



The Scottish Parliament
Pàrlamaid na h-Alba

ECONOMY, ENERGY AND TOURISM COMMITTEE

AGENDA

14th Meeting, 2014 (Session 4)

Wednesday 7 May 2014

The Committee will meet at 9.30 am in the James Clerk Maxwell Room (CR4).

1. **Scotland's Economic Future Post-2014:** The Committee will take evidence from—

Dr Mary Hilson, Senior Lecturer in Scandinavian History, Department of Scandinavian Studies, University College London;

Professor Michael Keating, Professor of Politics, University of Aberdeen and Director, ESRC Scottish Centre on Constitutional Change;

Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh;

John Nugée, Associate Fellow, Chatham House;

and then from—

Kyle Thornton MSYP, Chair, Scottish Youth Parliament;

Danny Boyle, Parliamentary and Policy Officer, Black and Ethnic Minority Infrastructure in Scotland (BEMIS);

John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations;

Dr Maureen Sier, Director, Interfaith Scotland.

2. **Subordinate legislation:** The Committee will consider the following negative instrument- Electronic Documents (Scotland) Regulations 2014 (SSI 2014/83)
3. **Decision on taking business in private:** The Committee will decide whether consideration of its Work Programme should be taken in private at the next meeting.

4. **Scotland's Economic Future Post-2014- Review of evidence heard (in private):** The Committee will review the evidence heard at today's meeting.

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Clerk to the Economy, Energy and Tourism Committee
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Edinburgh
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The papers for this meeting are as follows—

Agenda item 1

Paper by the clerk

EET/S4/14/14/1

PRIVATE PAPER

EET/S4/14/14/2 (P)

Agenda item 2

Paper by the clerk

EET/S4/14/14/3

Economy, Energy and Tourism Committee

14th Meeting, 2014 (Session 4), Wednesday, 7 May 2014

Scotland's economic future post-2014

Introduction

1. This paper provides background information for the Committee's evidence session as part of its [inquiry into Scotland's economic future post 2014](#). The themes for this session are 'international/lessons from abroad' and 'civic Scotland'. There will be two separate panels of witnesses as below:

International/lessons from abroad

- Dr Mary Hilson, University College London
- Professor Michael Keating, University of Aberdeen
- Professor Ailsa Henderson, University of Edinburgh
- John Nugée, Chatham House

Civic Scotland

- Kyle Thornton MSYP, Scottish Youth Parliament
- Danny Boyle, Black and Ethnic Minority Infrastructure in Scotland
- John Downie, Scottish Council for Voluntary Organisations
- Dr Maureen Sier, Interfaith Scotland

2. The remit and call for evidence for this inquiry can be found online: [www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/Inquiries/Economic Future Inquiry - Remit and Call for Evidence.pdf](http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/Inquiries/Economic_Future_Inquiry_-_Remit_and_Call_for_Evidence.pdf)

3. Written submissions are attached (Annex A). A briefing (covering both themes) by the Financial Scrutiny Unit (FSU) is attached at Annex B. The FSU has published wider briefings of relevance to the inquiry. Links to these, for information, are below:

- Scotland's economy: recent developments
www.scottish.parliament.uk/parliamentarybusiness/72299.aspx
- Scotland's economy: future developments
www.scottish.parliament.uk/parliamentarybusiness/72297.aspx
- The currency of an independent Scotland
www.scottish.parliament.uk/parliamentarybusiness/74067.aspx

4. For information, a list of the remaining sessions is also attached (Annex C).

Fergus D. Cochrane
Senior Assistant Clerk to the Committee

Annex A

The following written submissions are available via the link below:

International/lessons from abroad

- Professor Michael Keating, University of Aberdeen
- Professor Ailsa Henderson, University of Edinburgh
- John Nugée, Chatham House

Civic Scotland

- Scottish Youth Parliament
- SCVO

www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/72692.aspx

Annex B

Economy, Energy & Tourism Committee: Scotland's Economic Future Post-2014

Panel 1: Evidence session on international/lessons from abroad

The session on the 7th May offers Members an opportunity to explore issues raised in previous sessions – for example, borrowing, currency, trade, welfare, inequality and the labour market - within an international and historical context. As such, this briefing summarises relevant evidence received by the Committee during its inquiry so far, as well as highlighting related sections of the Scottish Government's *Scotland's Future* white paper.

