Welcome to our Newsletter

by Stephen Imrie & Professor Nicola McEwen

Happy New Year to all and welcome to the third edition of the Newsletter for the External Experts Panel.

Well, it may be a new year, but the pace of developments on the constitution, devolution, Brexit, territorial finance and social security reforms shows no sign of slowing down in 2018.

This volume and pace of developments are reflected in the work of the Scottish Parliament and its committees, as well as in academia and in our think tanks.

The transition from phase 1 to phase 2 of the Article 50 withdrawal negotiations means that Brexit will of course continue to dominate much of the debate in Holyrood. Additionally, as the debate broadens to the issues of developing domestic regimes for agriculture, fisheries, justice, the environment etc., then we anticipate seeing more involvement from a greater number of committees.

The legislative programme at Westminster is also driving discussion in the Scottish Parliament and generating research from our Experts Panel. Now, alongside the EU (Withdrawal) Bill, we have new bills on Trade and on Customs matters, with others to follow, many raising parallel processes for scrutiny and legislative consent.

Finally, the development of a new social security system for the recently devolved powers took a significant step forward in December 2017, with the approval by the Scottish Parliament of the Social Security (Scotland) Bill at stage 1. The Bill now moves to the amending stage.

We have more on all these issues in this edition of our Newsletter.

Where now for social security reform in Scotland?
Clare Adamson MSP

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Members of the External Experts Panel
Where now for social security reform in Scotland?

by Clare Adamson MSP, Convener
Social Security Committee, The Scottish Parliament

What’s been happening in Parliament?

In December 2017, the Social Security Committee gave its support to the Bill’s general principles, as did the Parliament. The Bill is now back with the Committee for the amending stage (stage 2). At the time of writing, the Committee is about to start considering the first of the amendments lodged. A number of important amendments have already been lodged, many in response to the Committee’s stage 1 report.

Whilst the Committee is supportive of the consultative approach that the Scottish Government has taken to create the new Scottish social security system, of which the Social Security Bill is an important part, it has identified areas for development at Stages 2 and 3.

Our recommendations include:

- Strengthening scrutiny – as, in its current form, the Bill has no provision for a super-affirmative procedure or for independent scrutiny of regulations.
- Creating a Scottish Social Security Advisory Committee.
- Looking annually at the effect of inflation on the levels of assistance
- Considering whether Scottish Ministers should have a “duty” rather than “a role” in ensuring individuals receive what they are eligible for under the Scottish Social Security system.
- Clarifying legislation so that it more clearly reflects stated policy, specifically, an individual may have a choice whether or not to receive assistance in a form other than cash but cash will be the default and genuine errors or misunderstandings by an applicant or someone in receipt of assistance will not result in that person being criminalised.
- Clarifying the process for redress for any individual who feels his or her treatment has not been compatible with the Charter.

These are the areas where there was cross-party agreement on the improvements to be done in stages 2 and 3. There are also amendments representing party positions and manifesto commitments. We expect to consider amendments over a number of meetings in February and March 2018.

The task of scrutinising this Bill is a challenging one. We are legislating for a new social security system in Scotland which will affect more than a million people. It is important we get the fundamentals right but it is equally important that the Parliament and others have sufficient opportunity to scrutinise the detail of the new benefits, whether through this Bill or in the draft regulations as they are developed and brought forward.
What happens next in Parliament?

The Social Security Committee’s role does not end with this Bill – the draft regulations are in many ways “the business end” of this legislation. That is why establishing a scrutiny body, genuinely independent of the Parliament and the Scottish Government, will be central to the development of our new system. The Scottish Government has now come forward with proposals to create a Scottish Social Security Commission. We expect to see some potentially significant changes to the Bill at stages 2 or 3. Whatever happens, we all want legislation that provides the safeguards, opportunities for adequate scrutiny and the flexibility to ensure our Social Security is responsive to need in Scotland and embodies the dignity and respect principles we have been promised.

How is the Bill developing?

The Bill provides the framework for the new system, including making provision for a Scottish social security charter. The detail on how to apply, what documentation will be needed, who will be eligible, how much will they get is still being developed. The detail is being developed alongside the Bill, in partnership with the Government’s “Experience Panels”.

