



FINANCE COMMITTEE

AGENDA

33rd Meeting, 2014 (Session 4)

Wednesday 17 December 2014

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Further Fiscal Devolution:** The Committee will take evidence from—

Peter Kelly, Director, Poverty Alliance;

Dave Moxham, Deputy General Secretary, Scottish Trades Union Congress.
3. **Devolved Taxes Implementation:** The Committee will take evidence from—

Eleanor Emberson, Head of Revenue Scotland, Scottish Government;

John Kenny, Head of National Operations, Scottish Environment Protection Agency;

John King, Director of Registration, Registers of Scotland.
4. **Post-Legislative Scrutiny of Financial Memoranda:** The Committee will consider its approach to the Post-Legislative Scrutiny of Financial Memoranda.

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The papers for this meeting are as follows—

Agenda Item 2

Note by the Clerk

FI/S4/14/33/1

Agenda Item 3

Note by the clerk

FI/S4/14/33/2

Agenda Item 4

PRIVATE PAPER

FI/S4/14/33/3 (P)

Finance Committee

33rd Meeting, 2014 (Session 4), Wednesday 17 December 2014

Further Fiscal Devolution

Purpose

1. At its meeting on 1 October 2014, the Committee agreed to undertake an inquiry into further fiscal devolution. The purpose of this inquiry is to enable the Committee to contribute to the debate by examining the options for the devolution of further financial powers to the Scottish Parliament and the impact on the block grant of any such devolution.
2. The Committee issued a [call for evidence](#) in relation to the inquiry and has agreed to take evidence at a number of meetings before hearing from the Chief Secretary to the Treasury and the Cabinet Secretary for Finance, Constitution and Economy in January. All written submissions received are available on the [Committee's website](#).
3. The Smith Commission has now published [its recommendations](#) on the further powers it considers should be devolved to the Scottish Parliament.
4. At this meeting, the Committee will take evidence from the Scottish Trades Union Congress and the Poverty Alliance. The submissions these organisations made to the Smith Commission are attached.

Catherine Fergusson
Senior Assistant Clerk to the Committee

STUC submission to the Smith Commission

INTRODUCTION

The STUC welcomes the opportunity to submit its views on further devolution to the Smith Commission. We do not underestimate the difficulty of the task the Commission faces and believe that significant compromise will be necessary on all sides if an agreement is to be reached which is coherent and matches the aspirations of a majority of the Scottish people.

The STUC's concerns about the process for agreeing further powers is a matter of record. We have joined with a range of civil society organisations to argue that whatever proposals are agreed should be tested in a citizen led process involving the use of maximum consultation and the creation of citizens' juries. The STUC is also on record as stating that the most important outcome is an optimal proposal and this, for us, is much less important than adhering to the very testing timetable laid down, both for the Commission and the subsequent parliamentary process.

The STUC has been disturbed at the enormously divergent accounts of what has been 'promised' with respect to further powers. We do not believe that the content of the proposals previously published by the three pro-devolution parties, or the wording of the 'Vow' can be categorised as a promise of 'Devo Max' or full fiscal autonomy. Equally however, a strong impression was conveyed that the powers proposed would extend significantly beyond that which had previously been promised.

Opinion polls suggest that there is strong public support in Scotland for the devolution of very meaningful fiscal, welfare, employment, equality and other powers. The detail of what this means has not been tested which is why the STUC is so strongly in favour of the outcome of the Commission being tested in an environment which is capable of investigating the detail and engaging the wider public.

The STUC's proposals in this paper fall short of what would normally be categorised as full fiscal autonomy or Devo Max. This is grounded in an honest assessment of what arrangement would best serve the people of Scotland in the years ahead. Equally, we do not propose the devolution of all aspects of welfare.

However, our proposals go significantly further than the sum total of the proposals of the three pro-devolution parties.

Our appeal to all parties in the negotiations is that they should be prepared to make significant compromises and that political advantage should take a back seat.

Taken together the proposals offer a coherent approach to tackling inequality and promoting sustainable economic growth. Fundamentally they recognise that the role of government is to support and nurture society and that the Scottish Parliament must be empowered to play a leading in role in meeting that challenge.

SUMMARY OF RECOMMENDATIONS

Sections

Democratic ownership and the public good

Fiscal powers

Workplace protection and labour market reform

Equality

Citizens rights

Welfare

Other issues

Democratic ownership and the public good

1.1 There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament's jurisdiction particularly as it impacts upon democratic ownership.

1.2 The full devolution of the Crown Estate to the Scottish Parliament.

1.3 Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such a PFI.

1.4 Devolution of powers to enable a public sector led bid for the ScotRail franchise.

1.5 Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

1.6 To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

1.7 The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.

Fiscal powers

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

2.3 Devolution of income tax at all bands & other personal wealth related taxes

2.4 Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

2.5 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

2.6 The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

2.7 The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury

2.8 The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits.

A better labour market and workplace protection

3.1 The devolution of employment law, health and safety, trade union law and the minimum wage

3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.

Equality

4.1 That employment law and equality law not be separated with respect to further devolution proposals

4.2 The full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

Basic Rights for Scottish Citizens

5.1 STUC recommends that the Sewel Convention is given full legal force.

5.2 Consideration to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. Focus on both the powers of the

Scottish Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds.

Welfare

6.1 The devolution of Housing Benefit

6.2 The devolution of Attendance Allowance.

6.3 The devolution of Carer's Allowance.

6.4 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus.

6.5 The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union*.

Other powers

7.1 A presumption in favour of the right to Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

7.2 An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

7.3 The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

7.4 Devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

7.5 A more formal role in energy industry regulation but recognising the challenges of delivering a distinct regulatory approach within an all UK energy

market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

7.6 The Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.

Democratic ownership and the public good

The STUC supports the devolution of a number of powers to Scotland which would enhance the ability of the Scottish Parliament to democratise the ownership of land, assets and natural resources through, community ownership, co-operative ownership and state ownership. Pursuant to these aims, the Scottish Parliament should be fully empowered to undertake a more ambitious land reform agenda and to decentralise power to, and through, democratically accountable and properly resourced local government.

The goal of strengthening local government and empowering communities cannot be considered an afterthought to the process of further devolution to Scotland, nor can it be used as an excuse to bypass the Scottish Parliament. All of those involved in the Smith Commission should make clear statements of intent with respect to local empowerment.

The Scottish Parliament already possesses significant powers which enable it to promote democratic ownership and community empowerment but there are also a range of European Union and international regulations which place limits on the role of the state in relation to privately held assets and public franchises. In the STUC's view, the Scottish Parliament should be able to exert greater influence over the UK Government's ratification of treaties and directives which have an impact in areas where power is devolved to Scotland. This would include all devolved public services areas, public procurement and companies owned publicly in Scotland. The clearest example of a current treaty which falls into this category is the Transatlantic Trade and Investment Partnership (TTIP) which, depending on the nature of the wording of the final treaty, could potentially impact upon the ability of the Scottish Government to ensure that the delivery of services such as the NHS remain public.

Recommendation

There should be a process of consent between Westminster and Holyrood over EU decisions affecting areas within the Scottish Parliament's jurisdiction particularly as it impacts upon democratic ownership.

Devolution of the Crown Estate

The STUC notes the proposals from various parties for the devolution, or partial devolution of the Crown Estate. The most logical approach to effecting devolution in this area is for the Scottish Parliament to have the power to manage the revenues from all Crown Estate assets in Scotland.

Recommendation

1.2 The full devolution of the Crown Estate to the Scottish Parliament.

Public Ownership

The STUC strongly supports the right of national and regional legislatures to own, or maintain a controlling stake in its utilities, transport system and other key industrial sectors. It should also be able to protect its public services from privatisation. Increased borrowing powers would allow for different models of finance and strengthen the potential of a Scottish National Investment Bank, capable of issuing bonds, to invest in infrastructure and industry.

Recommendation

Increased borrowing powers for the Scottish Parliament to enable it to undertake public funded investment without recourse to mechanisms such as PFI.

Devolution of railway powers to enable a “not for profit” option for the ScotRail franchise.

Removal of any reservations preventing the Scottish Government forming publicly owned enterprises

Land ownership

The STUC believes that the empowerment of communities requires adequate control of land ownership and its use for the purposes of tax avoidance whilst, in many cases, subsidies are drawn down for farming and forestry activities.

Recommendation

To enable the Scottish Parliament to tackle the inequities of land ownership, the devolution of all relevant income and land related taxes including inheritance tax and capital gains tax reliefs.

Public housing

The Scottish Government has significant powers to enact direct local authority house building and the extension of the social housing sector. In addition to the capital borrowing powers already identified.

Recommendation

The devolution of Housing Benefit as recommended by the Scottish Labour Party and various others as well as any additional power required to enable the Scottish parliament to control private and public sector rents.

2. Fiscal powers

STUC supports a devolution settlement which places Scotland on a firm fiscal footing and empowers the Scottish Parliament to undertake progressive tax reform and redesign.

The STUC has considered two options. Full fiscal autonomy; and increased tax powers supplemented by a continuing block grant.

STUC believes that full fiscal autonomy presents potential future challenges for the maintenance of current levels of per-capita public spending in Scotland relative to the rest of the United Kingdom. The key factors within this calculation are:

Diminishing and uncertain tax receipts from North Sea Oil and Gas

Demographic trends in Scotland

During the referendum debate, the Scottish Government argued that an independent Scotland would be able to:

Benefit from higher oil revenues than predicted by the Westminster Government

Rebalance its demographics through promoting inward migration

Benefit from higher relative growth consequent to additional economic and fiscal powers

Channel tax receipts currently used for defence into other public spending areas

To a greater or lesser extent the aforementioned outcomes will not be possible under an enhanced devolution settlement rendering the longer term relative fiscal position worse than the Scottish Government imagined under an independence scenario.

The challenging position presented by the Fiscal Affairs Scotland and others, only holds true if the comparison is with existing levels of Scottish Parliament funding. In the case that the combined effect of devolved taxes and a smaller block grant were to significantly reduce Scotland's future revenues, there would be a different counterfactual which could render full fiscal autonomy more attractive.

The most comparable full fiscal autonomy model to which we can refer is the relationship between the Basque/Navarre region and the Spanish state, where there is virtually full fiscal autonomy in a national region of comparable relative size and which has higher than average GDP per capita than Spain as a whole. After collecting almost all taxes, the Basque/Navarre region 'buys back' a range of Spanish state services (amounting to around 50% of total spending) covering state functions such as defence and international affairs, but also welfare and pensions. However, there is one difference and one peculiarity which suggests the situation is not analogous to Scotland.

