

The Scottish
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Response to the
Recommendations
of the Commission
on Scottish
Devolution

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THE SCOTTISH GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE COMMISSION ON SCOTTISH DEVOLUTION

Introduction

- 1. This paper sets out the Scottish Government's response to the final report from the Commission on Scottish Devolution. The breadth and detail of the Commission's report is testimony to the hard work put in by Sir Kenneth Calman and the members of the Commission to examine the issues that face Scotland 10 years after devolution. Nevertheless the final report reflects the constraints under which the commission worked.
- 2. The remit of the Commission was too narrow. The Commission was established by the Scottish Parliament and the United Kingdom Government to:

Review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scotlish Parliament to serve the people of Scotland better, improve the financial accountability of the Scotlish Parliament, and continue to secure the position of Scotland within the United Kingdom.

- 3. From the outset therefore it was clear that the Commission would not be able to consider the proposition that Scotland should be an independent country. Federalism was also outwith the Commission's remit.
- 4. Some commentators have noted that the Commission's Report is remarkable not so much for its recommendations as for its constitutional language, particularly in the early parts of the Report. The language of the Report normalises the language of distributed and popular sovereignty in the UK context for what is perhaps the first time in a UK wide document of this kind. The Report states that the UK has never been a unitary state and describes Parliamentary sovereignty as a "convention". The Commission Report points the way forward for effective extensions of Scottish sovereignty, but more in its framework and language than through its recommendations for actions, which are clearly the result of a compromise.
- 5. The report covers a lot of ground and is organised around a small number of themes:
 - Strengthening accountability in finance;
 - Strengthening co-operation (between governments and parliaments);
 - · Strengthening the devolution settlement; and
 - Strengthening the Scottish Parliament.

Although the report is structured in accordance with these four themes it is difficult to see the Commission package as a coherent blueprint for the future.

6. Given the amount of ground it covers the Report touches on a range of issues. In that context there are certain recommendations which the Scottish Government supports and others – notably on taxation - which we believe would be damaging to Scotland and so strongly reject. There are still others which require further consideration by the Scottish Parliament, Scottish and UK Governments and the devolved administrations in

Northern Ireland and Wales. We set out our assessment of each recommendation in Annex A. Annex B is a more detailed analysis of the Commission's tax recommendations.

- 7. The Scottish Government made it clear shortly after publication in June that there were a number of recommendations in the Commission Report which had attracted widespread support and on which there ought to be immediate action. Those are described further in paragraphs 9 to 13 below. Taken individually these recommendations are modest, but the Scottish Government believes their implementation would help to improve the government of Scotland and be in the interests of Scotland. Under the current constitutional arrangements it falls to the UK Government to initiate action on most of the recommendations concerned. The Scottish Government is ready to play its part in the spirit of mutual respect and co-operation advocated by the Commission and has made that clear to the UK Government.
- 8. To date the Scottish Government has had no response from the UK Government to its request for co-operation other than a general statement that the Report is to be seen as a comprehensive package from which items cannot be "cherry-picked". As the recommendations do not represent a comprehensive or cohesive package in any real sense, the UK Government's insistence so far in treating it as such represents a missed opportunity.

Strengthening the devolution settlement

- 9. Six of the recommendations relate to additions to the competence of the Scottish Parliament and the functions of Scottish Ministers and offer an extension of devolved responsibilities. To help take these recommendations forward Scottish Government officials prepared drafts of the orders necessary to transfer responsibility to the Scottish Parliament in the relevant areas. The Minister for Culture, External Affairs and the Constitution published these draft orders in the Scottish Parliament Information Centre (SPICe) on 25 June.
- 10. The draft orders cover:
 - administration of elections to the Scottish Parliament (5.1)
 - regulation of airguns (5.13)
 - licensing and control of controlled substances used in the treatment of addiction (5.14)
 - drink driving limits in Scotland (5.15)
 - national speed limits (5.16)
- 11. The Marine and Coastal Access Bill offered an opportunity for the Westminster Parliament to implement the recommendation on devolving marine nature conservation (recommendation 5.17) through an amendment to the Bill which would have been within scope of the legislation.
- 12. Six other recommendations require new procedures and guidance within the UK Government and the Scottish Government has been pressing them to take the necessary action since the publication of the Commission Report. The changes would cover:

- Development of UK policy on the European Union (4.16)
- Scottish Ministers' engagement in EU business (4.17)
- Agreement to local variations on immigration policy (5.6)
- Consultation on welfare to work programmes (5.20)
- Appointments to the BBC Trust (5.4)
- Appointments to the Crown Estate (5.9)
- 13. These recommendations provide the opportunity to make real progress in areas of the Commission's Report on which there is broad consensus in Scotland. Action should be taken to implement those recommendations on which there is agreement rather than wait and risk losing momentum.

Strengthening accountability in finance

- 14. The recommendations contained in Part 3 of the Report are the most significant and far-reaching. The proposal to devolve responsibility for stamp duty, land tax, aggregates levy, landfill tax and air passenger duty could be a positive development which would give the Scottish Government additional economic levers. needs to be considered in the context of the Commission's recommendations for the overall economic framework and, in particular, borrowing and taxation. Recommendation 3.7 is that the Scottish Government should be given the ability to borrow, with use restricted to funding major infrastructure investment. The Scottish Government does not agree that any such restriction is appropriate or relevant but believes that the general concept of allowing the Scottish Government the opportunity to borrow is one that should be taken forward.
- 15. The Scottish Government position was set out in more detail in the paper it sent to the Calman Commission in March 2009. As outlined in that paper, the ability to borrow, coupled with greater fiscal autonomy in taxation, would significantly enhance the economic policy levers available to the Scottish Government.
- 16. The borrowing as proposed by the Commission would give the Scottish Government greater, but limited, influence over the pace and priorities of Scotland's capital expenditure programme, subject to agreement with HM Treasury. This would provide an opportunity to address Scotland's infrastructure needs more quickly, not least in enabling progress with critical projects such as the new Forth Crossing, by phasing funding in a way that is sensible, efficient, and wholly appropriate to Scotland's circumstances. However, the Commission's recommendations make no provision for the Scottish Government to borrow to offset cyclical fluctuations in tax receipts, or to provide a fiscal stimulus at a time of economic need. Such borrowing is essential to ensure that Scotland can respond flexibly to changes in economic circumstances and help mitigate the effects of a downturn. Borrowing would be of even greater importance if the Scottish Government's budget was more closely linked to the tax revenue raised in Scotland, as recommended by the Commission. The Commission's decision to place restrictions on the ability to borrow could therefore limit the ability of the Scottish Government to effectively manage its budget over the economic cycle and would continue to impose restrictions on its ability to support the economy when economic growth slows.