These are made up of 2,400 volunteers; people with experience of receiving benefits, who have signed-up to “shape” the system and contribute to developing the detail. The Scottish Government will then bring forward draft regulations / secondary legislation for the Parliament’s approval to put the detail in place.

Keep up to date

Follow the Bill’s further progress here @SP_SocialSecur
Finance and Constitution Committee will not recommend consent to the EU Withdrawal Bill in its current form

In its first substantive output from its ongoing scrutiny of the EU (Withdrawal) Bill and the issue of legislative, the Finance and Constitution Committee unanimously concluded that it—

"...is not in a position to recommend legislative consent on the Bill as currently drafted."

The Committee noted the commitment of the UK Government to agree amendments to Clause 11 of the Bill. However, the Committee concurred with the vast majority of the expert evidence it has received that Clause 11 as originally drafted represents a fundamental shift in the structure of devolution in Scotland. Regardless of whether the Scottish Parliament obtains additional powers or not, in the Committee’s view, the effect of Clause 11 will be to adversely impact upon the intelligibility and integrity of the devolution settlement in Scotland.

The Committee concluded that Clause 11, as currently drafted, is incompatible with the devolution settlement in Scotland, even if conceived as a transitional measure. In a conclusion central to its overall recommendation on the issue of legislative consent at this point in the Bill’s passage, the Committee said that it will not be in a position to recommend consent for the Bill unless Clause 11 is replaced or removed.

More widely, on ministerial powers to correct the statute book, the Committee echoed concerns that have been expressed by committees in Westminster and concluded that it had concerns about the breadth of the powers conferred by Clause 7 of the Bill and in particular by the apparent transfer to government (from the legislature) of such extensive law making powers. The view taken is that the powers in Clause 7 “should only be available where Ministers can show that it is necessary to make a change to the statute book, even if they cannot show that the particular alternative chosen is itself necessary.”

The Committee was supportive of the efforts made to date by the two governments to reach agreement on common frameworks, and welcomed the commitment from the UK Government that common frameworks will not be imposed. It did, however, make a number of points around the need for the legislature to be sighted and consulted on these discussions between the governments. The report states that:

- The Scottish Parliament must have the opportunity to consider the approach to common frameworks currently being negotiated at governmental level prior to being asked to give consent to the Bill; and,
- The Bill should be amended to include the approach to agreeing common UK frameworks, including the need for parliamentary consent and consultation with stakeholders.

The Committee’s main areas of focus were on Clause 11 of the Bill, which concerns how the repatriation of competences intersects with devolution, the scope and form of UK Common Frameworks to replace EU frameworks, and those aspects of the Bill that grant wide-ranging Executive powers to ministers to ‘correct deficiencies’ in retained EU law as a result of the repatriation of EU competences.
In a nod towards separate UK Government legislation, the Committee said that consideration will also need to be given to the interaction between the EU (Withdrawal) Bill, common frameworks and the negotiation of new international agreements including trade deals. In the first instance it is anticipated that the Committee will have a role in scrutinising the Trade Bill LCM.

The Committee said also that it intended to examine further the impact of the new international obligations including trade agreements on the devolved settlement with regard to the role of the devolved institutions, stakeholders and the wider public in influencing and informing the UK Government’s negotiations.

Collectively, all Forum members urged the UK Government to take all of these points of view into account as the House of Lords begins its scrutiny of the EU (Withdrawal) Bill in the coming weeks.

The Forum will meet again in March 2018, when they will again review the progress of the Brexit negotiations and the parallel domestic legislation.

The news release issued by the relevant Scottish parliamentary committees in advance of the Forum is available [here](#).

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**External Experts Panel Newsletter**

**Issue 3**

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**Tell Me More**

**FOR MORE INFORMATION:**
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**Tell Me More**

**FOR MORE INFORMATION:**
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**All together now ... 2nd meeting of the Inter-parliamentary Forum on Brexit, 18 January, House of Lords**


The Inter-parliamentary Forum on Brexit brings together parliamentarians from Westminster, Edinburgh and Cardiff, along with officials from Belfast. On 18 January 2018, the Forum held its second meeting at the House of Lords.

The genesis of the Forum is the report from the House of Lords European Union Committee on Brexit & Devolution, which recommended that the structures for inter-parliamentary dialogue within the United Kingdom should be strengthened, to support more effective scrutiny of the UK Government’s handling of Brexit.

