

THE SCOTLAND BILL 2015-16

NOTE COMPARING THE BILL BEFORE AND AFTER REPORT STAGE IN THE HOUSE OF COMMONS

Background

1. On Thursday 14 May 2015, the Committee published its [Interim Report](#) on the Smith Commission and the UK Government's then draft legislative proposals for the further devolution of powers to Scotland. 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. Subsequently, the UK Government introduced the Scotland Bill, which began its passage in the House of Commons.
2. After Committee Stage in the House of Commons, the Committee published its assessment ("traffic light grid") as to whether the Scotland Bill fully met its interpretation of the spirit and substance of the Smith Commission's Agreement and the conclusions and recommendations set out in its Interim Report. The Committee also [wrote](#) to the Secretary of State for Scotland, detailing what changes it expected to see to the Bill during Report Stage.
3. This short note (see Annexe) now compares the progress of the Bill **after** Report Stage - which was completed on 9 November - with the Committee's previous assessment. Report Stage was effectively the last opportunity for major revisions to be made to the Bill in the House of Commons. The Bill now moves to the House of Lords.

What now?

4. The Committee will continue to keep track of the progress of the Bill as it now begins its passage in the House of Lords, before returning to the House of Commons to complete the legislative process in the UK Parliament. Towards the end of that process, the Committee will prepare its final assessment of the state of the Bill and the issue of whether the Committee should recommend that the Scottish Parliament gives its legislative consent. The Committee will also carefully consider any fiscal framework that may be agreed to.

**Clerking Team
November 2015**

'TRAFFIC LIGHT' SUMMARY OF THE PROGRESS OF THE SCOTLAND BILL**Key**

■	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
■	It is 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.
■	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
■	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.

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
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)
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)			

NB

The following issues – income tax and block grant adjustments, assignment of VAT, the fiscal framework/institutional arrangements/no detriment and borrowing – have been removed from this version of the comparison table. This is because the Committee expects these elements to be part of any **Fiscal Framework**. The Committee will make its assessment on these matters in due course once a draft Fiscal Framework is made public by the two governments.

Similarly, the issue of a revision to the Memorandum of Understanding (MoU) that sets out the nature of **inter-governmental relations** between the UK and the Scottish, Welsh and Northern Irish governments is currently being negotiated between them. This issue will also be assessed once any new MoU is issued.

Explanatory notes

- (1) The amendments at Report Stage 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. 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. The Committee is considering these carefully but, at this stage, is broadly content. Nevertheless, the Committee seeks further clarification from the UK Government as to why amendment 101 created an exception concerning “non-executive” posts only.
- (5) The Committee has no further comment to make about this provision at this stage.
- (6) Amendments at Report Stage were agreed to in this area which improve the Bill. However, we do have a number of points where we are seeking further clarification.
- (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 at this stage.
- (8) Amendments at Report Stage 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 at this stage.
- (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. No amendments to the relevant clause were made at Report Stage.

- (10) Significant amendments have been made to this area of the Bill at Report Stage. 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. However, we do have a number of points where we are seeking further clarification.
- (12) The Committee has no further comment to make about this provision at this stage.
- (13) Changes to the Bill in this area have been made which improve the Bill. However, we do have a number of points where we are seeking further clarification
- (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.
- (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.
- (18) The amendments made at Report Stage do not radically alter 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. However, our analysis is that the amendment does not fully address the points made to the Committee by the Law Society in its written evidence. We also have an additional query which we will take up with the Secretary of State for Scotland.
- (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 proposal for the devolution of welfare foods and abortion to the Scottish Parliament was introduced by the Secretary of State for Scotland at Report Stage. These issues have not therefore been part of any analysis by the Committee prior to that stage. The Committee is considering how it wishes to take forward these areas.