- a) The Basque/Navarre strength in GDP does not rest on a depleting natural resource
- b) the cost ratio at which the Basque/Navarre 'buys back' services from the Spanish state is highly advantageous to the region, a situation which is unlikely to be replicated here.

The STUC believes that it is both practical and fair to use the existing relative fiscal position as the basis for a new funding formula combining tax and block grant. Such an arrangement would recognise that Scotland has, since the inception of the Barnett Formula, contributed more in tax and received more in spending than the UK average. The arrangement would recognise that this situation may not persist in the medium to long-term as oil tax receipts diminish.

The role of the block grant would therefore be to maintain funding at existing levels relative to the rUK. Overall funding might increase or reduce pursuant to UK-wide public spending decisions or changes in Scottish devolved tax revenue, but the funding ratio would not change.

The STUC therefore supports a funding arrangement combining devolved taxes and a continuing block grant as the best option for Scotland, but this is predicated on a clear commitment that there will be no detriment to current Scottish funding levels relative to the rest of the UK for at least a generation. The block grant is the amount of funding Scotland has received in a given year and the Barnett Formula is the mechanism by which it is adjusted in the following year. Neither the block grant, the Barnett Formula, nor how the Barnett Formula is applied in a given year is enshrined in statute or given any legal or constitutional form. This gives rise to uncertainties about the future and disagreement about this application.

The purposes of the devolution of further taxes should be:

- To provide a better balance between the amount of revenue raised and spent by the Scottish Parliament

- To enable the Scottish Parliament to enhance protection and tackle inequality through progressive and redistributive taxation

- To provide a means by which economic success in Scotland can translate into higher public spending and to remove negative incentives towards investing in services and pursuing policies with positive labour market outcomes

- To enable redesign of Scottish tax, including local taxation.

Recommendation

2.1 The devolution and assignment of taxation amounting to at least two thirds of Scottish public spending (over 50% of all spending in Scotland)

2.2 A commitment, with appropriate legislative safeguards, that the Scottish Block Grant will continue, for at least a generation, to guarantee funding at existing levels relative to the rUK.

Specific Tax powers

The STUC supports the devolution of all forms of income tax.

The STUC does not support the devolution of Corporation Tax as we support the harmonisation of Corporation Tax across the UK and Europe.

The STUC also believes that oil and gas revenues should only be devolved in the case of full fiscal autonomy. We believe that recognising the historical and future contribution of oil and gas revenues to the UK economy is best represented by the strong block grant component recommended earlier.

The STUC has previously rejected the devolution of National Insurance. There are competitive dangers in relation to the employer component and complications with relation to the employee component. We are however open to considering its devolution if a compelling case is put forward during discussions and negotiations post October 31st.

The STUC recognises that assigned taxes cannot be used as economic levers, but believes that assigned taxation allows the tax base to better reflect economic success and can smooth out the unevenness potentially caused by devolving a large number of income related taxes but few other taxes.

Recommendation

Devolution of income tax at all bands & other personal wealth related taxes

Devolution of Air Passenger Duty and Aggregates Taxes as proposed by the Calman Commission but not included in the Scotland Act 2012.

The STUC believes that 'behaviours' taxes and VAT should be assigned, but not subject to variation. The proportion assigned should be 50%.

Recommendation

50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned

The full detail of the STUC's devolved tax proposals is attached as appendix A.

Funding flexibility and Financial Memoranda

By increasing the proportion of revenue raised in Scotland, the Parliament is better incentivised to use its existing spending power to grow the economy and strengthen its labour market interventions. The STUC recalls the arguments during the referendum relating to child care in which the Scottish Government argued with some, if not complete, persuasiveness that without the capacity to benefit from the improved tax outcomes of a stronger labour market created by expanded child care, it would not be able to sustain the policy. Whilst the devolution of significant new taxes partly meets that criticism, it does not address the savings such a policy would effect in relation to UK Government welfare spending in Scotland i.e. Were a free and universal childcare policy to be implemented in Scotland under existing powers, the UK Government would benefit from reduced support for childcare costs of Scottish families as a consequence of entirely devolved Scottish public spending.

This situation already exists with respect to free personal care for the elderly, where there are savings to the UK welfare budget in Scotland pursuant to the universal nature of provision here. Until 2006, this phenomenon was recognised with respect to the Council Tax (devolved) and Council Tax Benefit (then reserved) through the use of a funding agreement between Westminster and Holyrood. Between 1999 and 2006, increases or decreases to Scottish Council Tax, compared to the UK average, which led to a higher or lower than average call for Council Tax Benefit funding in Scotland led to block grant adjustments compensating whichever government suffered a funding detriment as a consequence of the variation.

Whilst the devolution of Council Tax Benefit has now rendered this specific arrangement redundant, it has a wider application in circumstances where it can be demonstrated

that specific decisions using devolved funding have a positive impact on the UK welfare budget in Scotland. As an example the STUC cites potential action by the Scottish Government to create jobs for young people as was delivered by the previous Westminster Government's 'Future Jobs Fund'. This initiative was partly financed through additional fiscal stimulus, but also funded through benefit savings as a consequence of the newly created jobs which were targeted at young job seekers.

Recommendation

The agreement of a financial memorandum allowing adjustments to the block grant to recognise discreet actions by the Scottish Government using devolved funding which have a positive impact on UK welfare spending in Scotland.

Borrowing

The STUC has already outlined a recommendation for increased borrowing capacity to finance capital investment and direct government investment. However a significant increase in tax devolution requires a borrowing capacity to match for the purposes of current account management.

Recommendation

The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury

The capacity should exist for the Scottish Government to issue bonds within normal and negotiable limits

3. A better labour market and workplace protection

The STUC believes that a central cause of current economic failures, and indeed the financial crisis itself, has been the fundamental inequalities in the labour market rooted in gender and other forms of discrimination; weak protections for workers; and the decline of collective bargaining as a means of ensuring decent wages and lower levels

of pay inequality. A number of the key issues are discussed here and Appendix B looks in more detail at this area of policy, which is central to trade unionism.

Only a small number of aspects of employment regulation are currently devolved to the Scottish Parliament – the employment of children and the functioning of the agricultural wages board. However the Scottish Parliament exercises a range of powers which impact upon the workplace, some of which are detailed in Appendix B.

The default position under the current constitutional settlement has been for primary legislation on equalities, employment law, health and safety, trade union regulation and minimum wages to be reserved to Westminster. These are henceforth referred to as ‘workplace protections’ although equalities is also considered in its wider context later.

Whilst this division of powers exists between Holyrood and Westminster, it is not the case across the whole of the UK. In Northern Ireland all of the legislation listed above is devolved to the Northern Ireland Assembly.

In the context of the wide range of powers already devolved to Scotland or potentially to be devolved to Scotland (including a separate legal system, powers on economic development, planning, environmental protection and additional tax and welfare powers) there is a strong case to be made for devolving workplace protection. This is because it is easier to imagine coherent policies on economic development, tackling inequality through public service provision, welfare and active labour market intervention if the Scottish Parliament is empowered to tackle discrimination, poor employment practice, insecure employment, low minimum wages and to create healthier workplaces and promote collective bargaining.

In taking the view that workplace protection should be devolved, STUC has been mindful of the potential for competitive deregulation in the pursuit of investment and of the economic impacts of the creation of separate regulation. The STUC also recognises that in a highly integrated economy with a shared currency and similar taxation system, the potential for policy divergence is likely to be limited. Much of the law is underpinned by EU Directives which offers both minimum protection and a range of restrictions on workplace protection.

However, the STUC also notes the appetite in Scotland for reducing income inequality and

the desire to forge a more positive relationship with trade unions. There are also specific Scottish challenges with respect to health and safety which can be better met with devolved powers.

There is no inherent reason why workplace protection cannot be devolved, as is the case in Northern Ireland. Devolving these powers has allowed Northern Ireland to pass distinctive legislation with regard to equality, - particularly around religion and political opinion - which has no precedent within the UK setting.

As mentioned earlier there has recently been some divergence in the employment environment with Northern Ireland choosing not to implement some of the reforms that were undertaken at a Westminster level.

There have been examples of delays in implementing equality and workplace protection legislation in Northern Ireland after its implementation in Great Britain and in practice some legislation came into place much later than in the rest of the UK, for example the Race Relations (Northern Ireland) Order was passed in 1997, whereas the Race Relations Act was passed in Great Britain in 1976. However, STUC does not believe that prevailing conditions in Scotland suggest that this would be the case.

The example of Northern Ireland shows, that it is possible to achieve a balance between maintaining a single labour market and devolving employment and equality powers. It also shows, however, that even where an effort is made to streamline provisions were possible, some divergence in the regulatory regimes is also inevitable, but that this divergence can be helpful and can reflect the specific context and needs of that nation.

Recommendation

3.1 The devolution of employment law, health and safety, trade union law and the minimum wage

Regulation of public sector pension schemes (with the exception of the Civil Service Pensions Scheme) is currently divided between the two legislatures even though these Scottish schemes are subject to separate actuarial valuation.

Recommendation

3.2 The devolution of public sector pensions schemes with the exception of the Civil Service Scheme.

4. Equality

The case for devolving employment law and equality law together

If equality law were to be devolved without employment law, there would be a restriction on the areas that the Scottish Parliament could effectively legislate with regards to equality. In this scenario, it would be possible to have separate Scottish equality law on devolved matters such as housing and health, enforced by the Scottish courts but it would not be possible for the Scottish Parliament to legislate with regard to equality within employment as this would be considered ‘creating an employment right’ and therefore reserved. This creates a situation where equality law within the employment setting would wholly be governed by Westminster as a consequence of their reservation of employment law more generally, while other parts of equality law are governed by the Scottish Parliament.

By coupling employment law and equality law together, however, it is possible to avoid complexities and keep a streamlined approach to equality legislation that is to the benefits of organisations trying to meet the law and individuals trying to access their rights in a variety of settings.

Recommendation

4.1 That employment law and equality law not be separated with respect to further devolution proposals

Other aspects of equality law

Over and above equality issues relating to employment, the STUC believes that certain aspects of equality might better be tackled by the Scottish Parliament. Scotland has very distinct questions around sectarianism, differing demographics and a considerable rural dimension and therefore might benefit from different and distinctive legislative approaches to support equality outcomes for the Scottish people.