Currency

In the event of independence, the importance of Scotland having feasible currency arrangements in place was highlighted during the Czech/Slovak break-up. The two states intended to (at least temporarily) keep a common currency to mitigate the effects of the changes, but financial markets perceived that a currency union was not economically or politically durable. Speculative activity put immediate pressure on the arrangement and it lasted just six weeks. In evaluating the currency options for an independent Scotland, there is much that can be gleaned from looking at international experiences.

'Sterlingisation'

There is debate around whether 'sterlingisation' – the arrangement that existed in the Irish Free State until it got its own Saorstát pound in 1928 -

would be feasible for an independent Scotland. In his written submission to Committee, John Nugée highlights that “the main consequence of sterlingisation for the infant Irish Free state was stability, and public confidence in the currency” (2014). While this type of arrangement would also allow Scotland and rUK to avoid transaction costs, it would give Scotland no control over monetary policy. The arrangement is most prevalent amongst smaller territories, e.g., Jersey, Kosovo and Panama. Armstrong (2014) notes that if Scotland were to choose such an option, it would be by far the largest and wealthiest country to do so. John Nugée also points out that “in almost all cases the domestic capital markets are very limited or non-existent” and highlights that Scotland may not find it easy to establish these under sterlingisation (2014). The Fiscal Commission Working Group (Fiscal Commission) also raised concerns about this currency arrangement for Scotland stating “Advanced economies of a significant scale tend not to operate in such a monetary framework. Though an option in the short-term, it is not likely to be a long-term solution” (2013).

Own currency - pegged

From 1928 a currency board arrangement was set up in the Irish Free state to maintain 1:1 parity between the Saorstát pound and sterling. This arrangement continued until Ireland joined the ERM in 1979 and broke the sterling link. In his written submission John Nugée expressed his view that the policy objective of maintaining parity with sterling over this period was over-prioritised to the detriment of other economic policy in Ireland. A pegged currency has similar advantages and disadvantages to a ‘sterlingisation’.

Countries that peg the value of their currency to another currency are usually small states which rely heavily on trade or larger countries. In some cases they have a poor record of economic management. Countries with a pegged currency include Lithuania and Bulgaria (pegged to the Euro). The UK Government warned that “the complexity of the Scottish financial sector would make it difficult for Scotland to follow a similar approach [to Ireland]” (2013).

An exception to this is Hong Kong. Since 1983 the Hong Kong dollar has been linked to the US dollar at the rate of HK\$7.8 to one US dollar in a ‘Linked Exchange Rate system’. The link is maintained through the operation of a Currency Board system. The entire monetary base of Hong Kong is backed with US dollars at the Linked Exchange Rate. Because of the currency board arrangement, Hong Kong does not have an independent monetary policy. The exchange rate is maintained through an automatic interest rate adjustment mechanism. US interest rates are the determining factor of Hong Kong interest rates. However, John Nugée cautioned that “Hong Kong is not typical of such arrangements: it had had a separate currency and independent financial system for a long time prior to the introduction of its current linked exchange rate system”.

Own currency – floating

The Fiscal Commission (2013) highlight that creating a Scottish currency “would represent a significant increase in economic sovereignty, with interest rate and exchange rate policy being two new policy tools and adjustment

mechanisms to support the Scottish economy”. However, this option is not without its risks (e.g., exchange rate volatility, capital flight). In his written submission John Nugée (2014) highlighted that in almost every case of European countries that have won independence since the fall of communism, the new states have established new currencies. However, he notes that “in general the currency they left behind was unattractive or failing, and the new currency was secured behind exchange controls that compelled citizens of the new state to accept it. He goes on to say:

“There is almost no precedent in recent history for a population voluntarily to leave a currency which is successful and internationalised and to invest a significant proportion of their financial assets into a new currency that is untried.”