- 17. More contentious in terms of what the Commission describes as strengthening financial accountability are the budgetary and taxation recommendations. Analysis by a number of distinguished economists has raised fundamental questions about the Commission's income tax proposals and their negative implications for Scotland. Far from actually improving the financial framework for the Scottish Parliament, it is clear that moving in this direction would deliver less transparency, less accountability and would expose the Scottish Government budget to significant risks without adequate levers to offset these risks.
- 18. The messy 'fudge' of the Commission's proposals and their arbitrary nature are subject to a number of significant flaws which make them demonstrably inferior to the fiscal levers available to an independent country. The proposals indicate that the number of people who believe the current situation is acceptable is dwindling. But the suggested framework is unlikely to improve accountability or economic efficiency, and may instead be even worse than the status quo. Furthermore, by retaining Barnett while at the same time introducing a mix of devolved taxes, tax assignment, tax sharing, grant finance and reserved taxes, the system created will be bureaucratic, opaque and mired in complex and confusing uncertainty.
- 19. The Commission's income tax proposals will also expose the Scottish Budget to a significant degree of volatility, without appropriate policy levers or administrative procedures to mitigate these effects. While the UK government would still be responsible for many of the major levers that dictate Scotland's economic wellbeing, the Scottish Government would be left picking up the pieces through potentially diminishing tax revenues. And we would still lack the ability to take decisive action to maximize economic growth. There is also a risk that the Scottish Budget could be squeezed inadvertently following a technical or administrative adjustment having unintended consequences. For example, future changes to personal allowances and tax thresholds made by the UK Government could reduce the income tax revenue 'assigned' to the Scottish Government whilst leaving the total tax revenue raised in Scotland unchanged.
- 20. It is clear that the package of financial recommendations provide little increase in the responsibilities Scotland needs to become a more successful country. In this regard, the proposals fall short of not only the Scottish Government's preferred option of full fiscal autonomy in an independent Scotland, but also those of others such as the Steel Commission.
- 21. Under the Commission's proposals, the Scottish Government would be assigned less than half of total income tax receipts raised in Scotland. On most recent estimates, approximately 80% of total tax revenue raised in Scotland would continue to flow to the UK Government.
- 22. Responsibility over key elements of the income tax system, such as personal allowances, tax thresholds, the tax rates on savings and dividends, the opportunity to establish tax breaks for particular groups such as pensioners and the integration with the wider tax and welfare system, would remain reserved. The Scottish Government would only be able to apply broad brush measures to the income tax system. Targeted and potentially redistributive measures, open to the UK Government, through adjusting the structure of the income tax regime and its interaction with other taxes would not be

possible. For example, the Scottish Government would not have been able to protect low income households in Scotland from the abolition of the 10 pence tax rate.

- 23. Responsibility for corporation tax, green taxes, fuel duty, North Sea revenues, inheritance tax and other important elements of the public finances would continue to remain outside the remit of the Scottish Government and Scottish Parliament. Relative to other devolved administrations in both Europe and across the world, Scotland would remain part of a highly centralised framework.
- 24. Any new financial arrangements for Scotland must offer a genuine advance and provide a framework which encourages efficiency in policy setting, improves transparency and delivers maximum accountability. Independence and full fiscal autonomy would deliver this, the Commission proposals do not.

Strengthening co-operation (intergovernmental relations)

- 25. Part 4 of the Commission's Report contains proposals designed to strengthen cooperation. The recommendations on the Joint Ministerial Committee (JMC) raise issues which merit serious consideration. As with recommendations on extending devolution, the Scottish Government firmly believes that we should move to implement recommendations where we can do so and where there is agreement. That said, a number of recommendations cannot be progressed without the agreement and cooperation of the devolved governments of Wales and Northern Ireland. These relate mostly, but not exclusively, to the operation of the Joint Ministerial Committee.
- 26. It is essential that decisions about the JMC should be taken by all four member administrations of the JMC. The recent JMC Plenary agreed that there should be further discussion of these recommendations.
- 27. The Scottish Government is particularly keen that discussion begins on the Commission's recommendation 4.22 which relates to improving awareness of devolution. This is important to all administrations.

Strengthening the Scottish Parliament (inter-parliamentary relations and the legislative process)

- 28. Procedural changes are a matter for Parliament and the parties rather than Scottish Ministers. Parliament is able to consider the issues raised by the Commission about the way in which it conducts its business and should move that consideration on.
- 29. Officials from the Scottish Government and the Scottish Parliament have met to discuss the implications of the inter-parliamentary relations on a number of occasions since publication of the Commission's Report. The recommendations have also been discussed by the Parliamentary Bureau.

Summary

30. The Scottish Government believes that those recommendations identified for immediate action should be implemented. We stand ready to play our part in this.

- 31. Other recommendations now fall to be taken forward by the Joint Ministerial Committee or by the Scottish Parliament.
- 32. The Scottish Government rejects the taxation proposals set out by the Commission. In the crucial area of finance the Government believes that the Commission's Report represents a missed opportunity particularly to offer real and effective fiscal and economic levers for Scotland.

ASSESSMENT OF RECOMMENDATIONS

Part 2: Understanding Scotland's place in the United Kingdom

RECOMMENDATION 2.1: The Scottish Parliament and UK Parliament should confirm that each agrees to the elements of the common social rights that make up the social Union and also the responsibilities that go with them.

The Scottish Government welcomes this recommendation. We have always been clear that there should be a continuing overarching social union between the nations and territories of Britain and Ireland - reflecting our shared history, cultures and values.

This does not mean that policies must be precisely the same everywhere. It does mean that we should work closely together to promote and maintain interactions and cohesion across Scotland, England, Wales and Ireland (both Northern Ireland and with the Republic of Ireland). This is desirable and necessary whether Scotland is independent or part of the UK.

Part 3: Strengthening accountability in finance

RECOMMENDATION 3.1: Part of the Budget of the Scottish Parliament should now be found from devolved taxation under its control rather than from grant from the UK Parliament. The main means of achieving this should be by the UK and Scottish Parliaments sharing the yield of income tax.

- a. Therefore the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, collected by HMRC, which should apply to the basic and higher rates of income tax.
- b. To make this possible, the basic and higher rates of income tax levied by the UK Government in Scotland should be reduced by 10 pence in the pound and the block grant from the UK to the Scottish Parliament should be reduced accordingly.
- c. Income tax on savings and distributions should not be devolved to the Scottish Parliament, but half of the yield should be assigned to the Scottish Parliament's Budget, with a corresponding reduction in the block grant.
- d. The structure of the income tax system, including the bands, allowances and thresholds should remain entirely the responsibility of the UK Parliament.

The Scottish Government does not support these tax recommendations for the reasons set out in paragraphs 17 to 24 of this paper. In the crucial area of finance and taxation the Commission's report represents a missed opportunity particularly to offer real and effective fiscal and economic levers for Scotland. The Commission's proposals would deliver less transparency, less accountability and would expose the Scottish Government's budget to significant risks without adequate levers to offset these risks.

RECOMMENDATION 3.2: Stamp Duty, Land Tax, Aggregates Levy, Landfill Tax and Air Passenger Duty should be devolved to the Scottish Parliament, again with a corresponding reduction in the block grant.

Taken together, these taxes are relatively small in comparison to the key elements of taxation such as income tax, national insurance contributions, VAT and corporation tax.

However the transfer of responsibility for the taxes could have important policy implications within specific sectors and related, currently devolved, competencies. Control of stamp duty, for example, would create a significant new policy lever for the Scottish Government in the housing sector in Scotland. Similarly the devolution of air passenger duty could also be a positive development. The creation of a devolved framework for these taxes would not be straightforward. Implementation of these recommendations without the additional devolution of levers over tax and spending or borrowing autonomy would leave the Scottish Parliament largely powerless to respond to changes in economic circumstances.

RECOMMENDATION 3.3: The Scottish Parliament should be given a power to legislate with the agreement of the UK Parliament to introduce specified new taxes that apply across Scotland. The new procedure we are recommending in Part 4 of our Report for the Scottish Parliament to legislate on reserved issues with the agreement of the UK Parliament could be used for this.

This would require further consideration of the way in which the proposal would work in practice. The recommendation suggests that the Scottish Parliament could be granted temporary legislative competence to create new taxes but only with the consent of the UK Government. The Scottish Government would not support such a system.