Devolution of the Enforcement of Equality Law

In the case that the Commission decides against the devolution of employment law, there is still potential to devolve its enforcement to the Scottish Parliament, even if primary legislative powers on passing the law are reserved to Westminster. This makes sense in conjunction with a wider set of proposals around the devolution of health and safety enforcement and employment tribunals. It also emphasizes the key point around equality. Ultimately equality law is governed by European minimums and therefore there is a level below which no part of the UK can drop. Equally the law as it currently stands is positive and tends to support the advancement of equality. The major barrier to achieving equality therefore is not the law, but practice, culture and indeed discriminatory attitudes. Therefore enforcement is key to advancing equality and major gains could be made if enforcement was carried out in line with Scottish expectations and the needs of the Scottish economy.

The STUC has a strong history of fighting for equality of representation for women. This includes arguing for the mandatory 50-50 representation of women in the Scottish Parliament and the extension of this to local government elections. The STUC also supports a policy of equal representation on company boards.

Recommendation

4.2 STUC recommends the full devolution of equality law, provided that employment law is also devolved.

4.3 In the case that employment law is not devolved, the STUC favours the devolution of equality enforcement along with the industrial tribunals and health and safety enforcement.

4.4 There should be no impediment under a devolved settlement to the Scottish Parliament legislating for mandatory 50-50 gender representation in the Scottish Parliament and local councils, or for gender equality on company boards.

5. Basic Rights for Scottish Citizens

There is a question around how the UK constitutional settlement functions with regard to international law and the signing, amendment or repeal of international treaties. An element of this debate was picked up in section above around the TTIP but a wider question regarding the basic rights of Scottish citizens remains, particularly in light of recent discussions around European exit and the repeal of the Human Rights Act.

Both the European Convention on Human Rights (ECHR) and EU law are incorporated directly into the devolution statutes in Scotland, Wales and Northern Ireland. For example, section 29(2)(d) of the Scotland Act 1998 (SA), provides that Acts of the Scottish Parliament that are incompatible with EU law or with ECHR rights are 'not law'. Section 108(6) Government of Wales Act 2006 states that any act of the Welsh Assembly incompatible with EU law or the ECHR, falls outside its competence. Section 24 of the Northern Ireland Act prohibits any legislation contrary to EU or ECHR.

In this way the ECHR and EU law are essential parts of the Constitutional settlement of the Scottish people and are often rightly portrayed as the backbone of a Scottish legal system. The Westminster Government has the power to repeal the Human Rights Act but in order to do so effectively it would also have to amend the Scotland Act. The UK Parliament may amend the devolution Acts, but the UK government has stated that it will not normally legislate on devolved matters without the consent of the devolved legislature. In this way, repeal of the Human Rights Act should require a Sewel convention.

In order to solidify the position of the Scottish Parliament in this respect it is necessary to give the Sewel Convention legal force and therefore remove the word 'normally' from the UK Government's commitment not to amend the devolution Acts. As a minimum the STUC would like to see this incorporated into an enhanced devolution package.

It might also be possible to go further than this and provide scope for the devolved Parliaments to have a power of co-decision on constitutional matters. So for example in order to change the UK's relationship with the European Court of Human Rights the Westminster Government might need consent from the majority of devolved parliaments, or to win a referendum on European exit, there might need to be majorities in every devolved nation.

There are many options for strengthening the rights of Scottish people on constitutional issues. However a basic starting point for this would require a clear understanding of

what a 'constitutional issue' is within the UK context, a stumbling block which should not be under-estimated. Ultimately this kind of 'co-decision' approach would strengthen democracy and local decision making (particularly if devolution was pursued within English regions) while also dealing with the current asymmetrical structure of UK democracy.

Extending the franchise for 16 and 17 year olds should also be considered as a matter of priority. It is the STUC's view that 16 and 17 year olds should have the vote in all UK elections, and the Scottish Government and the UK Government should work together to ensure that all necessary statutes are amended to allow this to happen.

Recommendation

5.1 STUC recommends that the Sewel Convention is given legal force.

5.2 In addition consideration should be given to how Scotland can have a stronger level of control around constitutional issues, including any change to agreed international treaties and the agreement of new international treaties. The STUC recommends that focus on both the powers of the Scottish Parliament (and the other devolved Parliaments) and the weight given to voters in Scotland (and the other devolved nations) in referenda be considered.

5.3 The franchise in all UK elections should be extended to include 16 and 17 year olds

6. Welfare

The STUC is deeply disturbed at the direction of UK welfare policy both in terms of cuts in support; and policies such as workfare and the extreme conditionality in the system. We also believe that there is a strong case for the alignment of powers and spending in health and education with welfare.

The key challenges for a full devolution package are the funding of a devolved welfare system and the creation of a new architecture to support an entirely separate system.

The STUC is doubtful that without an agreement on full fiscal autonomy Westminster will consent to a fully devolved welfare system because it would remove important fiscal stabilisers.

In the context of a challenging financial climate, and the likelihood that additional welfare expenditure in Scotland would rely on additional taxation, it cannot be asserted with any confidence that the overall budget would grow if welfare were entirely devolved. There would however be the potential for better policy with respect to conditionality, work fare and other ‘initiatives’ which are neither cost effective nor humane.

The STUC would need to be convinced that an autonomous welfare system would be sufficiently distinct and better funded to justify the creation of a separate institutional architecture and national insurance system.

The STUC recognises that it might be possible to separate pensions from other functions of the welfare state, with the former remaining reserved.

Short of the full devolution of welfare, the STUC supports the devolution of as many welfare powers as are possible within the UK-wide system of Universal Credit. We also strongly recommend the use of financial memoranda as outlined earlier to enable the Scottish Government to recoup more of the benefit of any interventions reducing the extent to which Scottish people rely on benefits.

STUC supports the devolution of the Works Programme and Jobs Centre Plus to Scotland, allowing the creation of a Scottish Employment Service. Whilst the benefit levels underpinning the systems would endure, as would overall budget constraints, the ability to design back to work support in concert with currently devolved spending budgets such as health and education would be important. It is particularly important that workplace health, equality and decent employment are considered to be integral parts of back to work programmes and these could be more effectively pursued with enhanced devolution. Block grant flexibilities as discussed earlier, would allow a more strategic view to be taken across budgets to enhance the quality of labour market interventions.

Additional welfare powers

The partial devolution of welfare can be supplemented by additional powers providing that changes to the Scotland Act are agreed to allow the Scottish Parliament to adopt new Scottish legislation with a social security purpose; and further, to empower it to “top

up” UK benefits with a supplementary Scottish rate through the universal credit using devolved Scottish revenues. This would invest in the Scottish Parliament the power to mitigate the impact of benefit cuts as it sees fit, but not to reduce the basic level of support offered through Universal Credit.

This highly persuasive proposal is discussed in detail by Andrew Tickell, Lecturer in Law, Glasgow Caledonian University and is part of a proposal he has submitted to the Commission (*Securing greater Social Security autonomy and restating the Union: Submission to the Smith Commission*). STUC recommends this approach to additional welfare powers in the strongest possible terms.

Recommendation

6.1 The devolution of Housing Benefit as discussed earlier in this paper

6.2 The devolution of Attendance Allowance

6.3 The devolution of Carer’s Allowance

6.4 The devolution of the Work Programme and other employability programmes run by the DWP; and the creation of a Scottish Job centre Plus

6.5 The adoption of the recommendation of Andrew Tickell in *Securing greater Social Security autonomy and restating the Union*

Section 7 Other powers

Immigration & Asylum

The STUC recognises that the continuation of the United Kingdom implies primary control by the Westminster parliament of immigration and asylum policy. Even with Scottish independence, the STUC foresaw difficulties with an entirely separate Scottish immigration system.

This notwithstanding, the STUC considers there is particular scope for the Scottish Government to pursue migration policies fitted to particular Scottish conditions and the views of its people. These are:

The tendency for fewer EU and non-EU migrants to wish to come to Scotland compared to some regions of the UK

The demographic challenges particular to Scotland – its ageing population

A general (if often exaggerated) tolerance of inward migration amongst those living in Scotland.

The desire evidenced by successive administrations in Scotland, of different political colours, for a more humane approach to refugees and asylum seekers and the existence of various devolved powers (including child protection) which has clashed in the past with reserved powers on immigration.

The current UK immigration legislation creates and has the powers to create a number of conditions for entry to the UK for EU and non-EU including residency requirements, proof of employer, spousal rights, the treatment of overseas students etc. The STUC believes that agreement should be reached to allow amendments to immigration legislation and, if necessary, the Scotland Act, to invoke a 'presumption in favour of Scottish Government autonomy' in which the Scottish Government would be able to direct immigration policy as it affects Scotland. The caveat would be the ability of the UK Government to override such legislation, but only in the case that it demonstrated clear detriment to the rUK in relation to identifiable and significant security or economic issues.

An example of where such a 'presumption' would be utilised is the decision of the current UK Government to revoke the Scottish Government 'Fresh Talent' initiative without, in the STUC's view, the provision of objective evidence of detriment to the UK.

There are likely to be severe limitations to the Scottish Government's ability to conduct an alternative Asylum and Refugee policy, as the ultimate outcome of offering asylum tends for some, to be UK citizenship. However, evidence from Glasgow suggests that once UK citizenship is achieved, new citizens tend to remain in the communities in which they have lived and imaginative approaches should be explored to allow the Scottish Government to offer asylum to particular ethnic groups or those suffering for reasons of war or other oppression.

The STUC does not see any reason why those in the process of seeking leave to remain or citizenship should not be allowed to work in Scotland following the criteria for a discreet approach to migration outlined earlier.

Recommendation

A presumption in favour of the right of Scotland to pursue distinctive policy on migration, subject to the UK Government providing substantive evidence of detriment to the rUK.

An agreement that the Scottish Government be able to offer asylum to refugees, subject to reserved Immigration and Nationalities Department consent

The Scottish Government to be enabled to legislate for those seeking asylum to work in Scotland whilst their applications are being processed.

Energy policy

As reflected in our *A Just Scotland* reports, the STUC believes that energy policy at Scottish and UK level has failed - and is likely to continue to fail - to deliver on the three key social priorities of security of supply, emissions reduction and affordability.