Division of assets and liabilities

In their paper on Assets and Liabilities and Scottish Independence Armstrong and Ebell (2014) highlight that there would be two critical issues that would be likely to arise in relation to dividing public sector assets and liabilities between Scotland and the existing UK in the event of independence:

1. The assets and liabilities to be divided
2. The basis for the division

They also highlight the example of the division of Czechoslovakia into the sovereign states of the Czech Republic and Slovakia in 1993 - often called the ‘velvet divorce’ for its spirit of mutual agreement. The general principle was that property and natural resources should belong to the state in which it was situated with other non-physical assets and liabilities divided 2:1 in to the Czech Republic, in line with the relative population size. The amount of debt was relatively small and divided up on per capita basis.

In *Scotland’s Future*, the Scottish Government (2013) proposes that the physical assets located in Scotland and needed to deliver currently reserved services transfer to the Scottish Government. It states that negotiations will decide how to best share other assets with Scotland expecting to receive a population share or their value in cash. Negotiations would also agree how to apportion liabilities. The Scottish Government proposes that national debt could be apportioned by reference to the historic contribution made to the UK’s public finances by Scotland, or on the basis of population share. It also states that Scotland may choose to offset part of its share of UK assets against the debt it agrees to take on from the UK.

Economic uncertainty

In her written submission Professor Ailsa Henderson (2014) draws on evidence from the 1995 referendum in Quebec and considers how political uncertainty affected the bond market, currency and exchange rate, inflation, investment and population flight. She highlights that Quebec and Canada bond yields increased before during and after the referendum with more modest Canadian effects lasting longer than the larger Quebec effects. Uncertainty over referendum outcomes affected the stock market returns of

firms in Quebec with companies with assets that could not be readily abandoned (e.g., factories) suffering more. The performance of the dollar improved the day after the referendum. However, there was no sign that the referendum impacted inflation or population flights.

Inequality and welfare

[David Eiser's submission](#) (for the 23 April evidence session) shows that, against the Gini Coefficient measure, inequality in Scotland is slightly lower than the UK as a whole and almost exactly the same as the UK rate once London is excluded. However inequality levels in Scotland and the UK as a whole are significantly higher than those seen in our Nordic neighbours (See graph in Annex 1). The ten countries with the lowest levels of inequality in the OECD are small (10 million population or less) northern and central European countries. Meanwhile, according to the Scottish Government, Scotland is 'locked in to one of the most unequal economic models in the developed world' (p.5)

The Scottish Government believe that Norway and Sweden 'have demonstrated that fairness and prosperity are part of a virtuous circle, reinforcing each other and delivering a range of benefits for society as a whole' (p. 150). The 'social investment' approach to welfare seen in the Nordic countries is not 'simply a safety net for individuals who cannot support themselves' but is viewed as an 'opportunity for positive investment in people throughout their lives'. Investment in early years development, childcare and employment is 'repaid through better outcomes for people, families and communities, and through increased contributions to society, whether that is through taxation or other means' (p. 161).

Modelling a range of potential tax and welfare policies in an independent Scotland, David Eiser demonstrates that raising tax and out of work benefits would have only a limited impact on inequality levels. The major driver of income inequality is *pre-tax* incomes, primarily caused by the continued polarisation of the UK labour market. David Eiser and his colleague at Stirling University, Professor David Bell, conclude that 'given that many of the drivers of inequality are linked to global trends in technology, and family formation practices, there are likely to be limits to the extent that a small open economy can mitigate them. Scottish independence would provide opportunities, but it would also come with constraints'¹

