

NOTE ON THE SCOTLAND BILL 2015-16 AND COMPARISON WITH THE CONCLUSIONS AND RECOMMENDATIONS IN THE COMMITTEE'S INTERIM REPORT

Background

1. On Thursday 14 May, the Committee published its [Interim Report](#) on the Smith Commission and the UK Government's Proposals. The prime purpose of the report was to make constructive suggestions to the new UK Government on how the draft clauses should be amended to ensure that the "spirit and substance" of the [Smith Commission's Report](#) was met in full.
2. The Secretary of State for Scotland published the [Scotland Bill 2015-16](#) on Thursday 28 May.
3. This paper from the Clerks, SPICe researchers and the Office of the Solicitor to the Scottish Parliament sets out an **initial** comparative analysis of the provisions and clauses in the Bill compared with the conclusions and recommendations of the Committee's report and the former UK Government's [Command Paper](#).
4. It is important to note that this analysis is of an interim basis as there was a limited timescale over which this could be produced in time for today's Committee meeting. Secondly, the Bill is now progressing through the various stages in the UK Parliament and it is not known at this stage whether the UK Government plans to amend further the Bill in line with the Committee's Interim Report. The Clerks will be liaising closely with the Scotland Office in this respect.
5. Finally, the Clerks understand that there are on-going discussions between the Scottish and UK Governments on a range of issues with a view to making further changes in the Bill. However, it is not clear at this stage what the outcome of these discussions will be given that the talks are on-going.

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SUMMARY TABLE

Key

	No substantive changes to the clause(s) in the Scotland Bill appear to have been made to bring it/them into line with the Committee's Interim Report
	It is unclear at this stage whether the clause(s) have been changed sufficiently to be in line with the Committee's Interim Report or partial changes have been made and a more detailed assessment is needed of the impact
	Changes have been made to the clause(s) in the Scotland Bill which now appear to bring it/them into line with the Committee's Interim Report
	The Committee's Interim Report suggested changes to non-legislative matters so, at this stage, no view can be taken as the detail of non-legislative aspects is still be finalised.
	The Committee's Interim Report was content regarding the clause and the clause has not changed in terms of content.

Provision	
Permanency of the Scottish Parliament	Red
Sewel Convention/Legislative Consent Process	Red
Inter-governmental relations - general	White
Inter-government relations – placing general principles and dispute resolution procedures in statute	Red
Crown Estate: responsibility for management of economic assets	Yellow
Crown Estate: removal of the word “may” and replacement with “shall” in relation to the transfer scheme and the exclusion of assets such as the Fort Kinnaird shopping centre from devolution.	Red
New benefits in devolve areas	Red
Top-up benefits in reserve areas	Yellow
Definition of carers	Red
Definitions of disability	Red
Universal Credit – perceived ‘veto power’	Red
Under occupancy charge / Bedroom Tax and Discretionary Housing Payments	Yellow
Winter Fuel Payments	Green
Scottish Welfare Fund	Yellow
Employment Programmes	Red

Equal opportunities: socio-economic inequalities	Yellow
Equal opportunities: gender quotas	Yellow
Tribunals	Yellow
Pay day loan shops	Red
Fixed-Odds Betting Terminals	Red
Income tax – general, ability to set zero rate, block grant adjustment etc.	Yellow
Assignment of VAT	White
Air Passenger Duty	Blue
Aggregates Levy	Blue
Fiscal framework, institutional arrangements and 'no detriment' policy	White
Borrowing	Red



TABLE: COMPARING SMITH, THE DRAFT CLAUSES, RECOMMENDATIONS OF THE DEVOLUTION (FURTHER POWERS) COMMITTEE AND THE SCOTLAND BILL

PERMANENCY OF THE SCOTTISH PARLIAMENT AND SCOTTISH GOVERNMENT		
Smith recommendation (Paragraph 21) UK legislation to state that the Scottish Parliament and Scottish Government are permanent institutions.		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 1 Draft clause 1 would give effect to the recommendation to state in statute that the Scottish Parliament and Government are permanent institutions by amending the Scotland Act 1998 to state that:</p> <p style="padding-left: 40px;">“A Scottish Parliament is recognised as a permanent part of the United Kingdom’s constitutional arrangements” and,</p> <p>Section 44 of the 1998 Act would be similarly amended to state that:</p> <p style="padding-left: 40px;">“A Scottish Government is recognised as a permanent part of the United Kingdom’s constitutional arrangements” (new s1A)</p>	<p>The Committee called for the words “is recognised” to be removed from draft clause 1.</p> <p>The Scottish Parliament should not be disestablished without a vote in both the UK and Scottish Parliaments and a Referendum of the people of Scotland</p>	<p>Clause 1 No change. Clause 1 in the Scotland Bill is identical to draft clause 1</p>

THE SEWEL CONVENTION / LEGISLATIVE CONSENT MEMORANDA

Smith recommendation (Paragraph 22)

The Sewel Convention to be put on a statutory footing

Command Paper

Devolution (Further Powers) Committee

The Scotland Bill

Draft clause 2

Draft clause 2 would give effect to the recommendation to make the Sewel Convention statutory by adding a new subsection to section 28 of the 1998 Act stating:

“But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament”

However, section 28(7) of the 1998 Act, which provides that this section does not affect the power of Westminster to legislate for Scotland, is not amended or repealed by the draft clauses.

The Committee called for the words “but it is recognised” and “normally” to be removed from draft clause 2.

Clause 2

No change. Clause 2 in the Scotland Bill is identical to draft clause 2

OPERATION OF THE SCOTTISH PARLIAMENT AND SCOTTISH ADMINISTRATION

Smith recommendations (Paragraph 26)

The Scottish Parliament to have powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government, including the:

- overall number of MSPs or the number of constituency and list MSPs.
- disqualification of MSPs from membership and the circumstances in which a sitting MSP can be removed.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 3 Draft clause 3 would provide the Scottish Parliament with the powers over the operation of the Scottish Parliament and Government recommended by Smith by making amendments to paragraph 4 of Schedule 4 of the 1998 Act. These amendments would add further exceptions to the prohibition which prevents the Scottish Parliament from modifying the 1998 Act.</p> <p>The powers set out in this draft clause will require a super majority, as provided for in draft clause 4</p>	<p>The Committee made no substantive comments at this stage on draft clause 3 except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clause 11 (with changes) This clause, now headed “Scope to modify the Scotland Act 1998”, aims to give increased autonomy to the Scottish Parliament in relation to the power to amend sections of the Scotland Act 1998 which relate to the operation of the Scottish Parliament and the Scottish Government. It specifies those parts of the Scotland Act which are no longer protected from modification by Schedule 4. The drafting has been tidied up and some anomalies corrected with additional provisions being freed to reflect the principle that the Parliament should be free to regulate its own house. Some areas have been tightened with minor restrictions in place to reflect the difference between “in-house rules” and “fundamental constitutional pillars” which are to be permanent. For example the function of appointing the First Minister remains fixed with Her Majesty.</p>

ELECTIONS

Smith recommendations (Paragraphs 23 – 25)

The Scottish Parliament to have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland (but not in relation to Westminster or European elections), including powers in relation to campaign spending limits and periods and party political broadcasts. The Scottish Parliament already has many of these powers in relation to local government elections in Scotland.

The Scottish Parliament to have competence over the functions of the Electoral Commission in relation to Scottish Parliament elections and local government elections in Scotland. The Electoral Commission to report to the UK Parliament in relation to UK and European elections and to the Scottish Parliament in relation to Scottish Parliament and local government elections in Scotland.

The Boundary Commission to report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament. UK Government powers in relation to Scottish Parliament boundaries will transfer to the Scottish Government.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clauses 5 to 9</p> <p>Draft clause 5(2) sets out restrictions on the day on which a general election to the Scottish Parliament can be held, in order to prevent the date coinciding with other elections being held in Scotland.</p> <p>Draft clause 5(3) would substitute a new Section 12 in the Scotland Act 1998, including the amendment to Section 12 set out in Section 1 of the Scotland Act 2012 (which is not yet in force). The draft clause gives powers over Scottish Parliament elections to Scottish Ministers, instead of the Secretary of State.</p> <p>This draft clause maintains the Secretary of State’s power to combine Scottish Parliament elections, with the permission of Scottish Ministers, negating the need to bring Section 2 of the Scotland Act 2012 into force.</p>	<p>The Committee made no substantive comments at this stage on draft clauses 5 to 9 except noting as an issue to return to when the Scotland Bill was published</p>	<p>Now Clauses 3 to 9 (with changes) - Some of the draft clauses dealing with amendments to elections have been expanded and reworded and include more detail on the proposed changes.</p> <p>Clause 3 (replaces draft clauses 5 to 8) recasts the reservation of elections. This is now divided into two parts. Part A retains the existing reservation of Westminster elections and European Parliament elections. Part B now sets out what is reserved in relation to Scottish Parliament elections, local government elections and combined polls. As a result the reservation is detailed and quite complex. Protected provisions within Part 1 of the Scotland Act require to be specifically reserved as does the digital service for</p>