The STUC also agrees with the Scottish Government's view that '*currently there is a complex landscape for energy policy across the UK*' and that the division of relevant responsibilities established by the original devolution settlement may not have assisted in delivering the priorities listed above. For instance, there can be little doubt that the regulatory regime has discriminated against Scottish generation; especially low carbon power generated around Scotland's periphery.

Therefore the STUC is sympathetic to the Scottish Government's call for Scotland to have a '*formal role in network regulation and setting reliability standards, including planning, ownership and operation of energy infrastructure and fairer grid charges to ensure secure energy supplies*' and supports the full devolution of the regulation of energy efficiency and additional powers to support low carbon generation. These new powers must be used to build a new approach to energy policy which prioritises community ownership and effectively tackles fuel poverty.

However the STUC notes that the Scottish Government wishes Scotland to remain fully integrated into the UK energy market. The challenges of making a system with separate and distinct approaches to industry regulation work in practice must not be underestimated.

The STUC does not support devolution of the Oil and Gas Fiscal Regime.

Recommendation

The STUC supports devolution of additional powers to tailor support for low carbon generation and the full scope of regulation of energy efficiency.

The STUC is supportive of Scotland playing a more formal role in industry regulation but recognises the challenges of delivering a distinct regulatory approach within an all UK energy market. Therefore, it is essential that all stakeholders are fully engaged in discussions about how new powers and responsibilities might be utilised.

Broadcasting

As reflected in earlier submissions to the Calman and Broadcasting Commissions, the STUC believes that the broadcasting industry has failed both to provide sufficient quality employment opportunities and to discharge its duty to strengthen and sustain Scotland's democracy and culture due to low investment, failures of regulatory oversight and a lack of accountability.

The STUC and the Scottish Federation of Entertainment Unions have previously called for the regulatory system to be restructured to create a significantly enhanced role for the Scottish Parliament. It is essential that, for instance, the BBC Trust and Ofcom are much more accountable to the Scottish Parliament. Any additional powers devolved to Scotland as a result of the Smith Commission process must be designed and used to boost the accountability of broadcasting to Scottish citizens through their democratically elected representatives.

Recommendation

The STUC calls for the Scottish Parliament to be given formal regulatory power over broadcasting in Scotland. It is particularly important that the public service broadcasters are accountable to, and seen to be accountable to, the Scottish Parliament.

Smith Commission on Further Powers for Scotland

A response by the Poverty Alliance

October 2014



1. Introduction

1.1 The Poverty Alliance welcomes the opportunity to respond to the Smith Commission on further powers from the Scottish Parliament. The Poverty Alliance is the national anti-poverty network in Scotland, formally established in 1992. We are an independent organisation with almost 200 members; with members drawn from the voluntary and public sectors, trade unions, researchers, faith groups and individuals with direct experience of poverty. Our aim is to work with others to enable communities and individuals to tackle poverty. We have a number of key policy areas that provide the focus for our activities; these are addressing low incomes, supporting services to address poverty, enhancing the participation of people with direct experience of poverty in policy development processes, and addressing attitudes to poverty. These concerns are reflected in this response to the Smith Commission.

1.2 The Poverty Alliance did not take a position during the independence referendum. Instead we argued that issues of social justice should be at the heart of the debate about Scotland's future. We were pleased that, to a large extent, this was the case. As we engage in the process for devolving further powers to Scotland, our key concern remains that questions of poverty and social justice must be central to identifying and using any new powers. In developing this response we have sought to engage with our members and stakeholders in a variety of ways; we have met with our Board of Directors, we have conducted an online survey to assess views on key issues and we organised a discussion seminar on the 29th of October. All of these discussions and the event have informed the content of this submission.

1.3 We have attempted to organise our response around a number of key issues:

- The Process of the Smith Commission
- Tax raising powers
- Additional welfare powers
- Employment

1.4 Issues of poverty and inequality are wide ranging, but we have attempted to focus on these 'core' issues for devolution.

2. General Observations

2.1 The Scottish independence referendum showed that there is a real appetite for a further devolution of powers to the Scottish Parliament. Not only was the exceptional turnout indicative of the strength of feeling regarding the question of Scotland's future relationship with the rest of the UK, but the level of engagement in the referendum debate was also of a level that we are not used to experiencing in 'normal' political life.

2.2 As others have noted, one of the most distinctive features of the debates during the campaign was the prominence that issues of social justice took. As an organisation that works continuously to raise awareness of poverty and its impact, it was gratifying to see that when issues of what kind of society people wanted to live in were raised, there was a clear consensus that it should be a society where poverty and inequality are effectively tackled. This is one of the key messages that we take from the independence referendum experience and it is one that should be carried forward in the deliberations of the Smith Commission and beyond.

2.3 There has been much talk of ‘powers for a purpose’. In assessing which new powers should come to the Scottish Parliament we have asked the question – will this power help address poverty and inequality? We believe that this should be the primary purpose for any new powers that come to Scotland. Poverty is one of the central challenges that Scotland faces. After falling for many years throughout the first decade of the Scottish Parliament’s existence, levels are beginning to increase again¹. In common with other parts of the UK we have seen a rapid increase in our use of food banks², and the health gap between the richest and poorest in Scotland continues to widen³. These facts provide compelling reasons for finding better ways of organising our system of government to ensure that these problems are more effectively tackled.

2.4 In addition to asking the question of whether new powers can be used to address poverty, it is also necessary to ask which powers can be most effectively dispensed at the Scottish level. The approach of the Smith Commission should be informed by the principle of the subsidiarity, as codified in Article 5 of the Treaty on European Union. This principle seeks to ensure that ‘decisions are taken as closely as possible to the citizen’. In the areas we highlight in this submission we would argue that applying the principle of subsidiarity would require that these are areas that should be devolved to Scotland.

2.5 The case for devolving more powers to Scotland must be based on constitutional need, not on grievance with a particular policy or party. If a power can be more effectively dispensed at the Scottish level, and offers the possibility of having a bigger impact on poverty, then in order to fulfil the ambitions for Scotland expressed at the independence referendum it should be devolved. Equally, it is important the correct balance is achieved that reflects the outcome of the referendum. Whilst there was a high profile for issues of social justice during the referendum debate, the clear result was in favour of retaining the union. The devolution of further powers to Scotland must take into account the need to reflect the desire to share responsibilities, risks and powers with the rest of the UK.

¹ See <http://www.cpag.org.uk/content/child-poverty-map-shows-shocking-levels-hardship-across-scotland-0>

² Mary Anne MacLeod (2014) ‘Food Poverty: responding to the Growing Need’ in *Scottish Anti-Poverty Review*, No. 16, Autumn, Poverty Alliance: Glasgow

³ Beeston C, McCartney G, Ford J, Wimbush E, Beck S, MacDonald W, and Fraser A. *Health Inequalities Policy Review for the Scottish Ministerial Task Force on Health Inequalities*. NHS Health Scotland. Edinburgh. 2014

2.6 It must also be noted that the devolution of further powers in relation to taxation and welfare will not in themselves deliver the kinds of significant change that is required to genuinely address the levels of poverty and inequality that exist in Scotland. A consistent message that has come out of events that the Poverty Alliance has participated in or organised since the referendum result has been the need to work towards a more fundamental transformation of the Scottish economy and society. This transformation can be, in part, facilitated by the devolution of new powers. However, to shift our deeply ingrained patterns of inequality and poverty will require, we believe, further and ongoing change. This means a different approach to economic development, one which does not solely focus on economic growth as the key metric of success; it requires valuing and investing in different parts of economic and social life (for example, in a new approach to childcare), and it also will require the further devolution of power and control to communities across Scotland. New powers for Scotland are only new tools to bring about change, ones that must be used more effectively than current ones have been. As always, how we use those tools will depend on political will, determination and creativity.

2.7 Finally, it is important that we frame the questions of the devolution of additional powers to Scotland in the context of human rights and equality. The concerns that the Poverty Alliance works on every day, whether the problems of individuals being able to feed themselves and their families, the inability to find and sustain employment, or the inability to secure an adequate incomes due to cuts in the welfare system, should all be seen as examples where basic human rights are being denied⁴. However, as the Scottish Human Rights Commission note in their submission to the Smith Commission ‘shifting powers over areas such as welfare, immigration, job creation and taxation would not in itself create opportunities for advancing the realisation of human rights.’ Using a human rights approach is a powerful, but under used tool to addressing poverty in Scotland. As part of the process of devolving additional powers to Scotland we would support the SHRC’s recommendation that any further amendments to the Scotland Act should be entrenched in order that current levels of accountability are preserved.

3. Process

3.1 Like many other civil society organisations, we have been unhappy with the speed with which the Smith Commission has been forced to undertake this important consultation. We recognise that within the very constrained timescales Lord Smith and the commission staff have made real efforts to engage as widely as possible. However, it was simply not possible that a consultation that lasted a little over four weeks could ever begin to engage

⁴ For further information see: Lucy Devlin, Human Rights and Poverty, *Poverty Alliance Briefing No 20*, October 2014 http://povertyalliance.org/userfiles/files/briefings/PA_Briefing20_HumanRights%26Poverty_FINAL.pdf

with the wide range of stakeholders that would have been required if it were to be a robust consultation.

3.2 A better approach would have been to ensure that a genuine discussion took place across Scotland, one that not only involved the political parties, but reached out to some of Scotland's more disadvantaged communities. Again, we appreciate the efforts that have been made to engage with civil society organisations, including the Poverty Alliance, but this is not a replacement for the kind of participatory process that was required. It was this kind of engagement that was the hallmark of the referendum and there was, and still is, an opportunity to build on that experience.

3.3 We would endorse the proposal put forward by the Electoral Reform Society, STUC, SCVO and others that the results of the Commission must be subject to scrutiny by some form of 'citizens led' participatory process. It is important that the Smith Commission process, or indeed the subsequent Parliamentary process, is not seen as the end of the process of consultation. However, we would also go further and state clearly that people with direct experience of poverty must be actively involved in the process of the scrutiny of the proposals for new powers. People living in poverty are not a homogeneous group, but rather bring the diverse life experiences that would be expected from an issue that impacts more than 800,000 people across our country. Poverty impacts in different ways on men and women, on older and younger people, people with disabilities, and people from black and ethnic minority groups. Despite this diversity and complexity, we believe that these experiences and voices need to be heard and can be, if the will exists. The Poverty Alliance has considerable expertise in bring policy makers together with those experiencing poverty and is ready to support any continuing, realistic process in whatever way we can.