RECOMMENDATION 3.4: The block grant, as the means of financing most associated with equity, should continue to make up the remainder of the Scottish Parliament's Budget but it should be justified by need. Until such times as a proper assessment of relative spending need across the UK is carried out, the Barnett formula, should continue to be used as the basis for calculating the proportionately reduced block grant.

The Scottish Government believes that any reform of the Barnett formula must only be introduced as a move towards full fiscal autonomy and taxation powers for the Scottish Parliament.

RECOMMENDATION 3.5: This system will require a strengthening of the intergovernmental arrangements to deal with finance.

- a. The present Finance Minsters' Quadrilateral Meeting should become a Joint Ministerial Committee on Finance (JMC(F)), and should meet regularly on a transparent basis to discuss not just spending but taxation and macroeconomic policy issues.
- b. HMRC should advise Scottish Ministers in relation to those devolved taxes it is tasked with collecting and their responsibilities in relation to income tax and should account to them for the operation of these Scottish taxes. Scottish Ministers should be consulted on the appointment of the Commissioners of HMRC.
- c. All the relevant spending or grant calculations done by HMRC and HM Treasury should be audited by National Audit Office (NAO) which should publish an annual report on the operation of the funding arrangements, including reporting to the new JMC(F) and to the Scottish Parliament.

RECOMMENDATION 3.6: These changes should be introduced in a phased way, step by step, to manage the risks of instability in public finances and of windfall gains or adverse shocks to the Scottish Budget.

The Scottish Government welcome moves to put discussion on financial issues on a more formal and regular footing but this will only work if the UK Government and HM Treasury are prepared to engage seriously and constructively on the issues raised. Whether this should be part of the JMC process will need to be agreed with all JMC member administrations and we are discussing this with them. The concept that there should be an independent scrutiny of HM Treasury decisions has been raised elsewhere (notably the report of the Holtham Committee on the future of funding in Wales). This has significant attractions and we would certainly want to develop this further. A more detailed explanation of the Government's response to the Commission's tax recommendations is attached at Annex B.

RECOMMENDATION 3.7: The Scottish Ministers should be given additional borrowing powers.

- a. The existing power for Scottish Ministers to borrow for short term purposes should be used to manage cash flow when devolved taxes are used. Consideration should be given to using the power in the Scotland Act to increase the limit on it if need be.
- b. Scottish Ministers should be given an additional power to borrow to increase capital investment in any one year. There should be an overall limit to such borrowing, similar to the Prudential regime for local authorities. The amount allowed should take account of capacity to repay debt based on future tax and other receipts. Borrowing should be from the National Loans Fund or Public Works Loans Board.

The Scottish Government supports the proposal that it should be given the ability to borrow but considers that this recommendation needs to be considered further. The Scottish Government provided information to the Calman Commission on the 11 March 2009 setting out the rationale for giving the Scottish Government borrowing responsibilities. The submission stated that "the Scottish Government should have extended legal powers to borrow and crucially increased spending power to utilise such borrowing."

The ability to borrow would give the Scottish Government greater influence over the pace and priorities of Scotland's capital expenditure programme. This would create further opportunities to address the clear infrastructure needs of Scotland more quickly, not least in enabling progress with critical projects such as the new Forth Crossing, by phasing funding in a way that is sensible, efficient and wholly appropriate to Scotland's circumstances.

Not being able to borrow when faced with considerable economic uncertainties or when faced with the prospect of having to fund a once in a generation infrastructure project, puts Scotland at a disadvantage in comparison to other countries. Other tiers of government in the UK, including local authorities and the devolved administration in Northern Ireland, have greater borrowing powers than are currently available to Scotland. While the borrowing recommendations proposed by the Commission would give the

Scottish Government greater, but limited, influence over Scotland's capital expenditure programme they fail to provide the Scottish Government with the ability to offset cyclical fluctuations in tax receipts, or to provide a fiscal stimulus at times of economic need.

A robust fiscal framework which ensures responsible management of government borrowing and financial planning, is vital to the long term sustainability of the public finances. Such reform must be developed, agreed and when in operation, managed and monitored, jointly by the Scottish and UK Governments. In the interests of efficiency, accountability and transparency, any revised framework cannot be determined solely by the UK Treasury.

Part 4: Strengthening co-operation

RECOMMENDATION 4.1: In all circumstances there should be mutual respect between the Parliaments and the Governments, and this should be the guiding principle in their relations.

The Scottish Government welcomes this recommendation. There should be parity of esteem between the Parliaments and the Governments, regardless of the constitutional arrangements that are in place. The UK Government should recognise in its dealings with the devolved administrations that Scottish (and other devolved) Ministers and their administrations need to be given full recognition as equal partners in the governance of the UK.

RECOMMENDATION 4.2: As a demonstration of respect for the legislative competence of the Scottish Parliament, the UK Parliament should strengthen the Sewel Convention by entrenching it in the standing orders of each House.

The Scottish Government welcomes this recommendation.

RECOMMENDATION 4.3: The UK Parliament and Scottish Parliament should have mechanisms to communicate with each other:

- a. There should be detailed communication about legislative consent motions (LCMs), and in particular if a Bill subject to an LCM is amended such that it is outside the scope of the LCM.
- b. A mechanism should exist for each Parliament to submit views to the other, perhaps by passing a motion where appropriate.

The Scottish Government does not support this recommendation. Inter-governmental communication is the proper channel for matters arising out of the legislative programme. The Commission is right to suggest that progress with LCMs should appear on order papers at Westminster, for information, and that the terms of any LCM should be reflected in the Explanatory Notes to a UK bill. It is already possible for one parliament to make its views known to the other by passing a motion. This is what an LCM is. It is for governments to ensure that such information is transmitted from one parliament to the other.

RECOMMENDATION 4.4: The UK Parliament should end its self-denying ordinance of not debating devolved matters as they affect Scotland, and the House of Commons should establish a regular "state of Scotland" debate.

The recommendation requires careful consideration to avoid the risk of creating public confusion over responsibility for devolved matters and undermine the principle (expressed in the Sewel Convention) that devolved matters are for the Scottish Parliament.

RECOMMENDATION 4.5: A standing joint liaison committee of the UK Parliament and Scottish Parliament should be established to oversee relations and to consider the establishment of subject specific ad hoc joint committees.

This requires further consideration. There is no reason why MPs and MSPs should not establish structures to share information and opinion although a joint committee risks causing confusion. It is a fundamental principle that members of one institution should not seek to exercise power over the business of the other.

RECOMMENDATION 4.6: Committees of the UK and Scottish Parliaments should be able to work together and any barriers to this should be removed.

- a. Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed.
- b. Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed.
- c. Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.

This requires further consideration. There is no reason why MPs and MSPs should not establish structures to share information and opinion but it is important to avoid confusion. It would be entirely proper for a committee to invite members from the other parliament to attend but it would not be appropriate to confer the right to attend without invitation.

RECOMMENDATION 4.7: To champion and recognise the importance of interaction between the Parliaments and Governments:

- a. UK and Scottish Government Ministers should commit to respond positively to requests to appear before committees of the others' Parliament.
- b. The UK Government Cabinet Minister with responsibility for Scotland (currently the Secretary of State for Scotland) should be invited to appear annually before a Scottish Parliament committee comprised of all committee conveners, and the First Minister should be invited to appear annually before the House of Commons Scottish Affairs Committee.

The Scottish Government agrees that in general there should be a positive response to requests to appear before parliamentary committees in the interests of providing information and evidence as appropriate. Scottish Ministers and others have given evidence to UK committees in the past, for example to the Justice Committee inquiry into "Devolution: A Decade On." UK bodies such as the Bank of England should also be encouraged to appear before Scottish Parliament committees.