<p>The proposed new Section 12 includes giving Scottish Ministers responsibility over the limits of election expenses of candidates, but not of registered political parties.</p> <p>Draft clause 6 would devolve the franchise for Scottish Parliament and local elections to the Scottish Parliament. A reservation will be maintained on the digital service, i.e. the Individual Electoral Registration Digital Service (IERDS) and the verification of applications to the system. The Scottish Parliament would gain the power to extend the franchise to 16 and 17 year olds in time for the Scottish Parliament elections in 2016, and for the local government elections in 2017. The Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) draft Order was laid before the UK and Scottish Parliaments on 20 January 2015.</p> <p>The Order was finally approved and made at the Privy Council meeting held on 19 March 2015, with the power to extend the franchise at Scottish Parliament and Scottish local government elections to 16 and 17 year olds being devolved to the Scottish Parliament from 20 March 2015.</p> <p>Draft clause 7 would devolve responsibility for the control of campaign expenditure and expenditure by third parties in relationship to Scottish Parliament and local government elections, except for elections combined with other elections.</p> <p>Draft clause 8 would devolve powers over sections of the Political Parties, Elections and Referendums Act 2000 relating to the Electoral Commission, with regard to Scottish Parliament elections, to the Scottish Parliament.</p>		<p>registration – mirroring what happened in SI 2015/692. Control of campaign expenditure and 3rd party national election campaigns in relation to devolved Scottish elections where these take place at reserved combined polls is reserved. There is detailed provision as to which provisions of PPERA 2000 are reserved in relation to Scottish Parliament elections.</p> <p>The franchise for Scottish Parliament and local government elections in Scotland is not reserved. Again this obviates the need to rely on SI 2015/692 and expands competence over all aspects of the franchise, not just the competence to lower to voting age for 16 and 17 year olds.</p> <p>Clause 4 now sets out the division of functions regulating the conduct of elections between the Scottish Ministers (new section 12 of the 1998 act) and the Secretary of State (section 12A of the 1998 Act). These are broadly the same but the division of combined polls between the two is now more specific, with fewer being reserved to the Secretary of State.</p> <p>Clause 5 now amends section 2 of the 1998 Act and deals with the timing of elections. There have been minor refinements to the policy and different treatment of how to resolve any prohibited clashes arising. A Holyrood general election cannot take place</p>
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<p>Draft clause 9 would amend Schedule 1 of the Scotland Act 1998 to require reports on reviews of Scottish Parliament constituency boundaries, carried out by the Boundary Commission for Scotland, to be submitted to Scottish Ministers, instead of the Secretary of State. Orders to put in place recommendations from those review reports would no longer need to be approved in the UK Parliament.</p>		<p>on the same day as or within the period 2 months before a regular Westminster general election or a European parliamentary general election. The Scottish Ministers are given the power to alter the date of the poll for the Scottish Parliament or local government elections by order where a prohibited clash arises. This may raise policy questions given that the purpose behind the move to fixed term elections was to remove the power to set an election date from sitting governments.</p> <p>Clause 6 now contains the executive powers conferred on the Scottish Government by SI 2015/692 which is to be revoked (see Clause 9)</p> <p>Clause 7 confers specific executive functions under PPERA 2000 on the Scottish Ministers in relation to campaign expenditure, controlled expenditure of third parties and control of donations to third parties in relation to Scottish Parliament elections.</p> <p>Clause 8 textually amends Schedule 1 of the 1998 Act to reflect the devolution of the functions of the Boundary Commission for Scotland to the Local Government Boundary Commission for Scotland.</p> <p>Clause 9 provides for minor and consequential amendments in relation to elections and related matters.</p>
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SUPERMAJORITY FOR LEGISLATION ON THE SCOTTISH PARLIAMENT FRANCHISE ETC.

Smith recommendation (Paragraph 27)

Any legislation changing the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament to be passed by a two-thirds majority of the Scottish Parliament.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 4 This is similar to the requirement in the Scotland Act 1998 and the Fixed Term Parliaments Act 2011, which provide that the Scottish and UK Parliaments can only be dissolved by a two-thirds majority in the Scottish Parliament and the Commons respectively.</p>	<p>The Committee made no substantive comments at this stage on draft clause 4 except noting it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clause 10 (with changes) This clause has been extended. It sets out the requirements for a super-majority in relation to the protected subject-matters of the franchise for the Scottish Parliament elections, the system by which members are returned, changes to constituencies, regions or electoral areas and the number of members. These include procedural requirements and a mechanism for the Law Officers to challenge whether or not the requirements have been complied with. The detail of these has evolved. Importantly, the period in which a challenge can be raised is restricted and once that period has expired any procedural impropriety does not affect validity of the legislation.</p>

INTER-GOVERNMENTAL MACHINERY

Smith recommendations (paragraphs 28-30)

Reform and scale-up current inter-governmental machinery, including the Joint Ministerial Committee (JMC) structures.

Develop formal processes for the Scottish and UK Parliaments to collaborate more regularly.

Reformed inter-governmental arrangements to:

- (1) include the development of a new MoU between the UK Govt. and devolved administrations which would:
 - lay out details of the new bilateral governance arrangements needed to oversee the implementation and operation of the tax and welfare powers to be devolved (consistent with the fiscal framework to be developed further to paragraph 95 of this agreement).
 - provide for additional sub-committees within the JMC structure which could include: home affairs; rural policy, agriculture & fisheries; or social security/welfare.
- (2) be underpinned by stronger and more transparent parliamentary scrutiny, including:
 - laying of reports before respective Parliaments on the implementation and effective operation of the revised MoU.
 - pro-active reporting to respective Parliaments of, for example, the conclusions of JMC, Joint Exchequer Committee and other inter-administration bilateral meetings
- (3) provide for more effective mechanisms to resolve inter-administration disputes with a provision for arbitration processes as a last resort.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Page 82 Recommendations in Smith paragraphs 28 to 31 do not require legislation.</p> <p>A new Joint Ministerial Committee on Welfare has been established.</p>	<p>This was a major non-legislative policy area that the Committee considered. Its key recommendations were as follows:</p> <ul style="list-style-type: none"> • general principles of operation of IGR should be in statute in the Bill • general principles behind dispute resolution should be in statute in the Bill • general principles unpinning parliamentary 	<p>Not covered in the Scotland Bill.</p>

	<ul style="list-style-type: none"> oversight should be in statute in the Bill detailed working arrangements for IGR should be in an MoU arrangements for IGR (tax, welfare, EU issues etc.) need to be agreed by the Parliament before any Bill is passed 	
<p>SCOTTISH GOVERNMENT REPRESENTATION OF THE UK TO THE EU</p> <p>Smith recommendations (Paragraph 31) The current Concordat on the Co-ordination of European Union Policy Issues should be improved to:</p> <p>(1) ensure that Scottish Ministers are fully involved in agreeing the UK position in EU negotiations relating to devolved policy matters. (2) ensure that Scottish Ministers are consulted and their views taken into account before final UK negotiating positions relating to devolved policy matters are agreed. (3) allow a devolved administration Minister to speak on behalf of the UK at a meeting of the Council of Ministers according to an agreed UK negotiating line where the devolved administration Minister holds the predominant policy interest across the UK and where the relevant lead UK Government Minister is unable to attend all or part of a meeting.</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Page 83 Recommendations in Smith paragraphs 28 to 31 do not require legislation.</p>	<p>The Committee made no substantive comments at this stage on this issue, except noting it should be covered as part of IGR matters (see above). This is an issue to return to when the Scotland Bill was published.</p>	<p>Not covered in the Scotland Bill.</p>

THE CROWN ESTATE

Smith recommendations (Paragraphs 32-35)

Management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, to be transferred to the Scottish Parliament including the Crown Estate’s seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

Following this transfer, responsibility for the management of those assets to be further devolved to local authority areas who seek such responsibilities. (The definition of economic assets in coastal waters should recognise the foreshore and economic activity such as aquaculture).

The Scottish and UK Governments to draw up and agree a MoU to ensure that such devolution is not detrimental to UK-wide critical national infrastructure.

Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 23</p> <p>Draft clause 23 would allow, but not require, the UK Treasury to make a scheme, through a statutory instrument, transferring all Scottish functions of the Crown Estate Commissioners to Scottish Ministers. This scheme can only be made with agreement of Scottish Ministers and may be modified “by agreement” (with modifications to be retrospective). The scheme will also transfer responsibility for liabilities e.g. to ensure renewables are decommissioned. “Rights and liabilities” may require some clarification.</p> <p>Draft clause 23 includes provision as the “Treasury considers necessary or expedient” relating to interests of defence, national security, telecommunications, oil & gas, and electricity. The Command Paper also mentions development of a Memorandum of Understanding on these issues. There is reference to an intention to transfer to the Scottish Parliament competence to legislate on the management of</p>	<p>This was a major policy area that the Committee considered. Its key recommendations were as follows:</p> <ul style="list-style-type: none"> • the UK Government should reconsider its drafting approach as there was merit in the suggestions made by Professor Aileen McHarg • the word “may” should be replaced by “shall” in draft clause 23 • there should be an obligation placed on the non-devolved Crown Estate to consider the option of shared investments with the devolved Crown Estate in Scotland with a fair allocation of revenues • a full share of the revenues from Fort Kinnaird should accrue to Scotland • Scotland should receive its fair share from any investment vehicles (like Fort Kinnaird) operating within 	<p>Now Clause 31 (with changes)</p> <p>The provision looks very similar in form to the draft clauses, but now includes the legislative procedures for making the Scheme and any amendments to the Scheme. The power to make the Scheme is to be made by Statutory Instrument, subject to affirmative procedure in both Houses in Westminster (s90B para (1) (14) and Clause 31(3)). There is no role for the Scottish Parliament but the SI requires agreement from the Scottish Ministers (para (13)). These provisions were in the original clauses.</p> <p>There is now a provision that any SI amending the Scheme, but which does not amend the reserved provisions set out in para (8) such as defence, telecommunications etc or have retrospective effect under para (15) may be</p>

