

LEGISLATIVE CONSENT MEMORANDUM

Scotland Bill

Introduction and Background

1. On Thursday 28th May 2015, the United Kingdom Government introduced the Scotland Bill in the House of Commons. As this is a relevant Bill under Rule 9B.1 of the Parliament's Standing Orders, this memorandum has been lodged by John Swinney, the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy, in accordance with Rule 9B.3(1)(a). The Scottish Government has prepared this memorandum as the basis of the Parliament's scrutiny of the Bill. The Bill can be found at: <http://services.parliament.uk/bills/2015-16/scotland.html>

2. On 19 September 2014, the UK Prime Minister announced the establishment of a commission to be chaired by Lord Smith of Kelvin. Lord Smith's commission published its report – the Smith Agreement – on 27 November 2014, setting out proposals agreed between the five political parties represented in the Scottish Parliament who sat on the Commission. A link to the report is accessible via the following link: <https://www.smith-commission.scot/>

3. The Scottish Ministers have been clear that although the recommendations of the Smith Commission did not go far enough they were an important step in providing the Scottish Parliament with further levers to improve the lives of the people of Scotland. The Scottish Government has therefore repeatedly urged the UK Government to implement the recommendations in full. The Scottish Government also published a paper setting out its proposals for devolution beyond the Smith Commission recommendations on 15 June: <http://www.gov.scot/Topics/constitution/publications/morepowersproposals>

4. On 22 January 2015 the UK Government published a Command Paper setting out its approach to implementing the Smith Commission recommendations. The paper also included draft clauses illustrating how the policy would be translated into statute. The paper can be accessed via the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf. The Scottish Government made clear on publication that these draft clauses required further work if they were to deliver on both the letter and the spirit of the Smith Commission proposals.

5. On 28 May 2015, the UK Government published the Scotland Bill and introduced it at Westminster. The Bill's contents are very similar in policy terms to the Command Paper published in January, although there are technical and drafting changes. It should be noted that there are also significant aspects of the Smith Commission recommendations which will be taken forward through administrative agreement between the Scottish Government and the UK Government. This includes the agreement of a fiscal framework which will govern the financial and budgetary arrangements that flow from the Smith Commission recommendations.

6. The Scottish Government set out its detailed position on the Bill in response to the Devolution (Further Powers) Committee on 7 June (see paragraph 12 below). It is for this reason that the memorandum is being lodged later than 2 weeks after the introduction of the Bill, although this is still compliant with Standing Order Rule LCM(S4) 37.1

Session 4 (2015)

9B.3(1)(a). The Clerk to the Committee was informed in advance of this timescale to advise on Standing Orders.

Summary of the Bill

7. The Bill covers a range of policy areas that were considered by the Smith Commission. It comprises 7 Parts and 2 Schedules:

- Part 1 makes provision on constitutional arrangements including the Scottish Parliament and Scottish Government, the Sewel Convention, elections and legislation by the Scottish Parliament.
- Part 2 and Schedule 1 make provision on partial devolution of income tax, value added tax and devolved taxes (Air Passenger Duty and Aggregates Levy).
- Part 3 makes provision to devolve on limited aspects of welfare benefits and employment support.
- Part 4 and Schedule 2 makes provision on other areas of legislative competence including The Crown Estate, equal opportunities, tribunals roads, transport policing, onshore petroleum, consumer advocacy and gaming machines.
- Part 5 makes provision on other areas of executive competence including the Gaelic Media Service, Northern Lighthouse Commissioners, Maritime and Coastguard Agency, rail franchising, fuel poverty, energy company obligations, renewable energy and the Competition and Markets Authority.
- Part 6 makes provision on miscellaneous areas including the Gas and Electricity Markets Authority, the Office of Communications and in relation to some bodies attending before the Scottish Parliament.
- Part 7 contains some general provisions that apply to the Bill as a whole.

Scrutiny

8. The Scottish Government welcomes the Scottish Parliament's consideration of this memorandum, and examination of the Bill, and stands ready to give evidence. The Devolution (Further Powers) Committee has already taken evidence from the Scottish and UK Governments on the UK Government's Command Paper and published a report on the draft clauses on 14 May:

http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/Reports/dfpr15-03.pdf

9. The unanimous report concluded that: "In some areas the Committee believes that the current draft legislative proposals meet the challenge of fully translating the political agreement reached in the Smith Commission. In other areas, improvements in drafting and further clarification are required. In some critical areas the UK Government's draft legislative clauses fall short." (Page 4 of the Report). The Committee's impartial, evidence-based report reflected the views of a range of stakeholders.

10. The Scotland Bill as published does not address the criticisms of the all-party Committee, whose report stated that the draft Bill failed to deliver the spirit or substance of Smith in key areas. Few of the Committee's recommendations are reflected in the Bill. This was highlighted in the Committee's further note published on 4 June, on the Scotland Bill 2015-16 and comparison with the conclusions and recommendations in the committee's interim report.