4. Taxation Powers

4.1 Taxation is an important tool and can transform the economy, and the Poverty Alliance is supportive of the devolution of more tax raising powers. If additional powers are to be used to make an impact on poverty and inequality then it is critical that a range of taxation is devolved to Scotland. However, any new powers must be real and effective. There has been much discussion in Scotland since devolution in 1999 regarding the fact that the limited tax raising powers that the Scottish Parliament has have not been implemented. The new tax raising powers delivered through the Scotland Act 2012, in particular the Scottish Rate of Income Tax (SRIT), can be seen as coming with similar constraints to those tax varying powers that have existed since 1999. Whatever new powers may come to Scotland, there must be an assurance that these powers are sufficiently flexible and meaningful to be applied. Tax raising powers that come to Scotland with significant constraints are not meaningful powers.

4.2 As stated above, it is important that the current revision of the devolution settlement reflects the outcome of the referendum. Arguably, people voted for the pooling and sharing of resources and there is a need to find a division of power that reflects this. It is important to find the correct balance of tax raising powers that will allow Scotland to deliver its ambitions in respect to poverty and inequality. We believe the additional powers, and new allocations would provide Scotland with the powers required to address poverty and inequality.

4.3 In addition to the 'tests' of whether new tax raising powers could help address poverty and inequality, and the test of being in accordance with the desire to retain some taxation powers at the UK level, there are a number of other factors that ought to be taken into account. These were outlined by David Eiser at the Poverty Alliance seminar on 29 October⁵. Amongst the factors to be considered were: the yield of any new taxes; the stability over time (e.g. are they cyclical?); how they linked to devolved competencies (new or existing ones); were they subject to mobility or tax competition. These were some of the factors that were taken into account when looking at the options for further devolution.

Income Tax

4.4 Income tax can be a tool for redistribution of wealth but this is only possible if the Scottish Parliament has the power to vary both rates and bands of income tax. The taxation powers recently devolved to the Scottish Parliament are without real use in the fight against poverty as they are so rigidly defined as to render them almost unworkable. Further devolution must allow for real variation in order to afford policy makers real decision making opportunities, and to increase the fiscal responsibility of the Scottish Parliament. There was strong support for the full devolution of income tax in the survey carried out by the Poverty Alliance.

Recommendation: The full devolution of income tax to the Scottish Parliament with powers to vary both rates and bands.

Corporation tax

4.5 While there is strong public support for the devolution of Corporation Tax, there has been mixed feelings about this by some in the third sector. The Poverty Alliance has concerns about the danger of direct tax competition and the relative mobility of many corporations. It is also not clear that the ability to control corporation tax can be effectively used to address poverty and inequality. The Poverty Alliance therefore does not support the devolution of corporation tax at this time. However, we do believe that, as does the STUC, that part of those taxes not devolved to Scotland should be assigned to Scotland

⁵ David Eiser, Taxation, Redistribution and Poverty: Principles for Change, Poverty Alliance Seminar "Powers to Tackle Poverty", http://povertyalliance.org/what_we_do/events/previous_events/smith_seminar

Recommendation: That power over corporation tax is not devolved to the Scottish Parliament.

VAT and alcohol, tobacco and fuel duties

4.6 Fuel, tobacco and alcohol duties accounted for more than £4bn in 2012/13. This is potentially a very large resource for the Scottish Parliament, and one which there has not, so far, been enough discussion about. On VAT, there are EU rules regarding the ability to vary VAT sub-nationally but there is no doubt that VAT is a regressive tax and it is something there needs to be discussion about at UK level. By increasing the proportion of revenue raised in Scotland, the Parliament is better incentivised to use its existing spending power to grow the economy and help lift people out of poverty.

Recommendation: 50% of VAT and alcohol/tobacco/fuel/gaming duties should be assigned.

Inheritance tax

4.7 Our recent survey found that 72 per cent of the people asked supported the devolution of inheritance tax. Inheritance tax can be a strong tool in the redistribution of wealth and can help break the cycle of intergenerational inequality. It is therefore a useful tool in the fight against poverty, and is a power which we believe would sit best with the Scottish Parliament.

Recommendation: The devolution of inheritance tax to the Scottish Parliament.

Oil and gas revenues

4.8 While there is public support for the devolution of oil and gas revenues, we believe that these are a resource which is best shared across the UK; but it is vital that Scotland receives a fair allocation of revenues raised.

Recommendation: Powers over oil and gas to remain at UK level but Scotland to receive fair share of revenues raised.

Borrowing Powers

4.9 For the Scottish Government to have credible fiscal powers and responsibility for the programmes which it initiates, then it is only right that it should also have the power to borrow. The power to borrow is one that local authorities in the rest of the UK currently have, and it seems unusual that the Scottish Parliament does not have similar powers. If the kinds of investment in Scottish infrastructure are to be made to enable a real transformation of the Scottish economy, then borrowing powers must come with additional tax raising powers.

Recommendation: The capacity should exist for the Scottish Government to borrow at the maximum level negotiable with the UK Treasury.

5. Increased Welfare Powers

5.1 As was stated above, one of the greatest challenges that Scotland faces is the high levels of poverty that currently exist. More than 800,000 people living in low-income households, with almost 1 in 5 children living in poverty⁶. A man born in the poorest parts of Scotland will, on average, die 12.5 years before his counterpart in the richest part of the country.⁷ It is problems such as these that motivated many, although by no means all, on both sides of the referendum debate to get involved in attempting to create a new constitutional framework for Scotland. We would agree at the outset that Scotland needs stronger powers over welfare⁸ in order to address the particular patterns of poverty that exist here. The distinctive features of the Scottish economy, geography and culture suggest that there are good arguments for the greater devolution of welfare powers to the Scottish Parliament. Bringing more powers over welfare will enable the Scottish Parliament to better fulfil the desire that was often stated in the late 1990s of finding ‘Scottish solutions to Scottish problems’.

5.2 It is essential that any powers over welfare must come with necessary financial controls and policy-making powers to allow for effective delivery. Devolution without this is not devolution at all, and it is important that the Scottish Parliament does not find itself in the same situation as the Northern Ireland Assembly regarding the parity principle. It is important to accept that the devolution of more powers over welfare to Scotland will only advance a process that has been underway for some time. We do not regard the UK social security system as sacrosanct, and only operable when fully ‘unified’. The introduction of free personal care for older people through to the creation of the Scottish Welfare Fund have all signalled the need to deliver parts of the welfare system in a different way in Scotland. The proposals for further devolution contained here, and strongly supported by many other organisations in civil society, would bring more coherence and provide a clearer rationale for a process that has been underway for some time.

5.3 The Poverty Alliance believes that all welfare powers that are best delivered in Scotland should be devolved to the Scottish Parliament. In determining which powers should be devolved we would again apply the test of subsidiarity – which welfare powers can be delivered more effectively at a Scottish level than they are currently at the UK level. We also believe that we should move towards a welfare system in Scotland that is better able to deliver the principles outlined by the Scottish Campaign on Welfare Reform (SCoWR):

⁶ John McKenrick (2014) ‘Is poverty falling?’ in *Poverty in Scotland 2014: The Independence Referendum and Beyond*, (eds) J. McKendrick, G. Mooney, J. Dickie & P. Kelly, CPAG: London

⁷ National Records of Scotland (2014) Life Expectancy for Areas within Scotland National Statistics: Edinburgh

⁸ It is important to note that when we use the term ‘welfare’ we are in fact referring to what should properly be regarded as the social security or benefits system. Important parts of the welfare state are already devolved to Scotland, such as health and education. We use the term welfare to fit with the terms of debate as they have been set out, even though they are not particularly helpful.

- Benefit rates should be set at a level where no one is left in poverty and all have sufficient income to lead a dignified life.
- Respect for human rights and dignity should be the cornerstone of a new approach to welfare.
- The benefits system should be simplified - by, for example, increasing the role of non-means tested benefits.
- The system should provide the support needed to enable everyone to participate fully in society.

5.4 We believe that welfare powers can be used to address poverty, but it should be remembered that welfare alone cannot address poverty. If we genuinely wish to address poverty and inequality then there is a need to ensure that welfare powers work in coherence with other powers to ensure that there is the necessary transformation required to bring about real change.

5.5 Over 90 per cent of those who responded to our recent survey on more powers supported the devolution of all welfare powers, excluding pensions, to the Scottish Parliament. Pensions were excluded from this question as our view is that that these are a resource best shared at UK level and devolving them would be unnecessarily complicated with no clear benefit. It is, of course, important to recognise that unpicking any part of the welfare system will be complicated and difficult but if welfare powers are not to be devolved wholesale then this becomes necessary.

5.6 Before considering whether and which parts of welfare to devolve to Scotland, there are other powers that ought to be created in Scotland. Due to Scotland's distinctive features mentioned above, there is a need for Scotland to have a distinctive approach to welfare and social security. One possible option is for the Scottish Parliament to be given the powers to create new benefits. This would be possible no matter which other parts of the welfare system are devolved and would give Scotland the ability to (re)introduce things like Lone Parent Grants, Health in Pregnancy grants and Child Trust Funds. This would allow the Scottish Parliament to identify those areas that need a particular Scottish response, for example, health inequalities, and then provide that response.

Recommendation: Scotland to be given powers to create new benefits, regardless of which other welfare powers are devolved.

5.7 It is possible to pick out clusters of powers which could be devolved and the Poverty Alliance believes that one viable option is to devolve powers over working age benefits. This includes, but is not limited to, Job Seekers' Allowance, Employment Support Allowance, Housing Benefit, Universal Credit, the Work Programme and Job Centre Plus.

5.8 In addition to this, we support the devolution of 'family benefits' such as Child Benefit, Sure Start Grants, Maternity Grants and Health Start Vouchers.

Recommendation: If welfare powers are not to be devolved wholesale then working age and family benefits should be devolved to the Scottish Parliament.

6. Employment and Equalities

6.1 It is clear that there is public appetite for employment legislation to be devolved to the Scottish Parliament. 91 per cent of people who responded to the Poverty Alliance survey on more powers for Scotland were supportive of this, and 91.5 per cent of people believed Scotland should have the power to set and enforce the minimum wage.

6.2 In recent years, Scotland has seen a huge growth in the numbers of people living in in work poverty. Currently, almost two-thirds of children in poverty in Scotland are in working households⁹ and this is a result of low pay and poor labour market practices.