<p>Scottish assets before the transfer scheme, although the detail of this is unclear.</p> <p>Draft clause 23 makes no reference to further devolution to local authority level, and it is expected this would happen through Scottish Parliament legislation. This would need careful handling as some powers, such as those for aquaculture leases are currently managed as a Scotland-wide concern.</p> <p>Revenues would transfer to the Scottish Consolidated Fund, however the command paper refers to safeguards that taxation of oil and gas receipts would remain reserved. After transfer, the Crown Estate would still be able to invest in Scotland. The Sovereign Grant is not mentioned in the Command Paper – the link between Crown Estate profit and the Sovereign Grant is a proxy, rather than relating to direct funding.</p>	<p>Scotland in the future</p> <ul style="list-style-type: none"> Once the powers over the Crown Estate have been transferred, the Committee recommends the early implementation of the Smith Commission recommendation that “responsibility of the management of the Crown Estate assets in Scotland should be devolved further to local authorities such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities”. 	<p>considered under negative procedure, but again in both houses of the UK Parliament. The draft clauses referred to modification of the scheme being by agreement (presumably between HM Treasury and Scottish Ministers) – this has been removed. Whilst there is reference to the power to amend the scheme, it is not obvious where that power is explicitly made. Furthermore, the Bill says any amendments could have effect from the transfer date and so could be retrospective.</p> <p>Provision has been made to amend the Crown Estate Act 1961 to reflect the new role for Scottish Ministers (SMs), but to retain the requirement to manage and improve etc the property, rights and interests being transferred subject to the remaining provisions of the Crown Estate Act 1961. This reflects the Smith Commission recommendation that it would be the powers of the Crown Estate Commissioners [which are set out in the 1961 Act] which would be transferred to Scottish Ministers. The Explanatory Notes do say, however, that “the Scottish Ministers may be able to take a different approach to managing the Scottish assets (for example, to adopt a less commercial approach [...])”.</p> <p>Once the Scheme has been made, should the Scottish Ministers wish to manage the estate differently in Scotland then there is power by</p>
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		<p>Order in Council to achieve this before and after the transfer. This power is for Scottish Ministers to promulgate any Order by affirmative procedure in the Scottish Parliament. It is not clear exactly what this is meant to cover. However it is clear that Clause 31(10) means that the basic functions transferred to maintain the estate cannot be modified by Scottish Parliament legislation under s90B.</p> <p>There is now specific provision that the revenues will go to the Scottish Consolidated Fund. The Commissioner with special responsibility for Scotland provisions inserted by the Scotland Act 2012 is removed. The reservation of the Limited Partnership holding including Fort Kinnaird has been slightly redrafted at 90B(3) but the effect is the same. The Command Paper (but not draft clause 23) referred to an MoU between the Scottish and UK Governments. Neither the Scotland Bill nor the Explanatory Notes make any reference to a Memorandum of Understanding.</p>
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BROADCASTING

Smith recommendations (Paragraphs 36-37)

The Scottish Government and Scottish Parliament to have a formal consultative role in the process of reviewing the BBC's Charter. BBC to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament on matters relating to Scotland.

Scottish Ministers to have sole power to approve Ofcom appointments to the MG Alba board.

Command Paper

Devolution (Further Powers) Committee

The Scotland Bill

Draft clause 34 and Page 58 - Paragraphs 5.2.1 to 5.2.3

Draft clause 34 would amend Section 183A of the Broadcasting Act 1990 to remove the Secretary of State's role in approving Ofcom appointments. To be put into effect by an MoU between the UK Government, Scottish Government, Scottish Parliament and the BBC

The Committee made no substantive comments at this stage except noting that it would be involved in the short-term in approving an MoU on the BBC and that it was an issue to return to when the Scotland Bill was published.

Now Clause 46. Otherwise, identical to draft clause 34.

REGULATION OF TELECOMMUNICATIONS AND POSTAL SERVICES

Smith recommendations (Paragraph 38)

The Scottish Government and the Scottish Parliament to have a formal consultative role in setting the strategic priorities for Ofcom's activities in Scotland. Scottish Ministers to have the power to appoint a Scottish member to the Ofcom Board.

Ofcom to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

Command Paper

Devolution (Further Powers) Committee

The Scotland Bill

Draft clause 43

Draft clause 43 provides that, before appointing or removing a member to the Ofcom board, the Scottish Ministers must consult the Secretary of State. A memorandum of understanding would be put in place between the UK Government, Scottish Government,

The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.

Now Clause 57. Otherwise, identical to draft clause 43.

Scottish Parliament and Ofcom.		
TRANSPORT – MARITIME AND COASTGUARD AGENCY AND NORTHERN LIGHTHOUSE BOARD		
<p>Smith recommendations (Paragraphs 39-40)</p> <p>The Scottish Government and the Scottish Parliament to have a formal consultative role in setting the strategic priorities for the Maritime and Coastguard Agency’s (MCA) activities in Scotland. Scottish Ministers to appoint a Scottish member to the MCA’s Advisory Board who is capable of representing the interests of Scotland. MCA to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p> <p>The Scottish Government and the Scottish Parliament to have a formal consultative role in setting the strategic priorities for the Northern Lighthouse Board’s (NLB) activities in Scotland. Scottish Ministers to have the power to appoint a further Scottish Northern Lighthouse commissioner.</p> <p>NLB to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clauses 35 and 36</p> <p>Draft clause 36 would amend Section 1 of the Coastguard Act 1925 and Section 292 of the Merchant Shipping Act 1995 to require the UK Secretary of State to consult Scottish Ministers about the activities of the MCA, including the safety standards of ships and seafarers, in Scotland.</p> <p>An MoU between Scottish Ministers and the UK Government would set out the Scottish Ministers’ ability to appoint a member to the MCA Advisory Board, provide copies of annual accounts to Scottish Ministers to lay before the Scottish Parliament and set out the expectation that MCA staff can appear before the Scottish Parliament.</p> <p>Draft clause 35 would amend Schedule 8 of the Merchant Shipping Act 1995 to allow Scottish Ministers to appoint a Commissioner to the NLB. It would also require the NLB Commissioners to submit accounts and inspection reports</p>	<p>The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clauses 47 and 48. Otherwise, identical to draft clauses 35 and 36.</p>

to Scottish Ministers, who shall lay any reports received before the Scottish Parliament.		
<p>Draft clause 44 Draft clause 44 would add the Commissioners of Northern Lighthouses to the list of bodies that may be required to attend before the Scottish Parliament</p>		<p>Now Clause 58. Otherwise, identical to draft clause 44</p>
<p>ENERGY EFFICIENCY AND FUEL POVERTY</p> <p>Smith recommendations (Paragraph 68) Powers to determine how supplier obligations in relation to energy efficiency and fuel poverty, such as the Energy Company Obligation and Warm Home Discount, are designed and implemented in Scotland to be devolved. This provision to be implemented in a way that is not to the detriment of the rest of the UK or to the UK's international obligations and commitments on energy efficiency and climate change.</p>		
<p>Command Paper</p>	<p>Devolution (Further Powers) Committee</p>	<p>The Scotland Bill</p>
<p>Draft clauses 38-39 Draft clauses 38 and 39 would amend the Gas Act 1986, Electricity Act 1989 and Energy Act 2010 to allow Scottish Ministers to design and implement Scottish specific supplier obligations, to better target funding and support.</p> <p>Setting the way the money is raised by these schemes (the scale, costs and apportionment of the obligations as well as the obligated parties) would remain reserved to Westminster.</p>	<p>The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clauses 50 and 51 (with changes) Clause 50 amends the Energy Act 2010 to enable the Scottish Ministers to make support schemes in relation to reducing fuel poverty in Scotland through obligations on gas and electricity suppliers. Clause 51 amends the Gas Act 1986 and the Electricity Act 1989 to enable the Scottish Ministers to exercise many of the powers held by the Secretary of State in relation to in relation to the promotion by gas and electricity suppliers of reductions in carbon emissions and home-heating costs in Scotland.</p>
		<p>New Clause 52 – Apportionment of targets.</p>

		<p>Clause 52 does not feature in the draft clauses, and amends the Utilities Act 2000. Where the Secretary of State has set an overall carbon emissions reduction target for the purpose of an energy company obligation, subsection (3) enables the Secretary of State to apportion that target between England and Wales and Scotland. Subsection (6) makes similar provision in relation to the apportionment of any overall home-heating cost reduction target.</p>
<p>ENERGY MARKET REGULATION AND RENEWABLES</p> <p>Smith recommendations (Paragraph 41) The Scottish Government and the Scottish Parliament to have a formal consultative role in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which Ofgem must have due regard.</p> <p>Ofgem to also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.</p>		
<p>Command Paper</p>	<p>Devolution (Further Powers) Committee</p>	<p>The Scotland Bill</p>
<p>Draft clause 40 Draft clause 40 would amend the Scotland Act 1998 to place a duty on the Secretary of State to consult Scottish Ministers when establishing any renewables incentive scheme that would apply in Scotland, or significantly amending any such scheme; including those already established i.e. contracts for difference, feed-in tariffs and the renewables obligation. It does not apply to fossil fuel or nuclear generation. Regarding the Scottish Government’s consultative role in the strategic priorities of the Energy Strategy and Policy Statement, this is not included in the draft clauses, and will be subject to discussions between the UK and Scottish</p>	<p>The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clause 53 (with changes) Clauses 56 and 58 are identical to draft clauses 42 and 44 but Clause 53 (Renewable electricity incentive schemes: consultation) has been changed, and does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme, it is understood that this relates to Contract for Difference - Supplier Operational Levies and Capacity Market - Settlement Cost Levies. These are levy payments made by Suppliers to</p>