RECOMMENDATION 4.8: Shortly after the Queen's Speech the Secretary of State for Scotland (or appropriate UK Government Cabinet Minister), should be invited

to appear before the Scottish Parliament to discuss the legislative programme and respond to questions in a subsequent debate. Similarly, after the Scottish Government's legislative programme is announced the First Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters.

The Scottish Government does not support this recommendation. While it would be helpful for Ministers to make themselves available to committees to provide information, this proposal would blur boundaries and cause confusion. The Secretary of State is not accountable to the Scottish Parliament and the First Minister does not have to justify the Scottish Government's programme at Westminster.

RECOMMENDATION 4.9: Where legislation interacts with both reserved and devolved matters there should be continued cooperation:

- a. For any UK Parliament Bill which engages the Sewel Convention on a matter of substance, consideration should be given to including one or more Scottish MPs on the Public Bill Committee, who should then be invited, as appropriate, to meet the Scottish Parliament committee scrutinising the legislative consent memorandum.
- b. A Scottish Minister should as appropriate be asked to give evidence to the UK Parliament committee examining Orders made under the Scotland Act.

The Scottish Government does not support (a) while (b) requires further consideration. Scottish MPs should sit on any Westminster committee dealing with reserved matters in Scotland. But neither the MPs nor the committee have any role in relation to devolved matters. Liaison with the Scottish Government and the Scottish Parliament on legislative proposals is the responsibility of the UK Government. A Westminster committee which wishes to know more about the interaction between devolved matters and the reserved business for which it has responsibility can already invite witnesses to give evidence. Whilst it might be possible for Scottish Ministers to give evidence (as witnesses) in relation to SAOs, on the basis that they are usually responsible for the underlying policy which has given rise to the legislation, they are not accountable to Westminster and cannot stand in for the UK Minister in charge of the instrument. It would therefore be important to avoid any blurring of lines of accountability. In fact, the Scottish Government believes that current arrangements in relation to SAOs work well.

RECOMMENDATION 4.10: Either the Scottish Parliament or either House of the UK Parliament should be able, when it has considered an issue where its responsibilities interact with the other Parliament's, to pass a motion seeking a response from the UK or Scottish Government. The relevant Government in each case should then be expected to respond as it would to a committee of its own Parliament.

The Scottish Government does not support this recommendation. There are clear lines of accountability between a government and its parliament. No government should have to justify itself to a parliament to which it is not accountable. Inter-governmental communications are the proper channel for seeking a response about the policies or actions of another government. It is also entirely open to committees of either parliament to enquire into matters which are within its remit. In doing so, it would already be

perfectly possible to invite ministers and members of parliament from other jurisdictions to give evidence.

RECOMMENDATION 4.11: There should be a greater degree of practical recognition between the Parliaments, acknowledging that it is a proper function of members of either Parliament to visit and attend meetings of relevance at the other; and their administrative arrangements should reflect this.

The Scottish Government supports the general intention behind this recommendation. It should be open to parliamentarians to visit the other institution and, when invited, to attend meetings. However it would be essential that any such arrangement recognised the respective responsibilities and authority of members of both parliaments and did not lead to any blurring of remits or accountability.

RECOMMENDATION 4.12: The Joint Ministerial Committee (JMC) machinery should be enhanced in the following ways:

- a. The primary focus should be on championing and ensuring close working and cooperation rather than dispute resolution (though it will be a forum to consider the latter as well).
- b. There should be an expanded range of areas for discussion to provide greater opportunities for cooperation and the development of joint interests.
- c. There should be scope to allow issues to be discussed at the appropriate level including the resolution of areas of disagreement at the lowest possible level.

The Scottish Government believes that these are the principles under which the JMC machinery is broadly operating already. We would welcome a reaffirmation from the UK Government of its commitment to making the JMC machinery work as a means of securing better outcomes for all the nations of the UK. The greatest value of the JMC so far has been in exploring difficult but resolvable areas of policy development and implementation, and we would wish to see that continue. It will be important to ensure that the JMC does not duplicate the valuable collaborative work of the British-Irish Council, but rather finds its own mode of working.

RECOMMENDATION 4.13: The JMC should remain the top level, and meet in plenary at least annually, but most importantly to a longstanding timetable. In addition:

- a. JMC(D) and JMC(E) should continue in much the same form, but with more regular meetings and to a longstanding timetable. There should be an additional JMC(Finance) which subsumes the role of the Finance Quadrilateral.
- b. Sitting below the JMC(D), JMC(E) and JMC(F) meetings should be a senior officials level meeting, JMC(O).

The Scottish Government believes that these are matters that need to be discussed with all the devolved administrations. We will support any moves to increase the effectiveness of the JMC.

RECOMMENDATION 4.14: Where inter-governmental ministerial meetings are held to discuss the overall UK position in relation to devolved policy areas, the relevant Secretary of State should generally chair these meetings on behalf of the overall UK interest, with another relevant UK Minister representing the policy interests of

the UK Government in relation to those parts of the UK where the policy is not devolved.

The Scottish Government does not accept that it should always be a UK Minister that chairs a meeting when devolved issues are being discussed, even on a UK-wide basis. This is not the parity of esteem and mutual respect that the Commission calls for elsewhere. The choice of chair should depend, as now, on a number of factors including the specific nature of the devolved issues, the location of the meeting and the outcomes to be agreed.

RECOMMENDATION 4.15: A new legislative procedure should be established to allow the Scottish Parliament to seek the consent of the UK Parliament to legislate in reserved areas where there is an interaction with the exercise of devolved powers.

The Scottish Government does not support this recommendation. If it makes sense for the Scottish Parliament to legislate in an area which is reserved, competence should be transferred permanently, not on a one-off basis. A bolder proposal would be to give the Scottish Parliament the right to take on any new competence when it felt ready to do so (by legislating, after consultation with Westminster, to amend the Scotland Act). If the current settlement is genuinely the best option for Scotland, such a mechanism would rarely be used. Where competence does need to be extended, however, a mechanism of this kind would offer a practical and inherently flexible means of initiating action from within Scotland, in accordance with the wishes of the Scottish Parliament.

RECOMMENDATION 4.16: In the development of the UK Government policy position in relation to the EU:

- a. Early and proactive engagement by the relevant UK Government department with its Scottish Government counterpart should be a matter of course.
- b. In addition Scottish Ministers and the relevant Scottish Parliament committee should become more proactive in identifying EU issues of interest to Scotland at an early stage, and taking the initiative accordingly.
- c. The JMC(E) should continue to be used to determine the UK Government position on EU matters.

The Scottish Government supports the Commission's endorsement of the need for early and proactive engagement between Scottish and UK Governments on EU issues.

RECOMMENDATION 4.17: To ensure Scottish Ministers are visibly engaged with EU business affecting their interests:

- a. When a request is received there should be a presumption that Scottish Ministers are accepted as part of the UK delegation where EU matters which cover devolved areas are for discussion;
- b. When Scottish Ministers request to speak in support of the agreed UK Government line there should be a presumption that this is granted wherever practicable.

The Scottish Government supports this recommendation as far as it goes. The recommendation describes the spirit of the Memorandum of Understanding as it currently stands but does not go far enough. Scottish Ministers should have a right to attend and speak, not a presumption in favour of being able to do so.

RECOMMENDATION 4.18: Closer involvement between Scottish MEPs and the Scottish Parliament is needed, and Scottish MEPs should be invited to attend, and should attend, the Scottish Parliament European and External Relations Committee regularly on a non-voting basis. The Committee should schedule its meetings to facilitate their regular attendance.