The most recent meeting concluded with the Forum members by agreeing a [statement](#). This stresses the need for parliamentarians in the respective legislatures to hold the UK and devolved governments to account for their role in the process; scrutinise the effects of the European Union (Withdrawal) Bill and related legislation, including the legislative consent process; understand the implications of Brexit for the future of the devolution settlements; and seek to determine the nature of the UK’s future relationship with the EU.

The Forum also recognised the strong views of members of the Scottish Parliament and National Assembly for Wales in relation to clause 11 of the EU (Withdrawal) Bill for the devolution settlements, and discussed the potential future UK-wide frameworks on these issues.

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**Scrutiny of the Scottish Government’s draft Budget for 2018-19**


The Christmas/New Year period is a particularly busy one for parliamentary committees as they begin their scrutiny of the Scottish Government’s draft budget proposal for 2018/19.

Most committees take evidence from outside bodies and the relevant minister just before the Christmas recess, then report to the Finance and Constitution Committee early in the New Year, setting out their views on specific parts of the draft budget.

The Finance and Constitution Committee itself then takes evidence and publishes its report, before the draft budget then moves to consideration in the Chamber.

On 26 January 2018, the Finance and Constitution Committee published just such a [report](#). It concluded that there is now likely to be a much greater degree of volatility and uncertainty in relation to Scotland’s public finances.

The report notes that a key factor in determining the size of Scotland’s budget is growth in income tax receipts north of the border, relative to the rest of the UK. In the Committee’s view, the Scottish Fiscal Commission is effectively forecasting that without tax policy differences, income tax revenues per capita
will grow at the same rate in Scotland as in the rest of the UK. That, importantly, will offset wider predictions of Scotland generally seeing slower economic growth per capita than the rest of the UK.

As the Committee noted, however, these are only forecasts and there is a risk to public finances if there is any significant forecast error - particularly if income tax revenues do not grow as strongly in Scotland as in the rest of the UK.

Speaking at the launch of the report, the Committee’s Convener, Bruce Crawford, added—

“Our committee emphasises that it is therefore essential that tax revenues are monitored closely by the Scottish Government and, as recommended by the Budget Process Review Group, that HMRC publishes monthly outturn data for Scottish Income tax as soon as practicable to do so.

“This information will be vital in providing a sufficient level of transparency to ensure public confidence in the operation of the new financial powers and the Fiscal Framework.”

It’s worth noting that the process of budget scrutiny in the Scottish Parliament is now changing with the publication of a series of recommendations from the Budget Process Review Group.

Key to the changes coming in for 2018 onwards is a full year approach whereby committees have the flexibility to incorporate budget scrutiny including public engagement into their work prior to the publication of firm and detailed spending proposals. We will also see moves to a more continuous cycle of scrutiny, with an emphasis on developing an understanding of the impact of budgetary decisions over a number of years including budgetary trends. Finally, scrutiny will become more output / outcome focused, with an emphasis on what budgets have achieved and aim to achieve over the long term, including scrutiny of equalities outcomes;

TELL ME MORE

FOR MORE INFORMATION:
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From our Experts

The Repatriation of Competences in Agriculture after Brexit
by Professor Michael Keating

Agriculture in Scotland, Wales and Northern Ireland faces an uncertain future after Brexit according to a new study from the Centre on Constitutional Change, The Repatriation of Competences in Agriculture after Brexit, published in January 2018. The research, conducted by the Centre’s director, Professor Michael Keating, investigated the challenges presented by UK policymaking being heavily influenced by the needs of agriculture in England, which are quite different from those in the devolved territories. In the light of this, Keating suggests, the question of subsidies after 2022 needs to be clarified by ministers.

Prof Keating explained that:

“Currently, agriculture is financed through the Common Agricultural Policy but the UK Government has guaranteed continuing support only up to the end of the current Parliament in 2022. After that, direct payments to farmers in England will be phased out.

“Policy for England, however, may not suit conditions in the devolved nations. Around half of farm incomes in England come from the CAP but in Scotland it is three quarters, in Wales it is 80 per cent and in Northern Ireland 87 per cent.