Governments.		cover the operational costs of administrating Contract for Difference and Capacity Market.
Draft clause 42 Draft clause 42 would require Ofgem to lay its annual report and accounts before the Scottish Parliament and submit reports to the Scottish Parliament.		Now Clause 56. Otherwise, identical to draft clause 42
Draft clause 44 Draft clause 44 would include Ofgem as a body which may be required to appear before the Scottish Parliament.		Now Clause 58. Otherwise, identical to draft clause 44
		New Clause 52 (Apportionment of Targets) is also relevant, and is outlined above.
		New Clause 54 – Offshore renewable energy installations This Clause does not feature in the draft clauses, and amends the Energy Act 2004 to enable the Scottish Ministers to exercise functions in relation to declaring safety zones around, and the decommissioning of, offshore renewable energy developments wholly in Scottish waters or in a Scottish part of a Renewable Energy Zone (REZ).

WELFARE AND BENEFITS: UNIVERSAL CREDIT

Smith recommendations (Paragraphs 44-45, 47-48)

The Scottish Government to have the administrative power to change the frequency of UC payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland.

The Scottish Parliament to have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependants.

Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 to be met by the Scottish Government.

Joint arrangements for the oversight of DWP development and delivery of UC, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clauses 20-21</p> <p>Draft clauses 20 and 21 would give effect to Smith paragraph 44. The clauses would give Scottish Ministers concurrent regulation making powers under the Social Security Administration Act 1992. Clause 20(4) would give Scottish Ministers powers to make regulations under section 5(1)(p) of the Social Security Administration Act 1992, (payments to another person on behalf of the beneficiary) so far as it relates to a payment of a housing costs element (for rented accommodation) of Universal Credit. This provision would allow direct payments to landlords to be made. Draft clause 21(2) would give Scottish Ministers powers to make regulations under section 5(1)(i) of the Social Security Administration Act 1992 so far as relating to the person to whom, or the time when, universal credit is to be paid. This would allow Scottish Ministers to vary plans for single household payments and to change the frequency of universal credit payments. The UK Government has set the</p>	<p>This was a major policy area that the Committee considered. In general terms, the Committee considered that the relevant clauses do not yet meet the spirit and substance of the Smith Commission’s recommendations and potentially pose challenges in any attempt to implement them.</p> <p>The Committee’s main concern with draft clauses 20 and 21 (now 24 and 25) was the question of a perceived veto. The Committee were looking for the issue and wording to be resolved through the Joint Ministerial Working Group on Welfare.</p>	<p>Now Clauses 24 and 25 (with changes)</p> <p>Clause 24 replicates draft clause 20, with the addition of new subsection (6). This provides that regulations made by the Scottish Ministers under this section will be subject to the negative resolution procedure in the Scottish Parliament.</p> <p>Clause 25 replicates draft clause 21, with the addition of new subsection (5). This provides that regulations made by the Scottish Ministers under this section will be subject to the negative resolution procedure in the Scottish Parliament.</p> <p>No changes have been made to the wording of the clauses regarding the “veto.”</p>

<p>overarching conditions for Universal Credit in the Welfare Reform Act 2012 and regulations made under that Act. Scottish Ministers will have no powers to alter the 2012 Act or regulations made under that Act unless it relates to the housing cost element (see below).</p> <p>Draft clause 20 would give effect to this recommendation. The draft clause would give Scottish Ministers regulation making powers under section 11(4) of the Welfare Reform Act 2012 (determination and calculation of housing costs element) where the claimant rents accommodation. The Command Paper at paragraph 4.2.4 states that this power will include the power to vary or remove the under-occupancy charge.</p> <p>Both draft clauses (at 20(4) and 21(3)) require that Scottish Ministers cannot make regulations unless they have consulted with the Secretary of State about the practicability of implementing regulations and the Secretary of State has given agreement as to when any such change made by the regulations is to have effect, such agreement not to be unreasonably withheld. The Scottish Government has expressed concern that this would give the UK Government the power to “veto” the use of Scottish Ministers powers, although the UK Government has denied this.</p> <p>Recommendations in paragraphs 47 and 48 of the Smith Report do not require legislation.</p>		
		<p>New Clause 28: Universal credit: supplementary</p>

		<p>This section provides that section 117 of the Scotland Act 1998 applies where the Scottish Ministers make regulations under clause 24 and clause 25. This means that all relevant enactments will be read so that references to a Minister of the Crown are read as being, or including, references to the Scottish Minister.</p>
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WELFARE AND BENEFITS: BENEFITS DEVOLVED OUTSIDE UNIVERSAL CREDIT

Smith recommendations (Paragraphs 49-52)

The following benefits to be devolved to the Scottish Parliament:

- (1) Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer’s Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance.
- (2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment.
- (3) Discretionary Housing Payments.

New arrangements for how Motability will operate in Scotland for DLA/PIP claimants to be agreed between the Scottish and UK Governments.

The Scottish Parliament to have complete autonomy in determining the structure and value of the benefits at paragraph 49 or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.

In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied set out by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland to be transferred to the Scottish Government.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 16 Draft clause 16 would give effect to the devolution of benefits for carers and disabled people, as listed in paragraph 49(1) of the Smith Commission report. It would do this by amending the current exception to the reservation on social security, thereby giving the Scottish Parliament legislative power for this group of benefits.</p> <p>Draft clause 16 defines ‘disability benefit’ for people who:</p>	<p>This was a major policy area that the Committee considered.</p> <p>On draft clause 16 (now 19), the Committee was concerned that the definition of disability contained in draft clause 16 is overly restrictive and would not provide a future Scottish Government with the power to develop its own approach to disability benefits in</p>	<p>Now Clause 19 (with changes) The wording of this clause is similar to draft clause 16.</p> <p>It includes the same definition of a “disability benefit” as in draft clause 16. The Explanatory Notes state that this covers Attendance Allowance, Disability Living Allowance and Personal Independence Payment. “The</p>

<ul style="list-style-type: none"> • have a physical or mental condition that has a significant, long term, adverse effect on their ability to carry out day-to-day activities; • or a significant need arising from impairment to a person’s physical or mental condition (e.g. for attention or for supervision to avoid substantial danger to anyone). <p>Draft clause 16 appears to encompass the legislative definitions for DLA/PIP/AA. The new definition appears no wider than that. Scrutiny will be required to ensure the existing definitions for these benefits have been captured.</p> <p>The definition for carer’s benefit includes being aged 16 or over, not in full-time education, not gainfully employed, and looking after a disabled person in receipt of a disability benefit. This looks similar to the existing criteria for Carer’s Allowance.</p> <p>SDA is payable to those incapable of work. The Scottish Parliament would have legislative competence over the provision of SDA, or a like benefit, for those claimants who remain eligible for the benefit at the point of devolution. This is because SDA was closed to new claimants in 2001, and existing claimants below state pension age have been, or are in the process of being, reassessed for eligibility to Employment and Support Allowance, which remains reserved.</p> <p>Industrial Injuries Benefit – for those who have suffered an injury or developed a disease at work. The Command Paper (para 4.3.1) clarifies that the correct term for Industrial Injuries Disablement Allowance is Industrial Injuries Benefit</p>	<p>the future. Accordingly, the Committee recommended that the definition of disability used in the Equality Act 2010 is also used in draft clause 16.</p> <p>In relation to carers, the Committee had similar views and wanted to ensure that the future Scottish administrations are able to define what constitutes a carer.</p>	<p>definition is based on the common feature of these benefits that, with the exception of those people who are terminally ill, eligibility is usually based on the effects on the individual, or the needs of the individual, rather than the nature of their condition itself.”</p> <p>The Explanatory Notes state that the phrase “normally payable” in relation to disability benefit is designed to allow flexibility to enable provision for exceptional cases. This would include payment to people who are terminally ill.</p> <p>The definition of “carer’s benefit” is the same as the definition in draft clause 16.</p> <p>The only difference between Clause 19 and draft clause 16 relates to the industrial injuries disablement benefit. It now includes people whose contracts have been found to be void or unlawful as a result of failures to comply with employment legislation. This provides the same discretionary power under s.97 of the Social Security Contributions and Benefits Act 1992, to accept a claim for industrial injuries benefit even though the person was found not to have a valid contract of employment, because of a failure by their employer to comply with employment legislation.</p>
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<p>(IIB), which is the term used to describe benefits “paid as a consequence of workplace prescribed disease or injury”.</p>		
<p>Draft clause 17 Draft clause 17 would give effect to the devolution of the Regulated Social Fund to the Scottish Parliament. It would do this by amending the current exception to the reservation on social security.</p>	<p>In relation to the Regulated Social Fund, the Committee sought assurances that winter fuel payments and cold weather payments are to be devolved, and that agreement is reached on adopting a system of payments which better reflects the climate conditions in different parts of Scotland.</p>	<p>Now Clause 20. Otherwise, identical to draft clause 17 According to the Bill’s Explanatory Notes (para 154), “The Scottish Parliament will have legislative competence to make provision for the type of payments which are currently the subject matter of the regulated Social Fund. The UK Government currently makes such provision through the Sure Start Maternity Grant, Funeral Payment, Cold Weather Payment and Winter Fuel Payment. The Scottish Parliament will have legislative competence to make provision for payments and conditions of entitlement or to replace these benefits entirely”</p> <p>This explanation would appear to provide the Committee with assurance that winter fuel payments and cold weather payments are to be devolved.</p>
<p>Draft clause 19 Draft clause 19 would give effect to the recommendation to devolve responsibility for discretionary housing payments (Smith paragraph 49(3)). The clause roughly follows the framework of regs 2, 3 and 4 of the Discretionary Financial Assistance Regulations 2001 which provide the current framework for discretionary housing payments. The Command Paper says, “The clause will devolve legislative competence in relation to Discretionary Housing Payments</p>	<p>In relation to the interplay between draft clauses 19 and 20 (now 22 and 24 respectively), the Committee sought clarity between the power to remove the under-occupancy charge and discretionary housing payments. The Committee considered that it was essential that the application of these clauses should not have the effect of causing detriment to individuals in receipt of discretionary housing payments.</p>	<p>Now Clause 22 (with changes) Clause 22 provides for DHPs. The wording of the clause remains the same as draft clause 19 in relation to eligibility for DHPs. A DHP can only be made to those who are in receipt of housing benefit or any other reserved benefit payable in respect of a liability to make rent payments. Therefore, it is likely that some stakeholder concerns about this aspect of the</p>