This recommendation is for the Scottish Parliament to consider but the Scottish Government believes there is merit in it. The Minister for Culture, External Affairs and the Constitution already chairs a group which brings together the MEPs, the European Committee of the Parliament, and Scotland's representatives in the Committee of the Regions and the Economic and Social Committee, to facilitate exactly the kind of exchange the Commission has in mind.

RECOMMENDATION 4.19: The JMC process should be subject to greater Parliamentary scrutiny, and have greater public transparency:

- a. Agendas and timelines should be published in advance of each JMC, JMC(E), JMC(D) or JMC(F) meeting, and a communiqué from each should be issued.
- b. After each full JMC meeting the First Minster should make a statement to the Scottish Parliament, and the Prime Minister, or UK Government Cabinet Minister with responsibility for Scotland, should make a statement to the UK Parliament.
- c. An annual report of the JMC should be prepared, and laid by each Government before its Parliament, and it should be scrutinised by the new of the UK Parliament and the Scottish Parliament.

The Scottish Government will support any moves to increase the effectiveness of the JMC although these are matters that need to be discussed with all the devolved administrations.

RECOMMENDATION 4.20: Scottish MPs should actively demonstrate appropriate oversight and stewardship of the constitution by way of regular scrutiny of the shape and operation of the devolution settlement.

This requires further consideration. There is a strong argument for MPs to consider the constitutional future of the UK and to address devolution anomalies (such as the treatment of England only legislation and equitable funding arrangements). The Justice Committee report (May 2009) engaged with such matters, although it did not present definitive recommendations for the future. It is the responsibility of Scottish MPs to scrutinise the work of the Secretary of State for Scotland and to promote Scottish interests in reserved areas (including the constitution). However, MPs have no function in scrutinising the work of the Scottish Government or the Scottish Parliament. There is a risk that legitimate work in one area would simply lead to interference in the other, resulting in confusion and disagreement. It is therefore essential that the proper constitutional distinctions established at the time of devolution are not eroded.

RECOMMENDATION 4.21: The responsibility for appointing, or approving appointments of, senior civil servants to senior posts in the Scottish Government should be delegated by the Prime Minister to the Head of the Home Civil Service, acting on the advice of the UK Civil Service Commissioners.

This requires further consideration. Given that the Calman Commission proposes to delegate this function we would have expected the Prime Minister's role in such appointments to have transferred to the First Minister. Where Ministerial approval is appropriate in the appointment process it should be given by the First Minister of the government in which the appointment is being made.

RECOMMENDATION 4.22: The Commission has heard of a lack of understanding of devolution within some UK Government departments, and this should be addressed by reinvigorated training and awareness raising programmes.

The Scottish Government wholeheartedly supports this recommendation and would like to see immediate progress in this area.

RECOMMENDATION 4.23: The Civil Service Codes should be amended to recognise the importance of cooperation and mutual respect.

The Scottish Government supports this recommendation to amend the Codes to include an agreed clause in relation to effective working between each devolved administration and the UK Government. This would also provide another opportunity to raise awareness on the Codes' values and the importance of cooperation between the administrations.

The Scottish Government wrote to the Ministry of Justice about the UK Constitutional Reform and Governance Bill which was introduced into the Westminster Parliament before the Summer Recess. The Government was surprised that the UK Government had not taken the opportunity that the Bill offered to address recommendations 4.21 And 4.23. The recommendations would have been within the scope of the Bill as introduced.

Part 5: Strengthening the devolution settlement

RECOMMENDATION 5.1: The powers of the Secretary of State for Scotland relating to the administration of elections to the Scotlish Parliament should be devolved.

The Scottish Government supports this recommendation as far as it goes but has argued consistently that full responsibility for the elections to the Scottish Parliament should be devolved. Ron Gould supported this view in his report into the 2007 elections. There are two options for the devolution of the Scottish Parliamentary elections to Scotland:

- Full devolution of powers both administrative and legislative.
- Administrative devolution which would give the Scottish Government management responsibility for the elections but not the primary legislative power. This would still sit in Westminster.

Administrative devolution is a half way house, offering responsibility but not full authority. The Scottish Government could make the rules to run the elections but would have to negotiate every policy position that required primary legislation with Westminster. Moves to a new voting system (perhaps to STV in line with Scottish local government elections) or to lower the voting age (to 16 in line with Scottish Government policy) would still be for Westminster. Ron Gould was clear that fragmentation was an issue in the problems highlighted in the 2007 elections. Administrative devolution would lead to further fragmentation of decision making and a complex layer of discussion. Full devolution

would reflect the spirit of the Gould Report and allow the Scottish Government to work with electoral professionals in Scotland to ensure that the problems highlighted by Gould do not happen again.

RECOMMENDATION 5.2: There should be a single definition of each of the expressions "charity" and "charitable purpose(s)", applicable for all purposes throughout the United Kingdom. This should be enacted by the UK Parliament with the consent of the Scottish Parliament.

The Scottish Government does not support this recommendation. It does not accord with our current policy nor are we convinced of the need for the changes which would require primary legislation. Any changes to the definitions introduced in the Charities & Trustee Investment (Scotland) Act 2005 could cause uncertainty for Scottish charities. The UK Government chose different definitions during passage of their Charities Act 2006 although the original intention had been for the two Acts to use the same terms. Implementation of the recommendation would diminish the terms of the devolution settlement by allowing Westminster to amend definitions which represent the will of the Scottish Parliament.

RECOMMENDATION 5.3: A charity duly registered in one part of the United Kingdom should be able to conduct its charitable activities in another part of the UK without being required to register separately in the latter part and without being subject to the reporting and accounting requirements of the regulator in that part.

The Scottish Government does not support this recommendation. It is right to minimise the administrative burden on charities but it is important that the public be given access to accurate information about all charities operating in Scotland and entry on the Scottish Charity Register is an effective way of providing this. We do not believe it is right that we should change our regulatory framework to match any changes south of the border where circumstances may be different. We welcome the publication of OSCR's guidance on "Cross-border charity regulation in Scotland", which sets out how the regulator works with the Charity Commission in England and Wales to streamline requirements, where possible.

RECOMMENDATION 5.4: The responsibility for the appointment of the Scottish member of the BBC Trust should be exercised by Scottish Ministers, subject to the normal public appointments process.

The Scottish Government supports this recommendation which is in line with the recommendations of the Scottish Broadcasting Commission and we would be keen for it to be implemented as soon as possible.

The Scottish Broadcasting Commission also recommended that Scottish Ministers assume responsibility for approving the appointment of Board members of MG Alba. We are surprised that this transfer of functions is not included in the Commission's recommendations. However we believe that it would be a sensible and straightforward way of giving Scottish Ministers slightly greater responsibility for broadcasting within Scotland.

The Scottish Government presented its annual progress report on implementation of the recommendations of the Scottish Broadcasting Commission to Parliament in September 2009. The Government emphasised that greater involvement of Scottish Ministers in the accountability arrangements for Scottish broadcasting would have significant benefits for both Scottish viewers and the sector more generally. In the Government's view this would be attained through Scottish Ministers appointing Board members to MG Alba and appointing the Scottish representative to both the BBC Trust and the Board of OFCOM.

RECOMMENDATION 5.5: In recognition of the close interaction of the HSE's reserved functions with areas of devolved policy, a closer relationship between the HSE in Scotland and the Scottish Parliament should be developed.

This requires further consideration. It is not clear why the Commission is recommending a closer relationship with the Parliament and how this would be achieved.