During the evidence session on 23 April, Dr Jim McCormick of the Joseph Rowntree Foundation highlighted a 'genuine concern' in the Nordic countries 'about an insider-outsider tensions that has grown up'. Well-qualified migrants arriving in Norway and Sweden often 'struggle greatly to break into secure positions in the core labour market'. Dr McCormick concludes that the Nordic countries 'to varying degrees, have been much less successful at integration, inclusion and progression than we might have expected' creating 'various consequences, one of which is starting to be felt in productivity and social cohesion' ([Official Report](#), 23 April 2014, Col 4355)

¹ [www.esrc.ac.uk/ images/Inequality%20paper%2013%20Nov%20Final_tcm8-29182.pdf](http://www.esrc.ac.uk/images/Inequality%20paper%2013%20Nov%20Final_tcm8-29182.pdf)

Labour market and social partnership model

Referencing OECD research linking trade union membership to lower levels of income inequality, the Scottish Government proposes to ‘formalise the relationship between government, employer associations and employee associations’. Key to this will be the establishment of a National Convention on Employment and Labour Relations, ‘a forum which encourages direct and constructive dialogue across all key stakeholders’ (pp. 104-105).

The Scottish Government is keen to see more employee representation on company boards (as is common in Germany and some Scandinavian countries) as well as greater gender balance on boards, concluding that ‘an independent Scotland can examine innovative ways to support improvements in the productivity and well-being of the workforce’.

In his presentation to the Royal Society of Edinburgh in June last year, the STUC’s Stephen Boyd suggested that an independent Scotland could adopt a more Nordic labour market model, including higher trade union membership, wider collective bargaining coverage, increased investment in active labour market programmes, as well as more generous unemployment benefits. Although these are desirable from a STUC perspective, Mr Boyd accepts that ‘a set of societal factors exist in the Nordic nations which enable social partnership to flourish...these conditions do not currently apply in Scotland’.² Peter Kelly of Poverty Alliance, giving evidence to the Committee on 23 April, also acknowledged that the tripartite arrangement model ‘is a tradition we do not have here’:

“In these debates, we often look to the Scandinavian countries, where tripartite approaches are well established and are part of the cultural way of doing business and of reaching negotiated agreements. If we want to transform the way our economy works, we have to understand that it is not only business leaders that make economies work; it is also organised labour, unorganised labour, the third sector and so on”.