6.3 The Scottish Parliament already has existing powers over economic development and some areas of tax and welfare. We believe that the devolution of workplace protection, alongside these existing powers, will allow the Scottish Parliament to develop more coherent policies on economic development, and tackle issues surrounding low pay and poor working conditions.

6.4 We know from our colleagues at the STUC that there are specific Scottish challenges to health and safety and therefore support their desire for health and safety legislation for be devolved to Scotland.

Recommendation: Employment law, health and safety, trade union law and the minimum wage to be devolved to the Scottish Parliament.

6.5 There is a case for devolving employment and equalities legislation together. Without employment legislation, there would be a restriction on the areas that the Scottish Parliament could legislate on with regards to equality; the example given by the STUC is that the Scottish Parliament could not pass legislation for equality within employment as this would be an employment right and therefore reserved. This would leave Scotland in a situation where some equalities laws are governed by the Scottish Parliament, and some by the UK Parliament.

Recommendation: That employment and equality law are not separated in devolution proposals.

6.6 Scotland has different demographics to the rest of the UK and different societal issues which mean that there are certain aspects of equality which may be better understood and tackled by the Scottish Parliament.

⁹ The Scottish Government (2014) <http://www.scotland.gov.uk/topics/statistics/browse/social-welfare/incomepoverty/publications>

Recommendation: The full devolution of equality law, alongside employment legislation

6.7 Persistent gender inequality exists in Scotland. This is seen in all aspects of life and we know that for many women a glass ceiling still exists. Women are under-represented in many aspects of public life and are also missing from many companies' boards.

Recommendation: The Scottish Parliament should be given the ability to legislate for mandatory 50-50 gender representation in the Scottish Parliament and local councils, and for gender equality on company boards.

6.8 The Poverty Alliance is also supportive of Engender's call for powers to legislate and regulate around equality law to be devolved, including the power to establish a Scotland-specific equalities regulator.

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Finance Committee

33rd Meeting, 2014 (Session 4), Wednesday 17 December 2014

Devolved Taxes Implementation

1. The Committee took evidence on the implementation of the devolved taxes from Revenue Scotland, Registers of Scotland and the Scottish Environment Protection Agency at its meeting on 26 November. The [Official Report of the meeting](#) is attached.
2. Audit Scotland published its report "[Preparations for the implementation of the Scotland Act 2012](#)" on 11 December.
3. Following publication of the report, the Committee intends to follow up on issues raised in the recent evidence session.

Alan Hunter
Assistant Clerk to the Committee

Finance Committee, Wednesday 26 November 2014, Official Report

Devolved Taxes Implementation

11.11 - The Convener: I reconvene the meeting, folks, but first of all I give apologies on behalf of Michael McMahon. As convener of the Welfare Reform Committee, he has had to go downstairs to meet a group of people with mental health issues who are coming to his committee next week, and show them the committee room. He will probably join us again in 15 or 20 minutes.

Agenda item 2 is an evidence-taking session on devolved taxes implementation with Eleanor Emberson, who is the head of Revenue Scotland at the Scottish Government; John King, who is the director of registration at Registers of Scotland; and John Kenny, who is the head of national operations at the Scottish Environment Protection Agency. As members have received copies of the most recent progress update from our witnesses, we will go straight to questions. The witnesses are all veterans of the committee, so they know the drill, so to speak.

I will start off with a question for Eleanor Emberson. In your update report, you say that the most recent estimate for the total cost of the set-up and first five years of operation is £21.2 million, but that figure excludes an estimated £730,000 for the costs of the Scottish tax tribunal, which were included in the financial memorandum to the Revenue Scotland and Tax Powers Bill and Revenue Scotland's previous progress report. Why have those costs been excluded as a quite separate issue, given that they were not excluded before, and why has there been a quite significant 9 per cent increase in the costs of establishing and running the system for the devolved taxes?

Eleanor Emberson (Scottish Government): The costs of the tax tribunal were properly included in the Revenue Scotland and Tax Powers Bill's financial memorandum because they were relevant to that legislation, but I have excluded them this time round because of the comparison with the £22.3 million estimate that was made by Her Majesty's Revenue and Customs. HMRC's figure would never have covered the costs of the tax tribunal, whatever had been done about it, but in hindsight we could probably have made that clearer at the time of the financial memorandum. They are not costs that HMRC would have borne, and they are not costs that Revenue Scotland bears. They are costs that are associated with running the taxes, which is why they were properly part of the bill's financial memorandum, but they are not among the costs that we like to add up and compare with the original HMRC estimate of £22.3 million.

As for the increase in costs, I can answer more questions about the detail, but as I have broadly explained in my update report, the increase is almost exclusively due to additional staff costs associated with implementation. Those staff fall into three broad groups. First, there are programme and project management staff, which we bolstered in response to gateway review recommendations and, indeed, to our own need to manage the programme and project very tightly through the past nine or 10 months of implementation work.

Secondly, we have additional business analysts working between the process design and our IT contractor. As you know, there have been problems with past Government IT projects. Things can overrun or might not deliver as required, so we have put in additional business analysts to ensure that as we go through every

iteration of the IT system, we are completely on top of things, are managing the project very tightly and are ensuring that it delivers what it needs to deliver and stays within budget.

Thirdly, I have put in additional staff to make quite sure that we deliver all the different aspects of set-up in time for April. In short, the increase is to do with set-up costs associated with staff.

11:15 - The Convener: As you have said in your update,

“increased investment in staff costs for implementation”

Is “now falling in 2015-16”, and you have made it clear that most of the additional costs are associated with staff. However, your report does not contain a breakdown of that.

You talked about managing things “very tightly”, but there seems to be quite a divergence in the number of staff that will be required. The report says that the anticipated number of staff is 41 in the first year of live operation, whereas the bill’s financial memorandum estimated 30 staff. You have said that the staff are for

“additional capacity in the critical early months”

but, again, no detailed estimates have been provided.

Eleanor Emberson: If it would help the committee, I could send you a staffing structure that shows who the 41 staff are and what they will be doing.

The Convener: Yes.

Eleanor Emberson: I am very happy to send that in, if you will find it useful.

The bill’s financial memorandum mentions 30 staff, but we have made additional investment in compliance, which will require three staff members. We are probably talking about a difference of eight posts between what we said in the financial memorandum and what we are saying now, and that is our best estimate of what we need to ensure that we can do this safely and reliably and that we can deliver the service and get the money in the door.

The Convener: How likely is it that the figures will change again in the months ahead?

Eleanor Emberson: I do not expect to recruit beyond 41 staff members. We have a plan for staffing up with 41; 12 of those people have already been identified, another nine are being interviewed in the next two weeks and a further tranche will come behind that. That is what we are going to go live with. I cannot speak for what changes might be made in future years, particularly once we have a board and some experience of live running, but that is the structure that we will be working with for the foreseeable future.

The Convener: Is your structure flexible enough to deal with any additional powers that might be devolved to Scotland?

Eleanor Emberson: We recognise that we might need to respond to that. Of course, the response would depend entirely on what the additional powers might be.

If they involve further small or transaction based taxes, we will have a good platform to build on, but I expect that if any significant extra power were to be devolved we would need more staff and more implementation work. That is just the nature of what we do.

The Convener: Okay.

The financial memorandum to the bill states:

“The intention is for Revenue Scotland to delegate operational responsibility for the collection of Scottish Landfill Tax to SEPA”,

but in its latest progress report SEPA says that it has been agreed that it

“will not collect tax data or process any SLfT ... transactions on behalf of Revenue Scotland.”

Why has the approach to the Scottish landfill tax been changed?

Eleanor Emberson: I will respond first and then invite John Kenny to come in.

When we last came before the committee, we explained the IT system change. I will have to go a long way back in the development, but the financial memorandum for the Revenue Scotland and Tax Powers Bill included new additional investment in an IT system for Revenue Scotland. That was based on the detailed work that we had done on the business analysis and the IT requirements, which highlighted that a more efficient and robust way of delivering the online system for collection of landfill tax and land and buildings transaction tax would be to develop a system at Revenue Scotland that was integrated appropriately with systems at SEPA and Registers of Scotland, rather than have separate systems at SEPA and ROS with nothing in the middle. That means that SEPA will not have a particularly significant up-front collection role, because people will make their returns, which will be processed by Revenue Scotland. We will handle all the payments and we will store the taxpayer data.

However, SEPA will have a very significant role in two areas, the biggest of which will be compliance, which will involve ensuring that taxpayers are paying the correct amount of tax, tackling the illegal dumping problem and trying to recover tax from people who have been dumping illegally. The other role that SEPA will have is in information. SEPA has staff who go out to landfill sites who are bound to be asked questions about tax, among other things, so they will be able to help us to spread the work. They are already helping us to work with landfill operators to make sure that the process goes as smoothly as it can. John Kenny might like to add to that.

John Kenny (Scottish Environment Protection Agency): There was recognition that the IT system change would result in more efficient delivery across the taxes involved, and that it would be better for Revenue Scotland to be the holder of those sensitive data in their entirety. That is the reason for the change.

The Convener: It is just that the revised set of running costs has not been included in the figures that have been provided to the committee. Those figures have been agreed with Revenue Scotland, but we have not received them.

John Kenny: I can tell you what the revised costs are. The set-up costs have been reduced by £250,000 on the back of that IT change.

The Convener: What about the running costs?

John Kenny: The main cost was setting up the information system. The running costs have come down a little from about £610,000 to just under £600,000.

The Convener: Thank you.

Registers of Scotland finances itself from the income that it receives for the services that it provides. The costs that it incurs in relation to LBTT will be met by the Government. The RSTP bill financial memorandum estimated that ROS would face set-up costs of £335,000 and running costs over the first five years of £1.625 million. Have those estimates changed?

John King (Registers of Scotland): We have been reviewing our estimates every month. We still envisage that the set-up costs will be in the region of £335,000; they will certainly be no more than that. Within that figure, there has been some reallocation of individual components. For example, the IT costs have come down from £85,000 to £70,000.

Our spend to date is in the region of £176,000. We anticipate that by the time we get to the end of March, which is when we go live, our spend will be between £300,000 and a maximum of £335,000. In the next four to six weeks, we will have a very high degree of certainty about what that end spend will be. It will depend on our refining what we will deliver, particularly on the IT side, along with Revenue Scotland's IT provider.