<p>(DHP), subject to certain restrictions similar to those that already exist in respect of DHPs”.</p>		<p>clause will remain.</p> <p>However, the clause has been amended in other respects. The draft clauses contained exceptions to the exception i.e. DHPs could not be made where the requirement for the assistance arose from e.g. a liability to meet charges for water, sewerage or related environmental services, liability to meet payments of local taxes etc. Some comment was made that these provisions were overly restrictive (although they replicate the existing DHP regulations). Most of these restrictions have been removed so it would appear the Scottish Government could decide whether to introduce such restrictions in any new scheme it creates. Although it is unclear what the practical implications of this are. The restriction from using DHPs to cover a shortfall in rent as a result of a benefit suspension or sanction still remains the same, although clause 22 now qualifies this. In these circumstances a DHP can be made if the requirement arises from exceptional event and the requirement is immediate.</p>
<p>The recommendations on Motability (Smith paragraph 50) do not require legislation</p> <p>Recommendation (Smith paragraph 51) does not require legislation. While the Scottish Parliament will have autonomy to determine the structure and value of disability benefits, the Regulated Social Fund and DHPs, this power</p>		<p>Not covered in the Scotland Bill.</p>

will be based on the defined criteria of draft clauses 16, 17 and 19		
<p>WELFARE AND BENEFITS: POWERS TO CREATE NEW BENEFITS AND TOP-UP RESERVED BENEFITS</p> <p>Smith recommendations (Paragraphs 54-56)</p> <p>The Scottish Parliament to have powers to create new benefits in areas of devolved responsibility, in line with the funding principles set out in paragraph 95.</p> <p>The Scottish Parliament to have powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP.</p> <p>The Scottish Parliament may seek agreement from DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government. All administration and programme costs directly associated with the exercise of this power (either as a result of changes to existing systems or the introduction of new systems) to be met by the Scottish Government in line with the funding principles set out in paragraph 95.</p> <p>Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment.</p> <p>The UK Government’s Benefit Cap to also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides.</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 18</p> <p>Draft clause 18 would give effect to paragraph 54 of the Smith Commission Agreement regarding discretionary payments. The Command Paper says (at 4.3.11) that the clause “broadens the provisions in the Scotland Act that allow for the Scottish Welfare Fund”. The clause substitutes text in section F1 of Part 2 of Schedule 5 of the 1998 Act. The existing section F1 gives Scottish Ministers powers over: “providing occasional financial or other assistance to or in respect of individuals for the purposes of –</p> <p>a) meeting, or helping to meet, an immediate short term need</p> <p>i) arising out of an exceptional event or</p>	<p>This was a major policy area that the Committee considered. In general, the Committee sought assurances that any new discretionary payments introduced by the Scottish Parliament will provide additional income for recipients and not be offset by reductions in entitlements to benefits, tax credits or tax relief provided by the UK Government</p> <p>In relation to draft clause 18 (now clause 23), the Committee wanted to ensure that new powers to make discretionary payments came without the need to obtain prior permission from the DWP. The Committee recognised that there will be a need for the Scottish Government to provide the DWP with</p>	<p>Now Clause 23. Otherwise, identical to draft clause 18.</p> <p>The Explanatory Notes (paras 164 to 167) details how the UK Government thinks the clause expands, rather than restricts, current provision regarding payments under the Scottish Welfare Fund.</p>

<p>circumstances, and; ii) that requires to be met to avoid a risk to the well-being of an individual”.</p> <p>This has allowed the provision of crisis grants. The proposed new text removes the general references to “immediate” short term need and to the need “arising out of an exceptional event or circumstances”. Instead, payments can be made to meet a short term need that requires to be met to avoid a risk to the well-being of an individual. Thus, payments are not linked to an exceptional event (i.e. a crisis) situation, and in this respect the provision seems wider.</p> <p>However, the second paragraph of clause 18 does propose that, in the case of benefit claimants who have been sanctioned, discretionary payments can only be made where the need for it also arises from some exceptional event and the need is immediate and short term. In effect, this appears to replicate existing practice i.e. a claimant who has been sanctioned can receive a payment from the Scottish Welfare Fund and payments from the Scottish Welfare Fund are made within the existing context of “immediate” needs arising out of “exceptional” circumstances.</p> <p>There is no mention of “top-ups.” In what might be a reference to “top-ups” the Command Paper says the Scottish Government will not have the power to create permanent entitlement to any new payments beyond the scope of the devolved benefits” (para 4.3.11)</p> <p>As noted in the text above, there has been debate on the</p>	<p>early notification of its intentions because of the potential for overlap with the administrative responsibilities of the UK Government in welfare matters.</p> <p>Furthermore, the Committee sought clarification from the UK Government that access to the Scottish Welfare Fund will not be restricted as a consequence of the draft clause provisions in relation to discretionary payments.</p>	
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<p>meaning of ‘discretionary’, whether it should be limited to those who have short term needs, and the lack of any provision to make “top-ups”</p> <p>The recommendation on the Scottish Parliament seeking agreement from DWP for the Department to deliver discretionary payments on behalf of the Scottish Government (Smith paragraph 54) does not require legislation.</p> <p>The recommendation on provision of additional income from discretionary payments (Smith paragraph 55) does not require legislation.</p> <p>The recommendation on adjustment of the benefit cap (Smith paragraph 56) does not require legislation. The Command Paper (paragraph 4.3.12) says that the “UK Government will ensure that if Scottish Ministers were to increase the amount of a payment in relation to any benefit included within the cap, then the additional amount provided by the Scottish Government would be disregarded for the purposes of the cap, and only the amount of the payment equivalent to that provided by the UK Government would be subject to the cap.”</p> <p>There is a cap on total household benefits at £500 per week for a family and £350 per week for a single person.</p> <p>Carer’s Allowance and SDA, which are to be devolved, are included in the benefit cap. If the Scottish Government was to increase the rate of Carer’s Allowance, this additional amount would be disregarded by the UK Government in calculating the cap. This may require a legislative change by</p>		
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the UK Government to the Benefit Cap regulations.		
		<p>New Clause 21: Discretionary Payments: top-up of reserved benefits</p> <p>The Scotland Bill also contains a new clause (Clause 21) that did not appear in the draft clauses. This will provide the Scottish Parliament with legislative competence to introduce discretionary top-up payments to people in Scotland who are entitled to a reserved benefit. These top-up payments could be paid on an individual case by case basis or to provide on-going entitlement to specific or all benefit claimants However, payments cannot be made to an individual simply to offset a reduction in a reserved benefit because of a sanction.</p> <p>The addition of this clause would appear to address the Committee’s concern that the Scottish Government should have the ability to “top-up” reserved benefits, although there are limitations for claimants who have been sanctioned.</p> <p>There have been no changes to the Bill to give the Scottish Parliament legislative competence for developing new benefits is any devolved area. Rather, the bill, as with the draft clauses limits new benefits to the areas of welfare that are defined.</p>

WELFARE AND BENEFITS: EMPLOYMENT PROVISION

Smith recommendations (Paragraph 57)