The Scottish Government already works closely with the HSE in Scotland both directly and through groups such as the Partnership on Health and Safety in Scotland (PHASS) and the National Advisory and Advocacy Group for Healthy Working Lives, to develop appropriate collaboration and partnership working to maximise the health, safety and wellbeing in Scottish workplaces.

The Commission's Report recognises that there is no reason in principle why health and safety (or elements of enforcement) could not be devolved but it questions whether it would appreciably improve matters for the people of Scotland. It further notes that the creation of a separate Scottish HSE could lead to duplication of effort (in both primary and support functions) as well as a deterioration in expertise on both sides of the Border. The Commission recognises that the development and creation of PHASS, as well as the co-location of HSE officials and those from the Crown Office to better facilitate decisions on prosecutions, are good examples of an agency exercising reserved powers taking into account the views of, and working with, those involved in the process.

The Scottish Government believes that there is no reason in principle not to devolve health and safety. This would enable the development of a health and safety regime most suited to Scottish workplaces and business requirements.

RECOMMENDATION 5.6: Whilst retaining the current reservation of immigration, active consideration (supported by inter-governmental machinery) should be given to agreeing sustainable local variations to reflect the particular skills and demographic needs of Scotland.

The Scottish Government believes that a 'one size fits all' immigration system does not work and the Scottish Parliament should have more immigration powers. While this recommendation does not go far enough, we will continue to explore with the Home Office flexibilities in the Points Based System to help us achieve our aims of population growth to support short-term and long-term economic growth and we will continue to pursue the possibility of a Scottish green card as part of the National Conversation.

The UK Government recently proposed establishing a principle of local variations to reflect the different skills and demographic needs of the UK in the Home Office consultation *Earning the right to stay – a new points test for citizenship* which was

launched in August 2009. In that consultation they propose that extra points towards citizenship could be awarded for applicants intending to settle in those parts of the UK (such as Scotland) which have particular skills and demographic problems. Scotlish Ministers have already written to the Home Secretary seeking an extension of this principle to the current points based system.

The UK Government Immigration Minister has agreed to hold a bilateral meeting with the Minister for Culture, External Affairs and the Constitution to explore the scope for further Scottish flexibilities within the Point Based System for managed migration and for promoting Scotland as a potential destination for migrants. The Commission's recommendation provides useful backing for what the Scottish Government is to some extent already doing in this area.

RECOMMENDATION 5.7: In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland.

Scottish Ministers and officials have had numerous discussions with Home Office Ministers and UKBA staff about the Children (Scotland) Act 1995 and the need to promote the well-being of children seeking asylum in Scotland. As a result, UKBA staff in Glasgow are well aware of the duties that local authorities have to support children in their area. The substance of this recommendation is already UKBA policy and it reflects existing practice in many circumstances – since January 2009 all UKBA staff and contractors have been operating under a statutory Code of Practice to keep children safe from harm and will be subject to a new statutory duty from the autumn to safeguard and promote the welfare of children. When children are detained at Dungavel, an agreement exists between UKBA and South Lanarkshire Council to ensure that children are given the help and support they need.

The Scottish Government remains fundamentally opposed to dawn raids and the detention of children and does not believe that children are being treated appropriately by UKBA in all circumstances. The 1995 Act does not place any statutory duties on UKBA or its contractors and we have been advised that it is disapplied when a child becomes subject to immigration control, (i.e. when they are detained by UKBA prior to removal from the UK). We will continue to raise concerns with UKBA about the need to promote the well-being of children at <u>all</u> times and to push for an end to forced removal and detention.

RECOMMENDATION 5.8: The Secretary of State for Scotland should, in consultation with Scottish Ministers, more actively exercise his powers of direction under the Crown Estate Act 1961 and, having consulted Scottish Ministers, should give consideration to whether such direction is required immediately.

The Scottish Government supports this recommendation which would represent a modest improvement. The administration of the Crown Estates is a reserved matter and there has been a long held view in Scotland that revenues are being collected with very little benefit to Scottish interests. The issue arises mainly for coastal businesses because of the Crown's ownership of the sea bed. The proposal is that the Scotland

Office direct the Crown Estate to have due regard to Scottish interests and wider issues, in consultation with Scottish ministers.

This issue is important for aquaculture, marine renewables and leisure interests such as boating. The fact that this recommendation is being made highlights deficiencies in arrangements to date. Achieving more leverage over the administration of the Crown Estate is Scotland is in line with existing policy. Implementation is for the Scotland Office, in consultation with Scottish Ministers. It could be implemented immediately.

RECOMMENDATION 5.9: The appointment of a Scottish Crown Estate Commissioner should be made following formal consultation with Scottish Ministers.

The Scottish Government supports this recommendation which would represent a modest improvement. A commitment to involving Scottish Ministers in the appointment of a Scottish Commissioner would be a small improvement to the governance arrangements for the Estate. Implementation is for UK Government and could be taken forward immediately.

RECOMMENDATION 5.10: Funding for policy relating to animal health should be devolved whilst responsibility for funding exotic disease outbreaks should be retained at a UK level.

The Scottish Government supports the recommendation that funding for policy relating to animal health should be devolved.

At present policy on animal health, including response to exotic disease outbreaks, is devolved but the budgets are held by the UK Government. Separating funding for endemic and exotic disease control poses significant problems as the policy and delivery structures for both are the same. The Scudamore Report, following the foot and mouth disease outbreak of 2007, found that responsibility for all aspects of exotic disease response should be devolved, so the Commission's rationale for reserving exotic disease control is unclear.

Detailed negotiations on devolution of the budget for animal health are ongoing with UK government. The effective management and control of exotic disease outbreaks comes with the potential risk of high unexpected costs e.g. for compensation of culled animals. This is an unabridged pressure which requires access to a large contingency fund.

RECOMMENDATION 5.11: The Scottish Parliament should not have the power to legislate on food content and labelling in so far as that legislation would cause a breach of the single market in the UK by placing a burden on the manufacturing, distribution and supply of foodstuffs to consumers, and Schedule 5 to the Scotland Act should be amended accordingly.

The Scottish Government does not support this recommendation. Food labelling is principally driven by EU legislation, reflecting the general need for consistency across the single European market. However labelling has important links to other devolved policy areas such as health, nutrition and food policies. It is appropriate that it remains devolved.

RECOMMENDATION 5.12: The regulation of all health professions, not just those specified by the Scotland Act, should be reserved.

The Scottish Government does not support this recommendation. Reserving the regulation of all health professions would reduce Scotland's influence in this area and could cause difficulties for the NHS in Scotland.

Devolution of the regulation of those professions regulated post the Scotland Act has not resulted in different systems. All four UK countries are committed to UK-wide regulation, sensitive to each country's needs, through the section 60 Order process. Currently we can only seek to influence section 60 orders in reserved areas. Final decisions rest with Westminster. However, Scotland has real influence in orders in devolved areas as they have to be approved by both Parliaments. This influence will increase as regulation is introduced for more professions.

If regulation was entirely reserved, Westminster could legislate in ways which might cause difficulties for NHS Scotland in terms of operational delivery, clinical governance, and the employment of staff. Westminster could decide to regulate staff that Scotland either did not want to employ or did not want to regulate; or could refuse to regulate a new role developed in Scotland and considered to present a risk to the public. The reserved regulators would not be accountable to the Scottish Parliament.

RECOMMENDATION 5.13: The regulation of airguns should be devolved to the Scottish Parliament.

The Scottish Government supports this recommendation. We have maintained that airguns should be licensed to put them on a similar footing with other lethal firearms, but allowing for legitimate use. We will continue to push for an overhaul of the whole firearms regime, to reform the licensing scheme to make it consistent, easier to understand and enforce.