The Convener: I have two questions for Eleanor Emberson. In your submission, you say that the tax gap for LBTT could be around £4.5 million a year. You also say that you plan to make an additional investment in tax compliance of £230,000, which you say will be

“aimed at reducing the expected tax gap.”

What is the current gap for stamp duty land tax? By how much do you expect to reduce the tax gap with the investment of £230,000?

Eleanor Emberson: I apologise because I do not have the figures for the SDLT gap in front of me. We looked into that when we did the financial memorandum for the Revenue Scotland and Tax Powers Bill. I do not have the figure in my head. We took the SDLT estimate and reduced it somewhat as an estimate for LBTT because we recognised that the legislation that Parliament had passed for LBTT already attempted to close loopholes and routes for avoidance.

We have not attempted to estimate by how much we can close the gap. There was a £230,000 estimate for additional investment in compliance work. My latest estimate for that is actually £259,000, which consists of £165,000 for three staff at Revenue Scotland and £94,000 for staff at SEPA, so it is across the two taxes.

The three staff at Revenue Scotland will be focused mostly on land and buildings transaction tax. Our aim is that those staff will pay for themselves several times over.

We will monitor over time how much we bring in through the additional compliance activity. That will allow the committee to understand something about how successful we are.

We simply do not have detailed information about the tax gap. We do not have a track record with the brand-new tax on which we could make a robust estimate of how much we expect to close the tax gap. Therefore, we have said that we understand what it will cost us and will monitor closely what comes in. We will report that to the committee as we go along.

The Convener: Okay. I understand that the stamp duty land tax is £9 million at present.

Eleanor Emberson: Sorry?

The Convener: The gap is £9 million.

Eleanor Emberson: Do you mean in Scotland?

The Convener: Yes—in Scotland. Therefore, if your update says that the gap will be £4.5 million, you estimate that the introduction of LBTT will reduce the gap by some 50 per cent.

Eleanor Emberson: I have to say that that is an estimate.

The Convener: Of course. We appreciate that.

Eleanor Emberson: We really do not know. I am concerned not to mislead the committee by trying to give you figures about what we might bring in that look accurate and confident, because until we collect the tax we do not know how successful we will be.

The Convener: That is something that the committee will consider as we go forward.

I have one or two more questions, but I might leave them until the end and see whether my colleagues cover them.

Gavin Brown: Good morning. As with many reports that are given to the committee and on which witnesses then appear before us, there is a slight time gap: your reports are all from October. Given the tight timescale that we now have, has anything material changed for any of your organisations since you submitted the reports in October?

Eleanor Emberson: There has been a lot of progress but there is nothing negative that I need to report. We are still on track on all the areas and quite a number of things have happened since early October. We now have draft technical guidance out for consultation, our website is live and we have seen further demonstrations of IT, so a lot of progress has been made since then.

John King: I echo that. The committee has previously asked about the division of roles and responsibilities between ROS and Revenue Scotland. At ROS, we are now

clear what our role is, which is helping us to refine the detail of our operational activity post 1 April.

Gavin Brown: When you appeared before the committee previously, alongside a written report you submitted what might be called a dashboard that used a system of green, amber and red lights, which is a project management tool. Lots of things were green and there was the occasional amber—I do not think that you had many reds. In any of your organisations, does any part of the project have an amber or red light at this stage that ought to be flagged up? Is there anything that could hold progress back for any of your organisations between now and the start of April?

11:30 - Eleanor Emberson: The answer has to be yes—of course things could happen between now and April that would hold us back. We are using the green-amber-red system. We have been working to readiness criteria, which is a series of descriptions of where we need to be, and we mark green, amber or red against every single one of those. We report that weekly. We have had small numbers of amber indicators out of two dozen or so criteria and we have been working hard to turn some of them back to green.

We are doing an assessment this week so that we will know, when we do another full assessment at the end of January, where we were on readiness at the end of November. We are still on track. Amber indicates that something is not exactly as per our plan, but we have a way of bringing it back. If we thought that we did not have a way of bringing it back, it would be red, and at that point, the warning lights would go on and we would intervene. We have nothing at red.

Gavin Brown: So, across the three organisations, things could go wrong and things could happen, but for each of your organisations, there is nothing at red that is likely to hold things back.

John King: We are clear about what Registers of Scotland has to deliver; all aspects of that are standing at green. The main IT component that we have to deliver is already in place. The remaining IT is more behind the scenes and we are aware of what has to be delivered there. ROS is confident that we have everything in place that will support effective delivery.

John Kenny: SEPA's answer is similar to Eleanor Emberson's. Across the board, a number of individual parts of the projects are at amber, which means that we expect to deliver them but there are challenges. The majority of them are green.

Gavin Brown: Without being involved in the projects, the ones that strike an outsider like me as being the riskiest, as with many projects, are the IT systems. If the IT systems function, we can probably get over most hurdles. If they do not, there is an immediate issue.

I got the impression from John King that the IT system is almost complete. Could each of you assure the committee that the IT system is being tested robustly and that there is a contingency plan in case something goes wrong on day 1, which would not get us off to a great start.

John King: I will clarify what I said about the IT system. I was referring to one component that ROS had agreed to deliver because we were building it for our own IT system. It is an authentication server that is a way of validating users to a system. We are sharing that with Revenue Scotland. The system has already been delivered and tested, and it is available for Revenue Scotland's IT team to use. It might be more appropriate for Eleanor Emberson to comment on more general IT.

Eleanor Emberson: I can give the committee an absolute assurance that everything is being thoroughly tested. There are various components to the full system; I am not a technical expert, so I will just describe them in plain language, although there are proper technical descriptions.

There is an electronic form that captures all the data; it is not static, but responds to the user. For example, if you tick certain boxes, it does not ask certain questions. There is a case-management system, which is what Revenue Scotland uses for individual tax cases. It is used for stages when there is a return or a payment but can be used if there is a dispute or inquiry. There is a set of links and something that looks out to solicitors for LBTT and landfill operators for landfill tax so that someone who is not within Revenue Scotland or SEPA can interact with the system. We intend to deliver all that—tested—by the end of January.

It is our intention to do in February and March what I, as a layperson, would describe as snagging: making absolutely sure that there are no little glitches.

The electronic form part is starting its testing imminently, and the case-management system and so on will follow behind, all through December. The outward-facing part will be tested in January. Most of the work for all of that is already done, and we are now stitching everything together.

A further thing that must happen at the end is full security testing and full security accreditation, to make absolutely sure that taxpayer data will be secure, and that nobody could do anything bad with any of our systems.

We are on track to deliver all of that, but Gavin Brown is absolutely right: of course we need a contingency plan in case any element fails when we get to testing, or if we do not get security accreditation. Our contingency plan is based on paper returns, because we will continue to offer paper returns as an option. Solicitors were not all keen to move fully online. We might, in time, wish to move fully online.

However, it would have been too big an ask to tell people that we were going to compel them to use an IT system that they had never seen, which I cannot prove works and which I cannot prove will be robust and good. We have agreed to offer a paper return, initially. For our contingency plan, we would, if we had to, do fully paper returns. We have prioritised the order in which we have built the IT system in order to ensure that, if we have to do the paper returns, we will have all the behind-the-scenes parts of the system for processing them. We are as robust as we can be. We have mapped out the staffing requirement for doing the paper return and so on.

Gavin Brown: That was helpful—thank you.

The convener asked about staff numbers. He spoke about having 30 staff under the initial bill; I think that the current complement is 41. One of the reasons that was given in your report was that you wanted to have an extra complement for year 1, potentially, to ensure that the operation would be a success. Based on current plans,

is that total of 41 simply for year 1? Might that number reduce over time? I suppose that it depends on what other responsibilities come your way. Is 41 likely to be more of a medium-term figure?

Eleanor Emberson: It is probably more medium term. Judging from the run of estimates that I have in front of me, the number would probably come down by only a couple of posts or so in 2016-17. We would then do what we needed to do from that point on. We would have proper experience by then, of course, of how well things were working in operation. I have assumed that we would drop the figures that I have used in order to develop the estimate by only a couple of posts in 2016-17 and beyond.

Gavin Brown: My next question might be more for ministers, but you might be able to answer it. As far as Revenue Scotland is concerned, are we on track with all the subordinate legislation for the two devolved taxes?

Eleanor Emberson: My understanding is that the subordinate legislation will all appear in December. If that happens, that is fine from Revenue Scotland's point of view.

John Mason: I am still a little bit confused about the total costs—perhaps that is my failing—so I wonder whether you could clarify the matter. In the spring 2014 report, which I think was published in March, reference was again made to the £16.7 million quote from Revenue Scotland, compared with HMRC's figure of £22.3 million. Revenue Scotland's figure was 25 per cent less. A statement was made at the time: "Our estimated costs for the basic collection of the taxes have not changed – they remain at £16.7m."

The figure in the current report is £21.2 million. The report says on page 3:

"This total cost continues to compare favourably with the original estimate of £22.3m".

That figure of £21.2 million is obviously an increase over the £16.7 million. If we had gone with HMRC's figure of £22.3 million, would we have had the same increase? I have not worked it out, but it would be about £4 million extra. Is all of that extra costs, or is any of it simply an increase in the £16.7 million base figure?

Eleanor Emberson: The £1.7 million that I highlighted for the committee is effectively an overspend against the estimates in the March report. If we were trying to apportion it, about £1.46 million would be an overspend against the £16.7 million and the rest would be a slight overspend against the so-called additional costs. It is very difficult to know what HMRC's estimate would be if you asked it now.

HMRC did an estimate way back in the summer of 2012, on the basis of the taxes being identical to the UK equivalents. If HMRC had been doing the development, it would also have had to respond to the fact that there are now differences between the Scottish and UK taxes. I have no idea what HMRC would quote at this point, but there is a good chance that its costs would also have gone up in response to the different design. I can only speculate, because we cannot know.

John Mason: I accept that. As far as you are concerned, you and HMRC quoted on the same basis—as far as we are all aware.

Eleanor Emberson: Yes.

John Mason: Are you saying that it is not that you did not quote correctly, but that as things have been developed, extra costs have come in and, as far as we know, they would probably have come in on the HMRC side, too?

Eleanor Emberson: As far as we can tell. The bulk of the additional cost is to do with ensuring that the systems match the design of the Scottish taxes. An element in this is that my estimates have not turned out to be completely accurate. I am being honest about that. We have had to put in additional resource to deliver. However, the bulk of the difference between £16.7 million and £21.2 million is to do with ensuring that the design of the systems matches the aspiration for Scotland.