The Scottish Parliament to have all powers over support for unemployed people through the employment programmes currently contracted by DWP on expiry of the current commercial arrangements. The Scottish Parliament to have the power to decide how it operates these core employment support services. Funding for these services to be transferred from the UK Parliament in line with the principles set out in paragraph 95.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 22</p> <p>Draft clause 22 would insert an exception to paragraph H3 of Schedule 5 to the Scotland Act to give the Scottish Parliament legislative competence for employment schemes in relation to disabled people and those at risk of long-term unemployment who are claiming reserved benefits. The main scheme is the Work Programme. The conditionality and sanctions regime which governs referrals to the Work Programme would remain reserved.</p> <p>Schemes in relation to unemployment must last at least a year. This is slightly different to the interpretation which some had of the Smith Commission recommendations, in that it does not include short term schemes for unemployed people. (See for example John Swinney's remarks in the Parliament on 27 January 2015).</p> <p>Draft clause 22 would also extend the existing shared ministerial competence for employment and training under the Employment and Training Act 1973 to include provision made under s.17B of the Jobseekers Act 1995. This means that power would be shared between Ministers of the Crown and Scottish Ministers.</p> <p>There have been calls to devolve employment programmes</p>	<p>In relation to the provisions in draft clause 22 (now 26), the Committee considered that, as currently drafted, it did not fully implement the Smith Commission recommendations.</p> <p>The Committee wanted to see drafting which provide for all employment programmes currently contracted by DWP to be devolved.</p> <p>Therefore, the Committee recommended that the Scotland Bill should not place any restriction on the type of person receiving support or in regard to the length of unemployment any person has experienced. The Committee considered that this should include the devolution of the Access to Work Programme.</p>	<p>Now Clause 26. Otherwise, identical to draft clause 22.</p>

sooner and complaints about the extension of existing contracts.		
<p>WELFARE AND BENEFITS: DELIVERY AND ADMINISTRATION</p> <p>Smith recommendations (Paragraph 58) As the single face-to-face channel for citizens to access all benefits delivered by DWP, Jobcentre Plus will remain reserved. However, the UK and Scottish Government to identify ways to further link services through methods such as co-location wherever possible and establish more formal mechanisms to govern the Jobcentre Plus network in Scotland.</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Page 84 This recommendation does not require legislation</p>	<p>The Committee made no comments at this stage on this matter, except noting that it was an issue that it and other committees may return to when the Scotland Bill was published.</p>	<p>Not covered in the Scotland Bill.</p>
<p>NEW CLAUSES – WELFARE</p> <p>The Scotland Bill contains some new clauses. Clause 21: <i>Discretionary Payments: top-up of reserved benefits</i> and Clause 28: <i>Universal Credit: Supplementary</i> have been described above. Other clauses regarding the administration and operation of the benefits system have been added</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
		<p>New Clause 27: Functions exercisable within devolved competence This clause primarily transfers the functions of a Minister of the Crown for the new devolved areas to the Scottish Ministers (full details in the Explanatory Notes paras 187 to 189)</p>
		<p>New Clause 29: Information Sharing This clause provides for the sharing of data between the Secretary of State and the Scottish Ministers (full details in the</p>

		Explanatory Notes paras 191 to 195).
		<p>New Clause 30: Extension of unauthorised disclosure offence. Section 123 of the Social Security Administration Act 1992 contains an offence of the unauthorised disclosure of information. It applies to (amongst others) those individuals who are or have been employed in social security administration. The clause is currently limited in scope so far as it applies to civil servants in the Scottish administration. This clause amends the scope of the offence so that it also applies to those civil servants in the Scottish Administration whose functions relate to social security administration generally. (full details in the Explanatory Notes paras 196 to 200)</p>

EQUAL OPPORTUNITIES

Smith recommendations (Paragraph 60)

The Scottish Parliament to have powers to legislate on equalities in respect of public bodies in Scotland, including the introduction of gender quotas. The Scottish Parliament also to have powers to legislate in relation to socio-economic rights in devolved areas.

Command Paper

Draft clause 24

Draft clause 24 would give effect to the power to legislate on equalities in respect of public bodies, including the introduction of gender quotas. Draft clause 24 (4) includes an exception under the reservation of Equal Opportunities in the Scotland Act 1998, in relation to public bodies. The Command Paper says that, “this power will enable the Scottish Parliament, by imposing new requirements on public bodies in Scotland, to introduce new protections for employees and customers of those bodies with regards to their devolved functions.” It is unclear at this stage how draft clause 24(4) might allow for the introduction of gender quotas on public boards.

John Swinney said, in a statement to the Scottish Parliament, “We will consider carefully the equalities provision to ensure that it meets the Smith report recommendation...”

Draft clause 24(3) would give effect to the power to legislate in relation to socio-economic rights in devolved areas. It would do this by amending the current exception to the reservation on equal opportunities, and includes Part 1 of the Equality Act 2010 as an exception. Part 1 of the Act was a public sector duty regarding socio-economic inequalities. The provision was scrapped by the UK Government in

Devolution (Further Powers) Committee

The Committee sought clarification, from the UK Government, on the scope of the provision in clause 24 with regard to the extent to which the Equality Act 2006 and 2010 would limit the ability of Scottish Ministers to legislate with regard to equalities issues.

Furthermore, sought clarification, from the UK Government, on what effect the inclusion of the Equality Act 2006 in the reservation in the clause had upon the proposed power for Scottish Ministers in this area.

Finally, the Committee wanted to remove any doubt and so ensure that the Scottish Parliament will be able to legislate for gender quotas in relation to Scottish public authorities and cross-border public authorities.

The Scotland Bill

Now Clause 32 (with changes)

Clause 32 appears very different to Draft clause 24. However, it appears to clarify the equality powers that were proposed by the Smith Commission.

Clause 32 will allow the Scottish Parliament to:

- Impose socio-economic duties on public authorities in Scotland exercising devolved or mainly devolved functions, subject to the approval of the Scottish Parliament. Scottish Ministers will be able to commence the socio-economic duty on a date of their choosing.
- Introduce protections or requirements in relation to the Scottish functions of any Scottish public authority or cross-border public authority. These can supplement existing provisions of the Equality Acts, but not modify them.
- Replicate or apply to new legislation provided for above, any part or provision of the Equality Acts, provided this does not affect how these provisions currently

TRIBUNALS

Smith recommendations (Paragraphs 63-64)

All powers over the management and operation of all reserved tribunals (including administrative, judicial and legislative powers) to be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.

Despite paragraph 63, the laws providing for the underlying reserved substantive rights and duties will continue to remain reserved (although they may be applied by the newly devolved tribunals).

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 25</p> <p>Draft clause 25 would allow the functions of a reserved tribunal to be transferred to a Scottish tribunal on a case by case basis by an Order in Council laid before and approved by the UK and Scottish Parliaments. In addition to the tribunals mentioned in the Smith Commission Report, clause 25 would also exempt: the Pathogens Access Appeals Commission; the Investigatory Powers Tribunal; and any tribunal dealing with matters under section B8 of Part 2 of Schedule 5 of the Scotland Act 1998 (i.e. national security, interception of communications, official secrets and terrorism). It appears that the clause will generally also not be used to transfer the appellate functions of reserved tribunals (Explanatory Memorandum, paragraph 6.3.6). The provisions will be brought into effect by adding a new paragraph 2A to Part 3 of Schedule 5 to the 1998 Act.</p> <p>The underlying substantive law will remain reserved. However, the scope of the functions transferred will depend on the specific Order in Council. Orders in Council can, in particular, include provisions aimed at securing consistency between Scottish tribunals and other tribunals or conditions relating to rules of procedure (clause 25(6)). The transfer of</p>	<p>The Committee welcomed the transfer of powers for tribunals to the Scottish Parliament but noted the views of the Law Society of Scotland* about the drafting of the relevant clause and potential limitations. The Committee sought assurances from the UK Government on these matters with a view to amending the Scotland Bill before it was introduced.</p> <p>* The Law Society had indicated that draft clause 25 (now 33) sets limitations on the transfer of responsibility for management of transferred tribunals. Specifically, the Society called for complete transfer of responsibility in this area to avoid questions as to the status of tribunals which deal with Scottish matters but which were not within the devolved responsibility of the Scottish Parliament.</p>	<p>Now Clause 33 (with changes)</p> <p>Clause 33 follows the general principles of draft clause 25, but includes certain changes re the scope of reserved tribunals that can be transferred.</p> <p>In particular, it clarifies that the power to transfer a tribunal does not apply to a regulator, noting that this reflects the policy set out in paragraph 6.3.6 of the Command Paper – i.e. that such bodies have appellate functions in reserved areas (new paragraph 2A(9)). For similar reasons, the power to transfer a tribunal does not apply to the Comptroller-General of Patents, Designs and Trade-Marks (new paragraph 2A(10)).</p> <p>It also clarifies that the definition of “Scottish tribunal” means a tribunal, “that is not, and does not have as a member, a member of the Scottish Government” (new paragraph 2A(11)).</p>

		bidding for rail franchises.
<p>Draft clauses 26 to 30</p> <p>Draft clause 26 would amend Section E1, Schedule 5 of the Scotland Act 1998 and draft clauses 28 and 29 would amend the Road Traffic Regulation Act 1984 to devolve powers over speed limits in Scotland to Scottish Ministers, except the ability to specify the types of vehicle exempt from speed limits on special roads (most special roads are motorways) and the training requirements for drivers of such vehicles.</p> <p>Draft clause 27 would amend the Road Traffic Regulation Act 1984 to devolve all powers over the design and sighting of traffic signs in Scotland to Scottish Ministers.</p> <p>At present, the British Transport Police is responsible under the Railways and Transport Safety Act 2003 for railway policing throughout Great Britain, with oversight provided by the British Transport Police Authority. Draft clause 30 would devolve legislative competence in relation to railway policing in Scotland by amending section E2 of Schedule 5 Part II to the Scotland Act 1998, which reserves the provision and regulation of rail services and rail transport security, by including an exception for the policing of the railways and railway property.</p> <p>This change would allow the Scottish Parliament to legislate in relation to the policing of railways in Scotland. The Smith Report stated that further consideration will need to be given to the manner in which executive competence will be transferred and to related organisational and operational aspects of the policing of the railways in Scotland.</p>	<p>The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clauses 34 to 38</p> <p>Clause 34 (Roads) is identical to draft clause 26. Clauses 35 and 36 (traffic signs and speed limits) relate to draft clauses 27 to 29 and have been changed. Clause 37 (Roads: consequential provisions etc.) is a new clause and Clause 38 (Policing of railways) is identical to draft clause 30.</p> <p>New Clause 39 is discussed below</p>

