissioners appointed under section 4 of the Public Passenger Vehicles Act 1981.

Fiscal framework

19. As you are aware, fiscal framework negotiations between the UK and Scottish Governments are ongoing. This is obviously an important and detailed negotiation and we do not anticipate finalising the agreement until after the UK Government's Spending Review and the draft Scottish Budget. Both Parliaments will be updated once an agreement is reached and I look forward to the scrutiny the Committee will be able to give to such an agreement.

Intergovernmental relations

20. Work continues to develop a revised Memorandum of Understanding which was commissioned by the Prime Minister and the heads of the Devolved Administrations at the Plenary meeting of the Joint Ministerial Committee in November 2014. As part of this process, the four administrations are considering the reports of the Silk and Smith Commissions, as well as other recent reports on intergovernmental relations including, of course, the Devolution (Further Powers) Committee's report.

21. This work is continuing, and will require careful consideration and discussion between all four administrations of the UK. The four administrations will set out the conclusions of this process in due course.