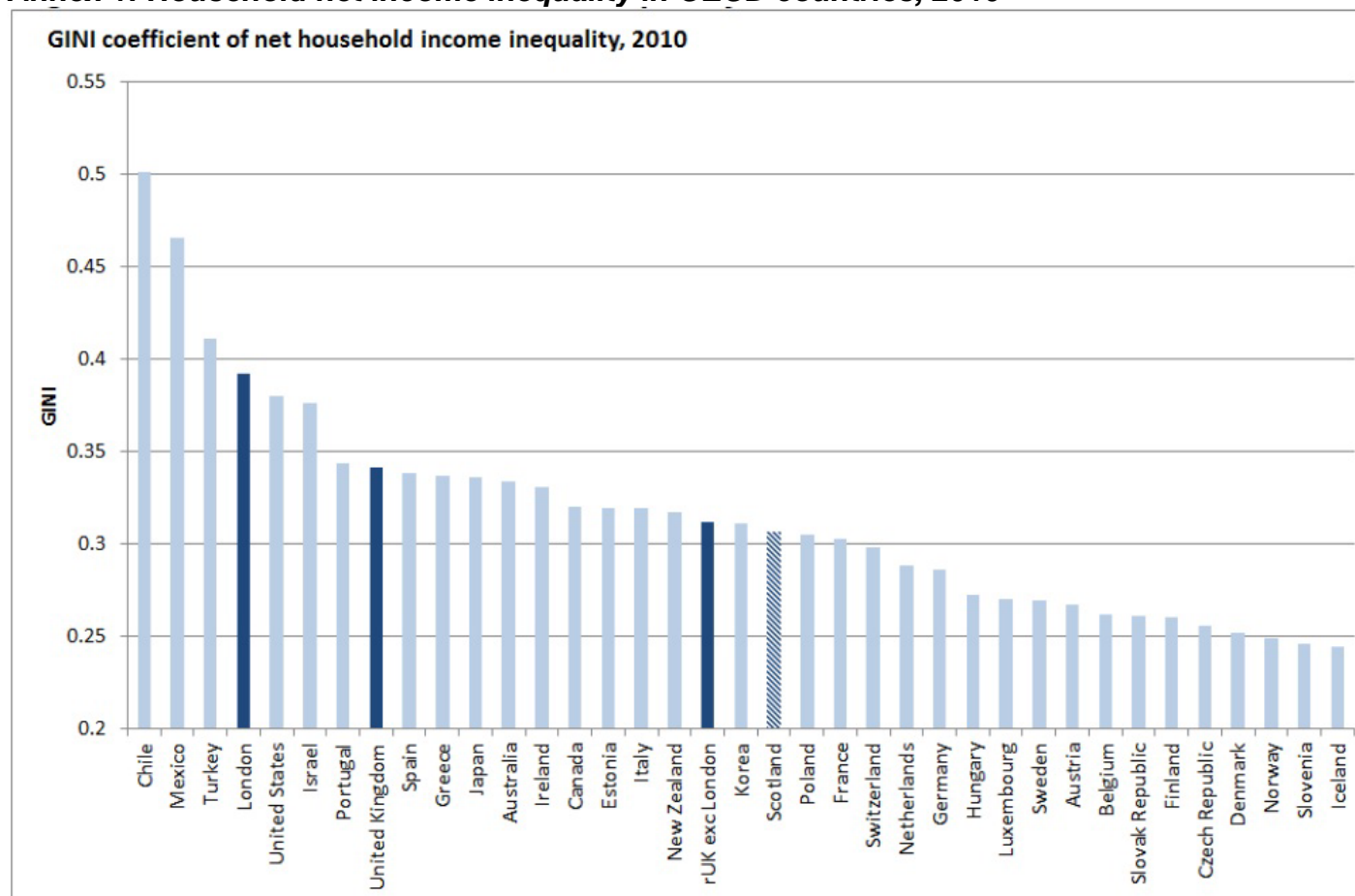
(Official Report, 23 April 2014, Col 4335)

Professor Michael Keating, in his written submission, highlights some of the defining features of the social partnership model, including an active public sector, wage stability and negotiations between partners which acknowledge the importance of a ‘social wage’ (i.e. ‘free’ public services such as education and health provision).

**Scherie Nicol and Greig Liddell, SPICe Research
02 May 2014**

² http://www.royalsoced.org.uk/1064_TheRealEconomy.html

Annex 1: Household net income inequality in OECD countries, 2010



David Eiser urged some caution when interpreting these rankings: 'the figures that have the UK as the fourth most unequal country on the world tend to exclude a number of OECD countries for which data does not exist' ([Official Report](#), 23 April 2013).

Panel 2: Evidence session on civic Scotland

This briefing summarises evidence received by the Committee from the panel of witnesses, as well as highlighting related sections of the Scottish Government's *Scotland's Future* white paper.

The role of religion in Scotland

The Scottish Government website provides a [summary of online evidence](#) related to religion. In 2011 just over half (54 per cent) of the Scottish population stated their religion as Christian - a decrease of 11 percentage points since 2001, whilst 37 per cent of people stated that they had no religion - an increase of nine percentage points.

More than six out of ten people said that their religion was Christian (65%): 42% Church of Scotland, 16% Roman Catholics and 7% Other Christian. After Christianity, Islam was the most common faith with 77 thousand people in Scotland describing their religion as Muslim. This is followed by Hindus (16 thousand), people from other religions (15 thousand), Buddhists (13 thousand), Sikhs (9 thousand) and Jews (6 thousand).

Section 124 of the [Local Government \(Scotland\) Act 1973](#) requires all local authorities to appoint three persons representing churches and other religions to committees or groups either advising the council on education or discharging education functions of the council on its behalf.