<p>In March 2015, the BBC published a statement from the Cabinet Secretary for Justice, Michael Matheson MSP, that the functions of the BTP in Scotland would be integrated within Police Scotland (BBC Report 10 March 2015).</p>		
		<p>New Clause 39 (British Transport Police: cross-border public authorities) This Clause facilitates the devolution of executive competence in relation to the policing of railways in Scotland by specifying the following as cross-border authorities for the purposes of the 1998 Act:</p> <ul style="list-style-type: none"> • the BT Police Authority • the Chief Constable of the BTP • the Deputy Chief Constable of the BTP • the Assistant Constable of the BTP <p>In addition to the normal rules regarding cross-border public authorities, any reports which they are required to lay before the UK Parliament must also be laid before the Scottish Parliament.</p>

ONSHORE OIL AND GAS EXTRACTION

Smith recommendations (Paragraphs 69-70)

The Scottish Parliament to have devolved power over licensing of onshore oil and gas extraction underlying Scotland and also to have responsibility for mineral access rights for underground onshore extraction of oil and gas in Scotland.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 31 Draft clause 31 would devolve the process of managing licences to exploit onshore oil and gas resources to the Scottish Government, including powers on licensing hydraulic fracturing operations to extract shale gas. The clause makes it clear that the taxation of oil and gas would remain reserved.</p> <p>The draft clause would also devolve access rights for onshore oil and gas.</p>	<p>The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clauses 40 and 41 (With changes) Clause 40 amends Section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act to give the Scottish Parliament competence to legislate for the granting of licences to search and bore for and get petroleum within the Scottish onshore area. The power to set the consideration payable for such licences is not included in these exceptions and remains reserved. The Scottish Parliament is also given competence to legislate for access to such petroleum within the Scottish onshore area.</p> <p>Clause 41 transfers to Scottish Ministers certain executive functions exercised currently by the Secretary of State relating to onshore petroleum licensing in the Scottish onshore area</p>
		<p>New Clause 42 (Onshore petroleum: existing licences) Clause 42 grants the power to the Secretary of State to make amendments to the provisions and model clauses of licences that were in existence before the commencement of devolved oil and gas licensing powers. This</p>

		additional power is limited to those licences already in existence and to certain clauses within these, which require amendment in order for the licences to continue to function appropriately in relation to the reserved taxation powers.
COMPETITION POLICY		
<p>Smith recommendations (Paragraph 71) Scottish Ministers already have the ability to request that a UK regulatory body carry out a market study of their area of responsibility to examine particular competition issues arising in Scotland. Scottish Ministers to also have the power to require the Competition and Markets Authority to carry out a full second phase investigation (in the same way as UK Ministers), after such an initial study has been completed, in relation to particular competition issues arising in Scotland.</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 41 UK Government Ministers have limited powers under section 132 of the Enterprise Act 2002 (2002 Act) to require the Competition and Markets Authority (CMA) to carry out in-depth investigations into markets. Draft clause 41 would extend these powers to the Scottish Ministers, but only if acting jointly with UK Government Ministers (i.e. the Scottish Ministers would need the agreement of the UK Government to require the CMA to carry out an in-depth market investigation).</p>	<p>The Committee made no substantive comments at this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>Now Clause 55. Otherwise, identical to draft clause 41.</p>
CONSUMER PROTECTION		
<p>Smith recommendation (Paragraph 72) Consumer advocacy and advice to be devolved to the Scottish Parliament.</p>		
Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 32 Draft clause 32 would amend the Scotland Act 1998 to make</p>	<p>The Committee made no substantive comments at</p>	<p>Now Clauses 43 and 44 (With changes) Clause 43 would make the provision of</p>

<p>the provision of publicly funded consumer advocacy and advice a devolved competency. It is proposed to amend the 1998 Act in a number of places, reflecting the range of consumer matters affected, including postal services and electricity and gas supply.</p> <p>Responsibility for consumer policy would remain with the UK Government, as would arrangements for funding through industry levies. It is also not intended that the functions of the Office of Communications (Ofcom) and the Gas and Electricity Markets Authority (the governing body of Ofgem) would be affected by the legislative proposals.</p>	<p>this stage except noting that it was an issue to return to when the Scotland Bill was published.</p>	<p>publicly funded consumer advocacy and advice a devolved competency. The effect would be the same as described for draft clause 32.</p> <p>The new clause contains additions which did not feature in the draft clause. Reserved legislation would be amended to allow for levies on gas, electricity and postal operator licences to be used to pay for consumer advocacy and advice in Scotland. Specific references in reserved legislation to Citizens Advice Scotland (which currently provides consumer advocacy and advice in these contexts) would be removed.</p> <p>Clause 44 is a technical amendment. It ensures that existing legislation will be interpreted to reflect the new powers which would be devolved by Clause 43.</p>
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PAY DAY LOAN SHOPS

Smith recommendation (Paragraph 73)

The Scottish Parliament to have the power to prevent the proliferation of Payday Loan shops.

Command Paper

Not included in the draft clauses as the UK Government argues that the Scottish Parliament can use its existing powers under planning law to deal with the proliferation of payday loan shops. To be the subject of discussions between the two Governments.

Devolution (Further Powers) Committee

The Committee made no final conclusion at this stage except noting that it was an issue to return to when the Scotland Bill was published. However, the Committee did agree an initial view that the current provisions for payday loan shops could go further and consideration could be given to including powers over licensing and regulation not just planning.

The Scotland Bill

Not covered in the Scotland Bill.

BETTING, GAMING AND LOTTERIES

Smith recommendation (Paragraph 74)

The Scottish Parliament to have the power to prevent the proliferation of Fixed-Odds Betting Terminals.

Command Paper

Draft clause 33

Draft clause 33 proposes to amend the Scotland Act 1998 so that certain aspects of the regulation of fixed-odds betting terminals (FOBTs) would become a devolved matter. There is currently no statutory definition of a FOBT. Clause 33 would cover gaming machines, “for which the maximum charge for use is more than £10”. Clause 33 would also amend the Gambling Act 2005 so that Scottish Ministers have the power, by order, to vary the number of FOBTs which can appear in certain gambling premises.

Draft clause 33 would specifically prevent alterations to existing gambling premises licences and, thus, any attempt

Devolution (Further Powers) Committee

The Committee made no final conclusion at this stage except noting that it was an issue to return to when the Scotland Bill was published. However, the Committee express some sympathy with view that the clauses should be amended to include the ability to limit the number of gaming machines in both existing and new betting premises.

The Scotland Bill

Now Clause 45 (With changes).

Clause 45 does, broadly, the same as draft clause 33. There are two key changes. The wording of clause 45 would make it clearer that Scottish Ministers can decide that the hosting of FOBTs is not authorised at all for new gambling premises licences.

Clause 45 would also exempt track premises licences from devolved competence. Track premises licences can cover a wide range of venues hosting sporting events, including horse and dog racing courses. In certain

<p>to reduce the current number of terminals. In addition, Scottish Ministers' power would be specifically focused on controlling the number of FOBTs in any particular premises. There is no wider power to tackle the way these machines are used or marketed. Neither are there any additional powers to control the proliferation of gambling premises more generally, even where this might circumvent the proposed FOBT controls</p>		<p>circumstances, track premises can host FOBTs.</p> <p>Clause 45 retains the limitation on altering existing gambling premises licences.</p>
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TAXATION

Smith recommendations (Paragraphs 76-79)

The Scottish Parliament to have power to set the rates of Income Tax and the thresholds (without limits) at which these are paid for the non-savings and non-dividend income of Scottish taxpayers (as defined in the 2012 Act).

There will be a corresponding adjustment in the block grant received from the UK Government, in line with the funding principles set out in paragraph 95.