“In part this is caused by 85 per cent of farm land in Scotland being in ‘areas of natural constraint’ such as hill farms, in Wales this is 81 per cent in Wales and 70 per cent in Northern Ireland, compared with only 17 per cent of farm land in England.”

The report considers the implications of Brexit for agriculture policy, which is currently devolved to Scotland, Wales and Northern Ireland. It highlights that this is an area where devolved governments have recently had increasing scope to make their own choices as CAP rules have become more flexible. For example, Michael Gove, the minister responsible for agriculture in England, has suggested capping payments for the wealthiest farmers after leaving the CAP. Scotland, Wales and Northern Ireland already do this within the CAP.

Keating demonstrates that, “This flexibility has allowed the devolved governments to tailor agricultural policy to local needs, balancing economic with social, environmental and cultural conditions. We still do not know how much flexibility they will have after Brexit.

“Although the devolved nations currently benefit greatly from CAP funding, this is as a result of greater need. Scotland and Wales receive more than twice the funds per capita than England. Northern Ireland gets four times as much. If this money were put into the block grant and subjected to the Barnett Formula, this would allow them to keep their relative advantage and to use the funds flexibly. Whatever happens to agricultural competences, trade rules will remain the responsibility of the UK Government.

“It is more likely, however, that the money will be subject to a specific formula, perhaps linked to a new UK agricultural framework. In either case, as support for agriculture in England is reduced, the amounts coming to Scotland, Wales and Northern Ireland will also come down over time.

“The EU Withdrawal Bill currently before Parliament will take back devolved agricultural competences to Westminster, allowing some of them to be ‘released’ according to the needs of the Brexit settlement. Already there are discussions about what powers will be retained and what devolved. The danger is that a piecemeal approach will make it more difficult for Scotland, Wales and Northern Ireland to forge coherent agricultural and rural development policies tailored to their own conditions.”

TELL ME MORE

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LATEST PUBLICATIONS/RESEARCH/BLOGS

From members of/organisations in the External Experts Panel

Uncertain Post-Brexit Future for Farmers in Scotland, Wales and Northern Ireland, Professor Michael Keating

Trade after Brexit, Options for the UK’s, relationship with the EU, Institute for Government

A Welsh or Scottish ‘EU Continuity Bill’ could be challenged in the Supreme Court, Institute for Government

Who’s afraid of the ECJ? Charting the UK’s relationship with the European Court, Institute for Government

What does the Government think about the economics of Brexit?, Institute for Government

Brexit and the Sewel (legislative consent) Convention, Institute for Government

The legal and political process for agreeing the future relationship between the EU and the UK and any transitional agreement, Dr Tobias Lock

Brexit and the sectors of the Scottish economy, Fraser of Allander Institute

North, South, East and West on Brexit, Richard Parry (on Centre on Constitutional Change’s website)

Firms’ supply chains form an important part of UK-EU trade: what does this mean for future trade policy?, Institute for Fiscal Studies

The implications of recent additions to HMRC powers and the shifting balance in the relationship with taxpayers, Institute for Fiscal Studies

Working while incapable to work? Changing concepts of permitted work in the UK disability benefit system, Dr. Jackie Gulland, University of Edinburgh

The long-term economic implications of Brexit for Scotland: an interregional analysis, Dr Katerina Lisenkova, Fraser of Allander Institute

Intergovernmental councils in Spain: Challenges and opportunities in a changing political context, Dr Sandra Leon, University of York

What might slower economic growth in Scotland mean for Scotland’s income tax revenues?, David Eiser, Fraser of Allander Institute

How devolution has changed the UK constitution ahead of Brexit, Professor Richard Wyn Jones, Wales Governance Centre and Professor James Mitchell, Academy of Government. Oral evidence

Constitutional Change and Territorial Consent: the Miller case and the Sewel Convention (in new edited book by Mark Elliot) (chapter available from the clerks), Professor Aileen McHarg

From others

It’s still uncertain how the UK will deliver a ‘successful’ fisheries policy after Brexit, Professor Richard Barnes et al

The Case for a Differentiated Brexit, Nikos Skoutaris, Scottish Centre on European Relations

Patchwork Brexit, Soft Brexit, No Brexit? Dr Kirsty Hughes, Scottish Centre on European Relations