The Church of Scotland is the national church of Scotland and provides an [online description](#) of its role in civil society including the following summary:

"In a millennium and a half, the Church has been at different times a tiny, radical outside force, a revolutionary movement, a strand of government and a partner in civil society. It has been supportive and critical, protective and destructive."

The role of religion post September 2014

A recent BBC [online report](#) suggested [Interfaith Scotland](#) had called for the role of religion to be recognised in a written constitution for Scotland. The report refers to a joint statement following an interfaith meeting stating:

"At a meeting, chaired by the Moderator of the General Assembly of the Church of Scotland, the Right Reverend Lorna Hood, representatives of Scotland's diverse faith traditions were united in the view that the contribution of faith to Scottish society should be properly recognised whatever the future holds.

"All the churches and faith communities present agreed Scotland's diversity of religious belief is an important reflection of Scotland's wider society."

An interfaith conference is scheduled later this year (July 2014) to help inform responses to both the constitutional consultation and the wider political debate beyond the referendum with regards to religion in Scottish society.

The Scottish Government will publish the [draft Scottish Independence Bill](#) before the Scottish Parliament's summer recess. The Scottish Independence Bill will set out an interim constitution while a permanent constitution for Scotland would be established through a constitutional convention after May 2016.

White paper

The Scottish Government [white paper](#) Scotland's Future states that "Independence will enable Scotland to build a modern, European democracy, founded on a written constitution, enshrining the fundamental rights and values that underpin our society and based on the principle of the sovereignty of the people of Scotland."

Scotland's economic model

The Scottish Council for Voluntary Organisations ([SCVO](#)) [submission](#) states "*In Scottish Government documents, we continue to see a strong focus on GDP and on economic growth alone as something to strive for, and we question the value of this approach.*"

Scotland's [National Performance Framework](#) outlines the Scottish Government's purpose "To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth." The [coalition programme](#) for the UK government also cites support for sustainable and balanced growth.

The [Scotland Performs](#) website measures and progress based on the seven purpose targets and fifty national indicators. Background information is provided for each measure of progress stating why the target is important, how the target can be influenced and the role of government. The [Government Economic Strategy](#) refers to "faster sustainable economic growth".

SCVO outline the following points:

- Ensuring the well-being of people across Scotland should be the leading principle behind any vision for Scotland's economic future.
- A continued focus on an economic model that has led to poverty, inequality and the degradation of the natural environment is detrimental to Scotland's people and the communities they live in.
- The need to rebalance the economy is critical to creating a more equal and sustainable society.
- In-work poverty will remain a significant challenge regardless of this year's referendum vote. Regardless of the result of the Referendum, developing solutions to our low wage economy is vital.
- Employment policy must recognise changing demographics, and flexible employment must be promoted and supported.
- Tax policy in Scotland should have a redistributive focus, encourage positive behaviour, and be transparent and easily understood.

- There must be a more progressive approach to welfare and welfare policy in Scotland regardless of the result of the Referendum.
- More unusual ideas should be considered such as a Citizen's Income.

Young people in Scotland

The Scottish Youth Parliament (SYP) produced a manifesto [Change The Picture](#) of young people outlining “ ... how they want Scotland, and society to exist.”. The following policy statements from Change the Picture highlight the economic priorities for young people, and therefore reflect what the Scottish Youth Parliament would wish to see whatever the outcome of the referendum:

- People should be paid equally for doing the same job. There should be an equal minimum wage for all, including those in training.
- There should be an emphasis on the long-term development of young people as part of the labour market, emphasising the provision and the availability of apprenticeships and placements which will equip young people with important skills and experience on which to build careers.
- The success of Scotland's students must not be compromised by financial worries. Immediate action needs to be taken to ensure students don't face poverty and hardship in the pursuit of their education.
- All young people should have the chance to participate in work experience.
- To tackle in-work poverty, the Scottish Government should set up a recognition scheme for employers that pay a Scottish Living Wage of at least £7 per hour to all employees, which is regularly reviewed to make sure it is meeting minimum income standards.
- Tuition should remain free in further and higher education. Top-up fees are not an option for a society which puts ability to learn above ability to pay.
- The Scottish Government should do more to help young people looking to buy a home for the first time. This could include continued funding and a high-profile awareness campaign for existing schemes to help first time buyers.
- Scotland's local tax system should be changed so that it is based on household income rather than the value of your home or the area you live in.
- Entrepreneurship and enterprise opportunities should be encouraged and promoted through the provision of start up funding and support geared directly at young people.