In 2008-09, almost half of all offences in Scotland involving firearms were air gun offences. We would legislate to require all air weapons to be licensed in line with other lethal firearms, which should in time reduce the number in our communities. People applying for an airgun licence would need to prove they had a good reason to hold a weapon and a basic level of competence in their safe handling.

We believe that firearms legislation generally, not just around air weapons, should be devolved. An Order under section 30 of the Scotland Act has been drafted to remove the firearms reservation as a whole. Airguns could be specifically devolved via a section 30 order. Alternatively, an order under section 63 of the Scotland Act could transfer certain functions to the Scotlish Ministers relating to air weapons but this would not be our preferred option as it would not fully achieve the desired policy.

RECOMMENDATION 5.14: Responsibility for those aspects of the licensing and control of controlled substances that relate to their use in the treatment of addiction should be transferred to Scottish Ministers.

The Scottish Government supports the recommendation to transfer responsibility for decisions on licensing medical practitioners to use controlled substances to treat addiction. It is regrettable that the Commission has not gone further.

RECOMMENDATION 5.15: Regulation-making powers relating to drink-driving limits should be transferred to Scottish Ministers.

The Scottish Government supports this recommendation as far as it goes. We believe that there should be a lower drink driving limit in place across the UK. However, in the face of the UK Government's reluctance to act on the matter, we have requested that the responsibility be devolved to Scottish Ministers. This recommendation is the second best option but would allow Scotland to make progress. The Cabinet Secretary for Justice wrote to the Secretary of State for Transport earlier in the year calling on the UK Government to devolve the ability to set the limits to Scottish Ministers. We will continue to push for a more appropriate limit across the UK as well as the devolution of responsibility to Scottish Ministers.

RECOMMENDATION 5.16: The power to determine the level of the national speed limit in Scotland should be devolved.

The Scottish Government supports this recommendation and welcomes the opportunity to have additional devolved responsibility for setting national speed limits for Scotland. This would enable us to decide on our own national speed limits, taking into account relevant Scottish issues such as the rural economy and climate change targets, rather than be hostage to decision making at UK level which may not fully take account of Scottish circumstances.

Currently, local authorities have the ability to set lower speed limits on local roads in their areas and Scottish Ministers can set lower speed limits on specific parts of the trunk network. In August 2006 the Scottish Government published revised guidance for traffic authorities on setting local speed limits. Local authorities have been asked to review speed limits on all A and B roads by 2011 in accordance with the new guidance.

RECOMMENDATION 5.17: The effectiveness of the agreement reached by the UK and Scottish Governments [on the UK Marine Bill] should be kept under review by the inter- Governmental machinery, and nature conservation should be devolved to the Scottish Parliament at the earliest appropriate opportunity, taking into account the experience and evidence to be gained from the operation of the regime set out in the respective Marine Bills.

The Scottish Government supports this recommendation which would provide modest additional responsibilities in the waters around Scotland.

The UK and Scottish government agreed on an arrangement for working together to coordinate marine management by joining up the UK and Scottish Marine bills. This provided for the Scottish government working with the UK Government on a UK Marine Policy Statement and being given executive responsibility for marine planning and nature conservation in the Scottish off-shore. To protect reserved interests the exercise of these new responsibilities was subject to the approval of UK ministers. This agreement has been warmly welcomed by the Commission (while hinting that re-reservation would be the other way of achieving coherent marine management).

The second half of the recommendation however goes beyond the agreement and recommends that legislative devolution of nature conservation powers should be given to the Scottish Parliament. This would represent additional responsibility over and above the limited executive devolution in the UK Marine and Coastal Access Bill. We are currently negotiating with DEFRA for executive devolution for wider nature conservation matters (over and above the specific provisions for Marine Protected Areas in the Marine Bill). Negotiations have been slow but positive. However, this recommendation goes further seeking full devolved nature conservation responsibility for the Scottish parliament. Scottish Environment Link have written to the Secretary of State for Scotland in support of this recommendation. We have pressed the UK Government to bring forward amendments to the UK Marine Bill to provide for full devolution of these powers.

RECOMMENDATION 5.18: Research Councils UK should re-examine its approach to funding so that Scottish institutions delivering a comparable function to institutions elsewhere in the UK have access to the same sources of research funding, with the aim of ensuring that the effective framework for research that has been established across the UK is not jeopardised.

Since publication of the Commission's report the Scottish Agricultural College has been granted full access to funds as it is now a Higher Education Institute. The Scottish Government and the Biotechnology and Biological Sciences Research Council (BBSRC) have held discussions about access to funds for other main research providers. As a result we anticipate that they will have access to a capped total of BBSRC funding starting this financial year. We would welcome access to other Research Council funds on a similar basis.

RECOMMENDATION 5.19: There should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing Benefit and Council Tax Benefit systems (as they apply in Scotland) when these are connected to devolved policy changes, and for the UK Government – if it agrees – to make those changes by suitable regulation.

This requires further consideration. Due to the different natures of housing benefit and council tax and their relationship to Scottish Government policies, our response to the two distinct elements of this recommendation differ. Overall, the proposal would not necessarily increase responsibilities on Housing Benefit or Council Tax Benefit. However, the element of the recommendation in relation to Council Tax, if taken forward in spirit as well as word, may be helpful for future reform of local government taxation.

Housing Benefit

The Scottish Government believes that Housing Benefit policy and legislation needs to be adapted in such a way as to allow it to better integrate with the Scottish Government's policies in areas such as housing, transitions to work and closing the wealth gap. There are difficulties with the present system and substantial review is required.

However, the degree of autonomy afforded to Scotland by the Commission recommendation is more apparent than real. The report only allows for the Scottish Government to propose changes to regulations to the UK Government, not to make changes. Furthermore, the wide array of social security benefits and tax credits available in the UK are interdependent, meaning that changes to any one element of Housing Benefit are likely to have knock on effects to other areas of the benefit system and consequently impact on both the coherence and the cost of the overall benefits system.

Making meaningful changes to Housing Benefit in isolation from the rest of the benefits system is impractical. It is also unlikely that any meaningful change would be cost neutral.

Council Tax Benefit

The Report correctly identifies that the reserved nature of Council Tax Benefit is an inhibiting factor on the development of devolved local taxation policy. Although the Scottish Government is committed to the introduction of a fairer local income tax based on ability to pay, the Scottish and UK Governments currently disagree on the effects on council tax benefit revenue for Scotland's local authorities. Although we welcome the Commission's call for Scottish Ministers and the Scottish Parliament to be able to propose changes to the council tax benefit system, recommendation 5.19 does not go far enough. Currently UK Ministers decide whether such changes are made, even if this restricts rightly devolved matters. This recommendation would not alter that situation.

The UK Government's current position on Council Tax Benefit would mean that implementation of the Scottish Government's preferred option of Local Income Tax could have significant cost implications for local authorities and the Scottish Government. While Recommendation 5.19 calls for Ministers and Parliament to be able to request changes to be made where they have implications for devolved policy this option is already open to Ministers and Parliament. In effect, there is nothing to prevent Ministers or Parliament from making such a request at present, and recommendation 5.19 makes clear that UK Ministers would (as at present) retain discretion over whether or not to make the proposed changes by introducing the necessary secondary legislation. Although the intention of recommendation 5.19 is welcome we consider that, if implemented, it may not have any substantial practical effect.

RECOMMENDATION 5.20: A formal consultation role should be built into DWP's commissioning process for those welfare to work programmes that are based in, or extend to, Scotland so that the views of the Scotlish Government on particular skills or other needs that require to be addressed in Scotland are properly taken into account.