As Brexit Negotiations Are Finely Poised, The Economic Picture Doesn’t Get Any Less Gloomy, Professor Anton Muscatelli, Scottish Centre on European Relations

Brexit Talks: What Happens When The Clock Stops? John Palmer, Scottish Centre on European Relations

Regulatory Alignment: What Will It Take to Make It Work, And How Big Are the Risks of Failure? Katy Hayward and Paul McGrade, Scottish Centre on European Relations

ESRC Brexit Research summary, UK in a Changing Europe, ESRC
Post-Legislative Scrutiny: how parliaments review the impact of legislation, Franklin De Vrieze, Westminster Foundation for Democracy

An immigration strategy for the UK: Six proposals to manage migration for economic success, IPPR

What is Scotland making of Brexit?, Professor Sir John Curtice

How will the application process work for EU Citizens after Brexit? Madeleine Sumption

Customs Unions – Some lessons from Turkey and elsewhere, Iana Dreyer, UK Trade Forum

Trade Bill highlights Parliament's weak international treaty role, Dr Brigid Fowler, Hansard Society

The promise and perils of a 'full monty' transition, Dr Simon Usherwood

“Project Fear” was groundless: the UK economy has been remarkably resilient, Ruth Lea

How damaging would a ‘no-deal’ Brexit be? Meredith Crowley, Giancarlo Corsetti, Oliver Exton, and Lu Ha

Devolution and the Repatriation of Competences: the House of Lords Constitution Committee reports on the EU Withdrawal Bill, Professor Stephen Tierney

The Impact of Brexit on UK Small and Medium-Sized Enterprises, Dr Ross Brown, University of St. Andrews

The Implications of Brexit for Agriculture, Rural Areas and Land Use in Wales, Public Policy Institute for Wales

Scotland’s Economic Performance: Comparative Research, SPICe

Social Impact of the 2017-18 Local Government Budget, SPICe

Negotiation of Trade Agreements in Federal Countries, SPICe

Brexit – Negotiating a transition, SPICe Blog (on its new Spotlight site)

UK Parliament & Devolved Legislatures briefings and reports

The European Union (Withdrawal) Bill 2017-19: Summary of Commons Committee Stage, Parliamentary Briefing

Transitional arrangements for exiting the European Union, Treasury Select Committee, House of Commons

The progress of the UK’s negotiations on EU withdrawal, Exiting the EU Committee, House of Commons

Brexit: Deal or No Deal, European Union Committee, House of Lords

Brexit: will consumers be protected? European Union Committee, House of Lords

Brexit: sanctions policy, European Union Committee, House of Lords

European Union (Withdrawal) Bill, Constitution Committee, House of Lords

Brexit: UK Funding from the EU, Parliamentary Briefing

The Trade Bill, Parliamentary Briefing

The Taxation (Cross-border Trade) Bill, Parliamentary Briefing

Future of UK Trade and Customs Policy, Parliamentary Briefing

UK governance post-Brexit, National Assembly for Wales, Constitutional and Legislative Affairs Committee
FORTHCOMING EVENTS

Brexit - This year, next year, sometime, never? 7 February 2018, Law Building, Cardiff University

Political Studies Association International Conference, 26-28 March 2018, Cardiff
### Who’s who?
Members of the External Expert Panel

**Constitution/politics/governance etc.**

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<th>Name</th>
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<td>Professor Nicola McEwen</td>
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<td>Professor Cathy Gormley-Heenan</td>
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<td>Professor Richard Wyn Jones</td>
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<td>Professor Michael Kenny</td>
<td>University of Cambridge</td>
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<td>Mr Akash Paun</td>
<td>Institute for Government, London</td>
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**EU/Brexit/International Trade matters**

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<td>Dr Tobias Lock</td>
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<td>Professor Damian Chalmers</td>
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<td>Dr Gracia Marin-Duran</td>
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<td>Dr Matias E Margulis</td>
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<td>Professor Alan Page</td>
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<td>Professor Laura Cram</td>
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**Taxation, economic policy and fiscal matters**

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<td>Professor David Bell</td>
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<td>Professor Graeme Roy</td>
<td>Fraser of Allander, University of Strathclyde</td>
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<td>David Eiser</td>
<td>University of Strathclyde &amp; Standing Adviser to the Finance &amp; Constitution Committee</td>
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**Social security and social policy**

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