[http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/General%20Documents/C comparative_analysis_paper_FINAL\(1\).pdf](http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/General%20Documents/C comparative_analysis_paper_FINAL(1).pdf)

11. The Scottish Government responded to the Committee's report on 7 June, setting out in detail the position of Scottish Ministers on all the areas where the current Scotland Bill does not meet either the substance or the intention of Smith <http://www.gov.scot/Resource/0047/00478767.pdf>

12. Areas of particular concern to the Scottish Government are the clauses relating to the permanence of the Scottish Parliament, clauses which effectively contain UK Government vetoes over Scottish Parliament decision making, limitations contained within the clauses on welfare and employment support, the complexity of the drafting and approach taken to devolving The Crown Estate and drafting of the clause on equal opportunities. The response to the Committee includes proposed alternative clauses in a number of areas, to bring the Bill into line with the Smith Commission recommendations.

13. The substantial detail in the Scottish Government response to the Devolution (Further Powers) Committee supplements the content of this memorandum. The Scottish Government expects that there will be further detailed scrutiny of the Bill by the Scottish Parliament and that both the Scottish and UK Governments will be asked to contribute evidence and analysis. The Scottish Government will fully support that process.

Financial Implications

14. The Bill would have significant financial implications flowing from the proposals to reform the financing of devolved government in Scotland. These include the establishment of a new fiscal framework to reflect the devolution of additional tax raising powers, assignment of a proportion of VAT revenues and the subsequent amendments to the block grant to ensure they adhere to the principle of 'no detriment' as set out by the Smith Commission. The framework will also reflect the transfer of funding to support the devolution of additional responsibilities, such as welfare, set out in the Smith Commission report.

15. Scottish Ministers and UK Government Ministers will be negotiating the fiscal framework in parallel with progress on the Bill through both Parliaments. Discussions are already underway and both governments are clear about the need to agree the fiscal framework jointly. The Scottish Government considers that agreement of acceptable fiscal framework arrangements are essential in order to recommend that Parliament gives legislative consent to the Scotland Bill. The Scottish Government will not therefore bring forward a legislative consent motion to the Scottish Parliament until and unless such agreement is reached.

Reasons for seeking a legislative consent motion

16. The purpose of the Scotland Bill is to revise the devolution settlement and adjust the legislative competence of the Scottish Parliament and the executive competence of the Scottish Government. In doing this the Bill makes extensive amendments to the Scotland Act 1998. The Scottish Government's view is that the Bill as a whole requires the consent of the Scottish Parliament under the Sewel Convention. The Scottish Parliament could refuse consent to any aspects of the Bill it does not support. Under the Convention, the UK Parliament would not proceed to consider those aspects of the Bill to which the Scottish Parliament did not consent. The Scottish Parliament could

also propose changes to the Bill and withhold its consent unless suitable amendments to the Bill are made by the UK Parliament or suitable undertakings offered by the UK Government. In addition the Scottish Government does not intend to invite the Scottish Parliament to give its consent to the Bill or any aspect of it unless there is agreement on a satisfactory fiscal framework (see paragraphs 14 and 15 above).

Draft Legislative Consent Motion

17. Under Standing Orders Rule 9B.3(3)(c) a member (including a member of the Scottish Government) lodging a legislative consent memorandum is required to include a draft legislative consent motion. Under Standing Orders Rule 9B.3(3)(d), if a member of the Scottish Government does not propose to include a draft motion they must explain why not. The Scottish Parliament is now undertaking detailed scrutiny of the proposals in the Scotland Bill and that consideration will inform the final Legislative Consent Motion lodged by the Scottish Government in due course. The motion will cover all aspects of the Bill, both financial and non-financial, which require the Scottish Parliament's consent, dependent on the outcome of that scrutiny and of negotiations and amendments on both the content of the Scotland Bill and the accompanying fiscal framework. In the meantime the Scottish Government provides the following draft motion to illustrate its position as set out in this memorandum:

That the Parliament agrees that the provisions of the Scotland Bill, introduced in the House of Commons on 28 May 2015, so far and as long as they are amended to implement the spirit and intention of the Smith Commission fully, where these matters fall within the legislative competence of the Scottish Parliament or alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

Conclusion

18. Since the General Election the Prime Minister and the Secretary of State for Scotland have both said that the Scotland Bill will implement the Smith Commission recommendations in full. The Scottish Government shares the view of the Devolution (Further Powers) Committee that the Scotland Bill falls short in a number of key areas. Other than modest changes to the welfare provisions, the policy reflected in the Bill is almost identical to that published in the draft clauses in January.

19. The Scottish Government's view is that the Bill's shortcomings must be rectified if it is to be seen as a credible reflection of the Smith Agreement and the UK Government's commitment to Scotland. It is essential that the UK Government now engages with the Scottish Government and Scottish Parliament to agree improvements to the Bill to be brought forward as UK Government amendments. The extent to which these address shortfalls identified by the Scottish Government and Scottish Parliament will be a significant factor in the Scottish Parliament's consideration of a Legislative Consent Motion.

20. The Scottish Government invites the Scottish Parliament to examine the Bill in detail to inform its consideration of a Legislative Consent Motion at an appropriate stage in the Bill process.

Scottish Government

June 2015