John Mason: I appreciate your straightforward answer, which certainly helps me to understand the situation. In the same area, it seems a little odd that we start a new tax and then immediately there is a tax gap. That would make some people think that Revenue Scotland was not doing its job properly, because surely there should not be a tax gap.

Eleanor Emberson: I would love to be in a world in which we legislate, people are required to pay and all that Revenue Scotland has to do is to provide the system for the money to flow in the door, but that is not the world that any of us expects to live in. Although the Parliament has tightened the legislation in relation to land and buildings transaction tax, and has given further powers, there will be an amount of testing, settling down and exploration of any grey areas and room to manoeuvre. We do not have a robust estimate of the tax gap; the £4.5 million quoted is the best that we could do.

John Mason: I will not press you on that. I totally accept that that is uncertain.

Eleanor Emberson: It is not in the nature of tax that we simply put it out there, everybody pays it and there is nothing more to do.

John Mason: I accept that and obviously HMRC accepts that, because it clearly identifies the issue—not just on this tax, but on all taxes—and tries to eat into it.

Did you want to say something, Mr Kenny?

John Kenny: Yes. I was going to mention the illegal waste sites for landfill that were not previously subject to tax under the UK landfill tax scheme. Those sites are illegal and therefore, by definition, we might not know where they are. We have come across individual sites that would have had a seven-figure tax liability. We know that it is there, and there is a gap, but it is difficult to quantify because the sites are illegal.

John Mason: Although we found them under the past regime—they turned up every so often.

John Kenny: They turned up and we are confident that, with the resources that we have been given, we will be in a better position to identify them and bring them into the tax system. However, the result is very hard to quantify. We can say only that

they are there and potentially large scale. The beauty of the new tax and system is that we can go after that tax, whereas we could not do that under the UK system.

11:45 - John Mason:

Presumably, with any tax gap, you spend a bit more and you get quite a lot more tax in, or you spend a bit less and you do not get so much tax in. There is a balance there. How do you find the right balance?

Eleanor Emberson: You will judge us on our track record. Part of the reporting that we expect to have to do to the Parliament and the public is on how much money flowed in through the normal process of people doing their returns and making their payments, and how much money was perhaps collected as a result of further investigations by SEPA or Revenue Scotland on either of the taxes. That is probably the best measure of our effectiveness. You will understand how much we are spending on compliance and see how successful we are being.

I have to manage your expectations, in that you might not see that in the first six months because these things build up. We start the process of inquiry and then we start taking action against people. For the first two or three years of the operation of the taxes, you will start to see how successful we are being in bringing in that money. I imagine that that is one of the things that you will want to explore with us regularly.

John Mason: I think that the figure for compliance was £230,000. Will you be able to identify how much tax you think that that has produced?

John Kenny: Over time.

Eleanor Emberson: Over time, yes.

John Mason: That is fair enough.

The ROS submission talks about Registers of Scotland's roles and responsibilities. They are quite clear, but I am not sure that I understand the fourth one. It says:

"We will have a role to play in the event that system contingency has to be invoked. The detail of this is being worked upon."

What does that mean?

John King: That one focuses around the front end of the tax collection system, so it is about what people would do in the event that there is a problem with the system and taxpayers are not able to submit returns online. We have been in discussion with Eleanor Emberson and her colleagues about the role that Registers of Scotland would have to play in simplifying the process for the taxpayer.

Eleanor Emberson mentioned that paper returns will still be an option, in general. Paper returns will be sent into Registers of Scotland, and we expect that they will come in along with paper applications for registration of the property transaction. They might come in in the one envelope. In the event of contingency, we are looking to extend that. If customers are used to sending paper returns to ROS, in a contingency situation they will continue to send a much greater volume of paper returns to ROS.

John Mason: That is helpful. The word “contingency” is used in different ways by different people.

The Convener: You say that you will be able, over time, to measure the impact of the £230,000 in reducing the tax gap, but we do not even really know what the gap is. You are only guessing that it is £4.5 million. It might be £3 million or £6 million. What about the impact of the general anti-avoidance rules? Surely they should reduce the tax gap substantially, if not virtually eliminate it. Issues such as sub-sale relief, which was covered by the bill, have been more or less eliminated. I am still trying to see where the tax gap could appear from.

Eleanor Emberson: I do not find the term “tax gap” that helpful.

The Convener: I know, but it was in your report.

Eleanor Emberson: I know, I know. It is my own fault.

The general anti-avoidance rule allows Revenue Scotland to take action to get the money in. However, sitting there of itself without any Revenue Scotland or SEPA staff taking action against a taxpayer, the general anti-avoidance rule will not achieve anything. The additional staff that I want to bring in will use the powers that the Parliament has given them to go after the money.

It is not a tax gap in the sense that you have legislated to leave a gap; it is a gap in that you have legislated, but we expect that people’s behaviour will mean that not 100 per cent of everything that should come in will come in. We will have to use the powers that the Parliament has given us to take action to take in the money that would otherwise not come in.

The Convener: That is interesting. Basically, you are saying that you are going to spend an extra £230,000 to reduce that gap because there is no point in having the rules if you do not have the people to enforce them. When the original staff costings were done, surely consideration must have been given to the possibility of compliance being part of the staffing structure—there would have to be a compliance section. It is not just that we have the rules so we need to bring in staff to ensure compliance; I would have thought that those staff would have been part of the structure from the off.

Eleanor Emberson: Indeed; that is the case. There are other staff who will be doing compliance work. There is a staffing structure, and there will be people who will do compliance work.

The £230,000 was to allow us to have a conversation with the Parliament about the net tax collected. Let us take out of the equation the three additional posts in Revenue Scotland. Of course we would collect tax with 38 staff, and of course they would undertake some compliance work.

As the legislation was developed and as the bill was introduced with the general anti-avoidance rule, we thought that we could take more action. I have therefore earmarked additional posts to take further action on compliance. We will track that, because we know that it is of interest, and we will be able to explain what has been achieved with those additional posts.

In effect, the aim is to allow the Parliament a choice. In future, you might scrutinise the measures and say that we have not demonstrated that having those extra posts was worth while, and we would return to a structure with basic compliance only. Alternatively, we might decide that the measures have been successful, and that it might be worth ramping up the effort. There are choices to be made.

The Convener: Given that we do not really know whether the tax gap exists or what it is—whether it is £4.5 million or whatever—I find it difficult to see how you will be able to measure the impact of the additional compliance officers in reducing it. Next year you might say that the gap is £3 million, so those three people will have reduced it by £1.5 million—but they might not have done, because there might not have been a £4.5 million gap to start off with.

Eleanor Emberson: I will not measure it in that way. I will tell you what they have brought in, not whether they have reduced a gap that I cannot estimate by an amount.

We will not be able to tell you that we now know that the tax gap is some precise number and that it has reduced by some precise number. We will be able to tell you that the actions of the additional compliance officers have brought in a certain amount of additional tax revenue—or that they are on track to do so, if we are considering the very early stages.

That is why, with hindsight, the term “tax gap” might not have been the best way to cast the notion but the term is in common usage. We should probably have related it back to actions to ensure that all tax is paid, so that you would see an increase in tax take as a result of the work that the people would do. I do not know whether that helps.

The Convener: Not really.

Malcolm Chisholm: I want to ask about staffing more generally. In the section of your submission that is headed “Revenue Scotland Staffing”, you state that there are now

“two divisions ... with around 40 staff”.

You go on to say that you

“have agreed the anticipated future staffing structure ... and are currently completing the detailed planning and preparation for the recruitment of 41 staff”.

I am a bit confused. What will the total number be at the end of that recruitment phase? You can see my point. Are they different people? Will one group of people do something else once the other people have come in?

Eleanor Emberson: Most of them, yes. We have a team of 40, who are doing the set-up work. We have designed a staffing structure for go live with 41 posts. A small number of people—currently it is four, or possibly five—will move from the set-up team into operational posts eventually. The others who are involved in the set-up will leave as their work comes to an end. Meanwhile, we will be building up the operational team of 41.

At the peak, which will probably be around February or March, we will have a lot more than 41, because we will have people who are still finishing set-up work and we will have people coming in ready to do the operational work. Then, one team will dwindle to zero and the other team will build up.

Malcolm Chisholm: Will those people come from other parts of the civil service, or will there be open advertisements?

Eleanor Emberson: We are looking only within the civil service, but potentially we will look beyond the Scottish Government, because we want some people with tax experience.

Malcolm Chisholm: Will those numbers increase when it comes to 2016 and the full Scotland Act 2012 provisions kick in?

Eleanor Emberson: We do not anticipate any further increase based on the 2012 act, because the Scottish rate of income tax will not impact on Revenue Scotland. If there are any further powers to come, there will be further set-up work to do and that will have an impact on the operational staffing structure. There is nothing on the existing plan.

Malcolm Chisholm: In general terms, your table shows the budgets declining significantly between 2014-15 and 2015-16. Is that right?

Eleanor Emberson: Yes. I have around £600,000-worth of set-up costs for Revenue Scotland and a bit more than that, in terms of IT set-up costs, running into 2015-16. However, on the current plan that drops away, assuming that there are no further taxes to set up.

Malcolm Chisholm: Is there a figure for funding allocated to SEPA or Registers of Scotland?

Eleanor Emberson: Yes. Do you mean in terms of set-up costs?

Malcolm Chisholm: I am talking about the 2015-16 costs.

Eleanor Emberson: The 2015-16 costs are projected to be fairly steady.

John Kenny: The costs for SEPA are £595,000 to £600,000.

Malcolm Chisholm: What are the costs for Registers of Scotland?

John King: We are predicting a running cost in the region of £325,000.

Malcolm Chisholm: Okay.

The Convener: The allocation for 2015-16 has been reduced from £40 million to £25.7 million. That is explained in part by the transfer of £4.3 million to a new budget line for Revenue Scotland. Can you explain what that budget line is?

Eleanor Emberson: That is Revenue Scotland's budget, and the budget to pay for Registers of Scotland and SEPA costs in operating the taxes in 2015-16. Until now, we have operated with those costs being paid from within the Scotland Act 2012 implementation budget, but from April there will be an independent body, so it needs its own budget line. That is why there is a transfer out.

The Convener: That is fine. We appear to have exhausted all the questions. Thank you very much.

Meeting closed at 11:57.