The Scottish Government to reimburse the UK Government for additional costs arising as a result of the implementation and administration of the Income Tax powers described above.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clauses 10-12</p> <p>Draft clauses 10-12 broadly seek to give effect to the extension of income tax powers recommended by the Smith Commission. These would give the Scottish Parliament the power to set rates and bands in relation to non-savings and non-dividend income of Scottish taxpayers, above the UK personal allowance.</p> <p>Draft clause 12 also seeks to deal with the interaction between Income Tax and Capital Gains Tax (CGT). Currently individuals who pay Income Tax at the higher rate also pay CGT at the higher rate. This clause sets out that the rate of CGT that applies to Scottish income taxpayers would continue to be calculated using the UK Income Tax rate limits.</p> <p>There are no draft clauses in relation to the corresponding adjustment in the block grant or the Scottish Government reimbursing the UK Government for costs arising from implementing/administering these powers. These recommendations do not require legislation and it is</p>	<p>In relation to the draft clauses on Income Tax, the Committee had no particular concerns at this stage with the drafting.</p> <p>However, the Committee wanted further clarification from the UK Government as to whether the current provisions would permit the Scottish Parliament to set a zero rate of income tax.</p> <p>The Committee then wanted to receive the detail on how the Income Tax (and other taxation) provisions will work before it could consider the issue of legislative consent. Critically, this included agreement to a Fiscal Framework and No Detriment provisions as well as the definition of residency for a Scottish taxpayer.</p>	<p>Now Clauses 12-14 (With changes). Aside from minor drafting changes, the main changes are:</p> <p>Clause 12 now allows for the Scottish Parliament to set a zero rate of tax. It also specifies that the Scottish Parliament cannot introduce different rates for different types of income.</p> <p>These new income tax powers will have effect from the tax year set by Treasury regulations.</p> <p>As with the draft clauses, there are no clauses in relation to the corresponding adjustment in the block grant or in respect of the Scottish Government reimbursing the UK Government for costs arising from implementing/administering these powers.</p>

<p>anticipated that details for these would be outlined in the Command Paper accompanying the Scotland Bill.</p>		
<p>VALUE ADDED TAX</p> <p>Smith recommendations (Paragraph 84) The receipts raised in Scotland by the first 10 percentage points of the standard rate of Value Added Tax (VAT) to be assigned to the Scottish Government’s budget. Receipts to be calculated on a verified basis, to be agreed between the UK and Scottish Governments, with a corresponding adjustment to the block grant, in line with the principles set out in paragraph 95.</p>		
<p>Command Paper</p>	<p>Devolution (Further Powers) Committee</p>	<p>The Scotland Bill</p>
<p>Draft clause 13 Draft clause 13 would give effect to the Smith Commission recommendation that the Scottish Government be assigned receipts from the first ten percentage points of VAT. With the agreement of both governments it also proposes to go slightly further by notionally assigning 2.5 percentage points of the reduced rate of VAT (which stands at 5 per cent) as well.</p> <p>The amount of VAT receipts attributable to Scotland is to be the subject of an agreement between the UK Government and the Scottish Government.</p> <p>There are no draft clauses in relation to the corresponding adjustment to the block grant. This does not require legislation and it is anticipated that further details would be outlined in the Command Paper accompanying the Scotland Bill.</p>	<p>In relation to the draft clauses on VAT, the Committee had no particular concerns at this stage with the drafting.</p> <p>However, the Committee wanted details of the assignment of VAT revenues and the share of any benefits be produced before the Scottish Parliament is expected to give its legislative consent.</p>	<p>Now Clause 15. Otherwise, identical to draft clause 13.</p> <p>No further detail is provided on the assignment of VAT revenues, or the corresponding block grant adjustment.</p>

AIR PASSENGER DUTY

Smith recommendations (Paragraphs 86-88)

The Scottish Parliament to have the power to charge tax on air passengers leaving Scottish airports

The Scottish Government to reimburse the UK Government for any costs incurred in ‘switching off’ APD in Scotland and a fair and equitable share of associated administrative costs to be transferred to the Scottish Government. The Scottish Government’s block grant to be adjusted in line with the principles set out in paragraph 95.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 14</p> <p>Draft clause 14 would make APD a devolved tax, as recommended by the Smith Commission. It would give HMRC the ability to ‘switch off’ these UK taxes in Scotland from a date to be set by secondary legislation.</p> <p>There are no draft clauses in relation to the Smith Commission recommendation that a fair share of the administrative costs for this tax should be transferred to the Scottish Government or in relation to the corresponding adjustment to the block grant. These recommendations do not require legislation and it is anticipated that details for these would be outlined in the Command Paper accompanying the Scotland Bill.</p>	<p>The Committee had no concerns or substantive comments to make on these provisions in the draft clause/Command Paper.</p>	<p>Now Clause 16 with minor drafting changes.</p>
		<p>In addition, new Clause 18 gives Treasury the ability to make further provision in relation to ‘switching off’ UK APD in Scotland. As with the draft clauses, there are no clauses in relation to the corresponding adjustment in the block grant or to the transfer of administrative costs to the Scottish Government.</p>

AGGREGATES LEVY

Smith recommendations (Paragraphs 89-93)

The Scottish Parliament to have the power to charge tax on the commercial exploitation of aggregate in Scotland.

The Scottish Government to reimburse the UK Government for any costs incurred in ‘switching off’ Aggregates Levy in Scotland and a fair and equitable share of associated administrative costs to be transferred to the Scottish Government. The Scottish Government’s block grant to be adjusted in line with the principles set out in paragraph 95.

The UK and Scottish Governments to work together to avoid double taxation and make administration as simple as possible for taxpayers.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>Draft clause 15 Draft clause 15 would make the Aggregates Levy a devolved tax. It would give HMRC the ability to ‘switch off’ these UK taxes in Scotland from a date to be set by secondary legislation.</p> <p>There are no draft clauses in relation to the recommendations that a fair share of the administrative costs for this tax should be transferred to the Scottish Government or in relation to the corresponding adjustment to the block grant and the avoidance of double taxation.</p>	<p>The Committee had no concerns or substantive comments to make on these provisions in the draft clause/Command Paper</p>	<p>Now Clause 17 (With changes) Clause 17 specifies that a new tax introduced by the Scottish Parliament may not be chargeable on the commercial exploitation of aggregate used as fuel, or that is processed in order to extract or produce fuel (as defined).</p> <p>The terms ‘aggregate’ and ‘commercial exploitation’ are not defined in the legislation.</p>
		<p>New Clause 18 gives Treasury the ability to make further provision in relation to ‘switching off’ UK aggregates levy in Scotland.</p> <p>As with the draft clauses, there are no clauses in relation to the corresponding adjustment in the block grant or to the transfer of administrative costs to the Scottish Government.</p>

SCOTLAND'S FISCAL FRAMEWORK

Smith recommendations (Paragraph 95)

The devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.

The following aspects should be incorporated into Scotland's fiscal and funding framework:

- (1) Barnett Formula: the block grant to continue to be determined by the Barnett Formula.
- (2) Economic Responsibility: Scottish budget should benefit in full from policy decisions by the Scottish Government that increase revenues or reduce expenditure, and bear the full costs of policy decisions that reduce revenues or increase expenditure.
- (3) No detriment as a result of the decision to devolve further power
- (4) No detriment as a result of UK or Scottish Government policy decisions post-devolution
- (5) Borrowing Powers: Scotland's fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework. The Scottish Government should also have sufficient borrowing powers to support capital investment, consistent with a sustainable overall UK fiscal framework.
- (6) Implementable and Sustainable: the arrangements should be reviewed periodically to ensure that they continue to be seen as fair, transparent and effective.
- (7) Independent Fiscal Scrutiny: the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland's public
- (8) UK Economic Shocks: the UK Government should continue to manage risks and economic shocks that affect the whole of the UK.
- (9) Implementation: the two Governments should jointly work via the Joint Exchequer Committee to agree a revised fiscal and funding framework for Scotland based on the above principles.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>The Command Paper indicates an intention to fulfil these recommendations through non-legislative means.</p> <p>Specifically, the UK Government has committed to agreeing a fiscal framework with the Scottish Government through the Joint Exchequer Committee. The intention is to provide this alongside the introduction of the Scotland Bill so that both Parliaments will be able to consider the settlement as a whole from the outset. It may be that there is some legislation required in due course, but this depends on the nature of the new fiscal framework.</p>	<p>This was a major policy area that the Committee considered. In general, the Committee wanted to see the detail of any draft framework provided to it and other parliamentary committees for approval before the issue of legislative consent could be considered.</p> <p>Furthermore, the Committee wanted both governments to enter into an agreement to establish a common database of tax information and also that there be independent scrutiny of these matters, by the Scottish Fiscal Commission.</p>	<p>Scotland's fiscal framework is not covered in the Scotland Bill.</p>

BORROWING

Smith recommendations (Paragraph 95(5))

Scotland's fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework. The Scottish Government should also have sufficient borrowing powers to support capital investment, consistent with a sustainable overall UK fiscal framework.

Command Paper	Devolution (Further Powers) Committee	The Scotland Bill
<p>As for the other Smith recommendations on the Fiscal Framework, the Command Paper contains no draft clauses in relation to borrowing. Whether any changes to Scotland's borrowing powers are needed will depend on a number of other factors likely to be determined by the overall fiscal framework (such as the risks the Scottish Government is exposed to by the method of block grant adjustment). While there is a power in the Scotland Act 2012 to increase borrowing limits by order, there may need to be further primary legislation in due course (e.g. if the circumstances under which the Scottish Government can borrow are changed).</p>	<p>The Committee concluded that the current borrowing powers of the Scottish Parliament are too restrictive and too limited.</p> <p>The Committee was supportive of a move towards a prudential regime which gives the Scottish Government more flexibility - within an overall framework that is governed by sound principles of affordability and sustainability - to borrow both for short-term revenue requirements as well as longer-term capital investment purposes.</p> <p>The Committee agreed that a future Scottish Government should be able to retain underspends so as to better manage volatility.</p> <p>Consequently, the Committee wanted to see a Scotland Bill give legislative effect to the above conclusions and recommendations.</p>	<p>The borrowing powers of the Scottish Parliament are not covered in the Scotland Bill.</p>