Richard Marsh, SPICe Research, 02 May 2014

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

Annex C

Remaining evidence sessions:

Date/theme	Witnesses
21 May 2014 Campaign groups	<u>Panel 1</u> Better Together <u>Panel 2</u> Yes Scotland
11 June 2014 UK and Scottish governments	<u>Panel 1</u> UK Government <u>Panel 2</u> Scottish Government

Economy, Energy and Tourism Committee

14th Meeting, 2014 (Session 4), 7 May 2014

SSI cover note

SSI title and number:	Electronic Documents (Scotland) Regulations 2014 (SSI 2014/83)
Type of Instrument:	Negative – Standing Orders Rule 10.4
Coming into force:	11 May 2014
Economy, Energy and Tourism Committee deadline to consider SSI:	7 May 2014
Motion for annulment lodged:	No
SSI drawn to Parliament's attention by Delegated Powers and Law Reform Committee:	No

Purpose of the instrument:

1. The [Electronic Documents \(Scotland\) Regulations 2014 \(SSI 2014/83\)](#) prescribes the requirements for electronic documents and electronic signatures for documents referred to in section 1(2) of the Requirements for Writing (Scotland) Act 1995 as amended by the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). They are subject to the negative procedure.
2. The Regulations form part of the subordinate legislation relating to the implementation of the 2012 Act. One of the purposes of the 2012 Act was to enable electronic conveyancing and to allow electronic documents to be used for certain contracts, unilateral obligations, and trusts and conveyances, including in relation to real rights in land that must be constituted by writing and to provide for the formal validity of those electronic documents.

Economy, Energy and Tourism Committee consideration:

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Standing Orders Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

4. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

5. A copy of the Policy Note, which provides more information on the policy intent of the Regulations is attached at Annexe A.

Consultation

5. On behalf of the Scottish Ministers the Keeper of the Registers of Scotland carried out a public consultation on the Regulations. The consultation took place between 1st July 2013 and 29th September 2013. It was published on the Registers of Scotland and Scottish Government websites. A report on the consultation and the responses are available on the Registers of Scotland website.¹

Impact Assessments

6. A Business and Regulatory Impact Assessment was carried out for the draft Regulations. This is available to view on the Scottish Government and Registers of Scotland websites.² A pre-screening exercise was carried out and established that the Regulations will have no impact on equality or environmental issues.

Delegated Powers and Law Reform Committee report

7. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 22 April 2014 and agreed that no points arose in relation to the instrument.

Action

8. The Committee is invited to decide whether it wishes to make any recommendation (i.e. content to see the instrument come into force or proposal to lodge a motion to annul) on the instrument and to report its decision to Parliament no later than 19 May 2014.

**Alexia Forrester
Committee Assistant**

¹ http://www.ros.gov.uk/consultation/edocsBRIA_final_v10.pdf

² http://www.ros.gov.uk/consultation/edocsBRIA_final_v10.pdf

ANNEXE A - POLICY NOTE**THE ELECTRONIC DOCUMENTS (SCOTLAND) REGULATIONS 2014 (SSI 2014/83)**

1. These Regulations are made in exercise of the powers conferred by sections 9B(2)(c), 9C(2) and 9E(1)(d) of the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”). The Regulations prescribe the requirements for electronic documents and electronic signatures for documents referred to in section 1(2) of the 1995 Act as amended by the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). They are subject to the negative procedure.

Policy Objectives

2. The Regulations form part of the subordinate legislation relating to the implementation of the 2012 Act. One of the purposes of the 2012 Act was to enable electronic conveyancing and to allow electronic documents to be used for certain contracts, unilateral obligations, and trusts and conveyances, including in relation to real rights in land, that must be constituted by writing and to provide for the formal validity of those electronic documents.

