

Annexe A – Final analysis of the Scotland Bill

Key

Red	No or insufficient 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 assessment of the Bill in its Interim Report
Yellow	It is still unclear at this stage whether the clause(s) have been changed sufficiently to be in line with the Committee's assessment of the Bill in its Interim Report and a more detailed assessment is needed of the impact <u>or</u> partial changes have been made.
Green	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 assessment of the Bill in its Interim Report <u>or</u> the Committee was previously content regarding the drafting of the clause
White	The Committee's assessment of the Bill in its 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 being finalised.

Devolution (Further Powers) Committee
New Powers for Scotland: Final Report on the Scotland Bill, 3rd Report, 2016 (Session 4)

Provision	Relevant paragraphs in the Committee's Interim Report	At Introduction of the Bill in May 2015	After the Committee Stage in the House of Commons, July 2015	After Report Stage in the House of Commons, November 2015	After Report Stage in the House of Lords, February 2016
Permanency of the Scottish Parliament & Scottish Government	495-497				(1)
Legislative Consent Convention	498				(2)
Equal opportunities: socio-economic inequalities	501				(3)
Equal opportunities: gender quotas	502				(4)
Income tax – ability to set zero rate	504				(5)
New benefits in devolved areas	522				(6)
Top-up benefits in reserved areas	522				(7)
Definition of carers	523-524				(8)
Definitions of disability	525				(9)
Universal Credit – perceived ‘veto power’	531				(10)
Under occupancy charge/Bedroom Tax & Discretionary Housing Payments	532				(11)
Maternity, Funeral and Heating Expenses (e.g. Winter Fuel Payments)	533				(12)
Scottish Welfare Fund	534				(13)
Employment Programmes	535-537				(14)
Crown Estate	540, 541, 543, 544 and 545				(15)

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Pay day loan shops	553				(16)
Fixed-Odds Betting Terminals	554				(17)
Tribunals (including fines, forfeitures and fixed penalties)	555				(18)
IGR – placing general principles & dispute resolution procedures in statute	570				(19)
Welfare Foods	Not applicable (20)				
Abortion	Not applicable (20)				
Irresponsible parking	Not applicable (20)				

Explanatory notes

- (1) The amendments at Report Stage in the House of Commons still do not introduce all three of the steps recommended by the Committee deemed necessary for any abolition of the Scottish Parliament, namely: majority votes in both the UK and Scottish Parliaments and a majority decision in a referendum of the people of Scotland. There is not yet any provision for a vote of the Scottish Parliament.
- (2) The clause as it stands does not include all three strands of the Sewel Convention as defined in Devolution Guidance Note No.10, namely the UK Parliament legislating: 1. With regard to devolved matters in Scotland, 2. With regard to altering the legislative competence of the Scottish Parliament or, 3. Altering the executive competence of the Scottish Ministers. The Committee had said previously that it wanted to see all three strands of the Sewel Convention placed in statute. Moreover, the Committee considered previously that the use of the words “but it is recognised” and “normally” in the clause has the potential to weaken the intention of the Smith Commission’s recommendation in this area and recommended that these words be removed from the clause. The previous wording remains unaltered.
- (3) Amendments have been made to this Bill at Report Stage in the House of Commons. The Committee’s Interim Report concluded that it was unclear about what was being done with socio-economic duties. If it is now the case that this area is already devolved, then the amendment made at Report Stage (removing reference to this area from the exceptions to the reservation) is acceptable.
- (4) Amendments have been made to the Bill at Report Stage in the House of Commons. The Committee is now broadly content.
- (5) The Committee has no further comment to make about this provision.
- (6) Amendments at Report Stage in the House of Commons were agreed to in this area which improve the Bill. The Committee is now broadly content.

- (7) The Committee's view is that this clause has been improved since the Bill was introduced. The Committee has no further comment to make about this provision.
- (8) Amendments at Report Stage in the House of Commons remove the restrictions on the definition of carers so that this now includes a person who is under 16 years of age, is in full-time education or is gainfully employed. The Committee has no further comment to make about this provision.
- (9) The Committee had previously concluded that it 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 the future. Accordingly, the Committee recommended that the definition of disability used in the Equality Act 2010 is also used in the Bill. This was not agreed to, but we do welcome some of the clarification that the UK Government provided in subsequent correspondence with the Committee.
- (10) Significant amendments have been made to this area of the Bill at Report Stage in the House of Commons. The effect is to make progress towards a mutually acceptable agreement on this key provision. The amendments have removed the requirement to secure the Secretary of State's general agreement. The only matter on which the Secretary of State for Work and Pensions can now formally intervene is regarding the date of implementation. The amendments make the process whereby a Secretary of State can make such a change more transparent than may be the case were the process of securing agreement purely intergovernmental. Conversely, it maintains the scope for the UK government to override Scottish ministerial decisions. The Committee is seeking further clarity in this important matter.
- (11) Changes to the Bill in this area have been made which improve the Bill. The Committee has no further comment to make about this provision.
- (12) The Committee has no further comment to make about this provision.
- (13) Changes to the Bill in this area have been made which improve the Bill. The Committee has no further comment to make about this provision.
- (14) The Committee has called for the inclusion of the Access to Work Programme into the employment programmes being devolved and for the removal of the restriction that devolved programmes should apply only to the long-term (i.e. more than one year) unemployed. Neither of these amendments has as yet been made. The Committee is also concerned at the substantial reduction in the budget set to be devolved.
- (15) Whilst a number of amendments have been made to this clause in the Bill, these have not related to the Committee's conclusions and recommendations made in its Interim Report. Reference remains to "may" rather than "shall" (make a transfer scheme) in the clause. There is no reference to an obligation being 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. Furthermore, there is no resolution of the Committee's call on The Crown Estate and HM Treasury to find a means of ensuring that a full share of the Crown Estate's revenues from Fort Kinnaird accrue to Scotland.
- (16) The Committee's initial view was 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. No such amendments have as yet been made.
- (17) The Committee indicated that it had clauses should be amended to include the ability to limit the number of gaming machines in both existing and new betting premises. No such amendments have as yet been made.

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- (18) The amendments made at Report Stage in the House of Commons have improved the position from the Committee Stage version of the Bill. It could be argued, however, that it makes the position more transparent and clearer about how responsibility for regulating tribunals hearing Scottish cases in relation to devolved matters is to be allocated.
- (19) The Committee called for the principles of transparency and accountability in relation to parliamentary oversight of inter-governmental relations to be placed into the Scotland Bill. These amendments have not as yet been made. The Committee also called for reference to be made to the role of Parliaments in oversight of intergovernmental relations to be made in a revised Memorandum of Understanding currently being developed by the UK Cabinet Office. It is not yet clear if this has been agreed to by the UK Government.
- (20) The proposals for the devolution of welfare foods, abortion and measures to tackle irresponsible parking to the Scottish Parliament were introduced by the Secretary of State for Scotland at Report Stages in both the Lords and Commons.