3. Before amendment by the 2012 Act, the 1995 Act prescribed that the legal documents governed in terms of their formal validity by the 1995 Act must be in writing and must be written on paper, parchment or some similar tangible surface. The signatures used to authenticate the document have to be subscribed using pen and ink. The Scottish Law Commission in their report into land registration³ recommended that the 1995 Act should be amended to allow the legal documents governed by that Act to take an electronic form and be authenticated using electronic signatures.

4. The 1995 Act provides that for a document covered by the requirements in the Act to be legally valid it must be subscribed by the granter and, for a document to gain the legal presumption that it has been subscribed by the granter, the document must bear the signature of a witness and his or her name and address. Provision is also made in Schedule 3 to that Act for signing in special cases by companies and other bodies.

5. Section 9B of the 1995 Act as added by the 2012 Act provides that an electronic document can be legally valid and section 9C provides that an electronic document can gain the legal presumption that it has been authenticated by the granter, to achieve the same legal effect as creation, execution and witnessing for traditional documents. Both sections provide that the Scottish Ministers may in regulations prescribe the requirements for an electronic document and an electronic signature required to authenticate the document. Section 9E provides similar regulation-making powers in relation to annexations to electronic documents.

6. These Regulations prescribe that under section 9B(2)(c) for an electronic document to be legally valid under the 1995 Act it must be authenticated (i.e. signed) using an advanced electronic signature. An advanced electronic signature is defined in the Electronic Signatures Regulations 2002⁴ (the 2002 Regulations) as an electronic signature;

³ [Scottish Law Commission – Report on Land Registration \(SCOT LAW CON No. 222\)](#)

⁴ S.I. 2002/318.

- (a) which is uniquely linked to the signatory,
- (b) which is capable of identifying the signatory,
- (c) which is created using means that the signatory can maintain under his or her sole control, and
- (d) which is linked to data to which it relates in such manner that any subsequent change of the data is detectable.

7. Under section 9C(2) the Regulations provide that, for an electronic document to obtain the presumption that it has been signed by the granter, the document must be signed using an advanced electronic signature and that signature must be certified by a qualified certificate as defined in Schedule 2 to the 2002 Regulations.

8. Under section 9E(1)(d), the Regulations provide that annexations to an electronic document must be referred to in the document and identified as an annexation to that document before it is signed using the electronic signature.

Commencement and Transitional arrangements

9. Provision is made by Commencement and Transitional Order⁵ to bring into force from 11 May 2014 relevant provisions of the 2012 Act amending the 1995 Act including those noted above, together with important transitional arrangements. In particular the provisions will not initially enable electronic documents to be registered in the registers held by Registers of Scotland except Automated Registration of Title to Land (ARTL) documents nor will they enable wills, testamentary trust dispositions and settlements or codicils. Details are set out in the Policy Note for that Order.

Consultation

10. On behalf of the Scottish Ministers the Keeper of the Registers of Scotland carried out a public consultation on the Regulations. The consultation took place between 1st July 2013 and 29th September 2013. It was published on the Registers of Scotland and Scottish Government websites. A report on the consultation and the responses are available on the Registers of Scotland website⁶.

Impact Assessments

11. A Business and Regulatory Impact Assessment was carried out for the draft Regulations. This is available to view on the Scottish Government and Registers of Scotland websites⁷. A pre-screening exercise was carried out and established that the Regulations will have no impact on equality or environmental issues.

Registers of Scotland on behalf of the Scottish Government
26 March 2014

⁵The Land Registration etc. (Scotland) Act 2012 (Commencement No. 2 and Transitional Provisions) Order 2014 (S.S.I. 2014/41).

⁶http://www.ros.gov.uk/consultation/edocsBRIA_final_v10.pdf

⁷http://www.ros.gov.uk/consultation/edocsBRIA_final_v10.pdf