The Scottish Government supports this recommendation, which would strengthen the provisions of our Concordat with DWP, and help maximise the potential of DWP funding in Scotland. Since DWP programmes potentially impact on a variety of services funded by the Scottish Government, it is vital to involve us in the commissioning process at an early stage. This will help reduce inefficiencies and ensure that DWP provision is appropriately tailored to the Scottish context.

Increasingly, DWP programmes have a range of impacts on provision funded by the Scottish Government, such as skills/training, health-related services, regeneration and childcare. While Scottish Government is usually consulted on programmes affecting Scotland, the nature of that consultation can vary in quality and scope. A formal consultation role would be consistent with the Scottish Government's commitment to deliver an integrated employment and skills service to the people of Scotland. It would be for DWP to create a protocol, in discussion with Scottish Government, which could then be reflected in the Scottish Government's Concordat with DWP. In theory, this could be done quickly and with relatively little effort.

RECOMMENDATION 5.21: The Deprived Areas Fund should be devolved to the Scottish Parliament given the geographic nature of the help it is designed to provide and the fit with the Scottish Government's wider responsibilities.

The Scottish Government supports this recommendation, as it fits with the Government's localisation agenda in Scotland. This recommendation would enable Scottish cities to plan and spend in a more holistic and strategic fashion, thus helping more people into work in Scotland at a time of recession. This is just one measure whereby services funded by DWP could be enhanced through increased levels of devolution. We have previously argued for the devolution of DAF to Community Planning Partnerships (CPPs), so that it could be combined with Fairer Scotland Fund (FSF) and European Social Fund (ESF) allocations.

On a purely practical level this devolution should not be difficult to put in place. However, with the money already having been allocated, it could potentially be up to two financial years before the opportunity arises again for the money to be devolved.

RECOMMENDATION 5.22: As part of its considerations as to future reform of the Social Fund, the UK Government should explore devolving the discretionary elements of the Fund to the Scottish Parliament.

The Scottish Government supports this recommendation in principle although it requires further consideration. UK Government undertook a compressed consultation on the future of the Social Fund in December 2008. This proposed simplifying the Social Fund, creating a single loan scheme, replacing some of the current Crisis Loan facility with advance payment of benefit, and re-focussing the grant component of the Fund. These changes would address criticisms that the fund is not currently meeting the needs of those it should be supporting, by simplifying the operational arrangements for accessing grants and loans.

The consultation also sought views on whether the UK Government might use third sector organisations, in particular, credit unions, to deliver Social Fund loans. That attracted considerable adverse media coverage in the middle of December. Credit

unions charge up to 2% a month interest on their own loans, and it was suggested that similar rates might apply to Social Fund equivalent loans which they provided as well. The UK Government responded by claiming that was not its intention (and confirmed in its response to the consultation published in February 2009 that such loans will continue to be interest free).

The UK Government response also confirmed it intended to take enabling powers to allow it to enter into arrangements with external organisations to provide loans in place of the current DWP delivery of the Social Fund, and to introduce advance payments of benefits. It noted the UK Government would continue to explore options for introducing a single loan and a re-focussed grant, and have a more detailed public debate in due course.

The Commission proposes that as part of its considerations as to future reform of the Social Fund, the UK Government should explore devolving the discretionary elements of the Fund to the Scottish Parliament. This would present opportunities to better align the funding (£430m in Scotland in 2007/08) with Scottish priorities. Social Fund budgets are administered by 20 Benefit Delivery Centres, two of which are in Scotland. If funding were devolved, it could be administered by local government, or by third sector organisations.

RECOMMENDATION 5.23: The UK Insolvency Service, with appropriate input from the relevant department(s) of the Scottish Government, should be made responsible for laying down the rules to be applied by insolvency practitioners on both sides of the border. This should be achieved by UK legislation.

The Scottish Government does not agree with the Commission's conclusion that devolution has produced an unsatisfactory state of affairs relating to corporate insolvency. The Scottish Government is committed to the implementation of modern insolvency legislation for individuals and businesses in Scotland.

The division of responsibility between devolved and reserved areas is clear, although not always correctly understood in some of the evidence presented to the Commission. For example, ICAS told the Commission that primary legislation is reserved and secondary is devolved, which is not correct. There are differences between Scottish and English and Welsh rules. This is because the underlying legal framework is different. It may be that creditors do not always appreciate that the law in Scotland is different.

We do not agree that the delays in implementing Enterprise Act related changes to Scottish Rules have caused any damage. These amendments, which were introduced in December 2008, are of a technical nature and their delay did not have any serious impact on corporate insolvency practice in Scotland. The Scottish Government was right to prioritise the modernisation of personal bankruptcy. The Scottish Government has a programme of reform for corporate insolvency. We recently introduced further legislation on limited liability partnerships and intend to improve the transparency of Scottish rules by disentangling personal and corporate processes.

RECOMMENDATION 5.24: The interpretation provision in relation to "social security purposes" in the Scotland Act should be amended to make it clear that the reservation refers to social security purposes related to the type of provision provided by the UK Department for Work and Pensions.

The Scottish Government notes this argument but on balance disagrees with the recommendation. We are aware of the idea that the social security reservation in the Scotland Act could be interpreted broadly – at least as a theoretical proposition. But note in practice that the Scottish Parliament has legislated on a range of matters (including legal aid and prescription charges) and that this has not given rise to disputes about competence. The Scotland Act provides clear mechanisms for "devolution issues" to be addressed and there have in practice been no difficulties in relation to this aspect of the social security reservation.

Part 6: Strengthening the Scottish Parliament

RECOMMENDATION 6.1: In relation to the Parliament's committee system:

- a. The structure of dual-purpose committees established both to carry out investigative inquiries and to undertake the detailed scrutiny of legislation, should be maintained.
- b. The level of turnover of committee memberships during a session should be minimised, in order to enable committee members to build expertise.
- c. Committees should have the facility to establish sub-committees to address temporary problems of legislative overload, without this requiring the prior approval of the Parliament as a whole.

RECOMMENDATION 6.2: The current three-stage Bill process should be changed to a four-stage process, with Stage 3 becoming limited to a second main amending stage, taken in the Chamber, while the final debate on whether to pass the Bill would become Stage 4.

RECOMMENDATION 6.3: The Parliament should amend its rules so that any MSP has the right to propose, at the conclusions of the Stage 3 amendment proceedings, that parts of a Bill be referred back to committee for further Stage 2 consideration.

RECOMMENDATION 6.4: The Presiding Officer should be able to identify in advance of Stage 3 amendments that (in his view) raise substantial issues not considered at earlier stages. If, at the end of the amendment proceedings, any such amendment has been agreed to, relevant provisions of the Bill should be referred back to committee for further Stage 2 consideration unless the Parliament decides otherwise (on a motion that may be moved only by the member in charge of the Bill).

RECOMMENDATION 6.5: Section 31(1) of the Act should be amended to require any person introducing a Bill in the Parliament to make a statement that it is (in that person's opinion) within the Parliament's legislative competence.

RECOMMENDATION 6.6: The Explanatory Notes published with a Bill should give a general account of the main considerations that informed the statement on legislative competence under section 31(1).

RECOMMENDATION 6.7: Section 19(1) of the Scotland Act should be amended so as to loosen the requirement on the Parliament to appoint a Presiding Officer and

deputies at the first meeting of a new session, and to enable additional deputies to be appointed if and when that becomes appropriate.

RECOMMENDATION 6.8: There should be a review of all other provisions in the Act that constrain the Parliament in terms of its procedures or working arrangements to ensure they are proportionate, appropriate and effective.

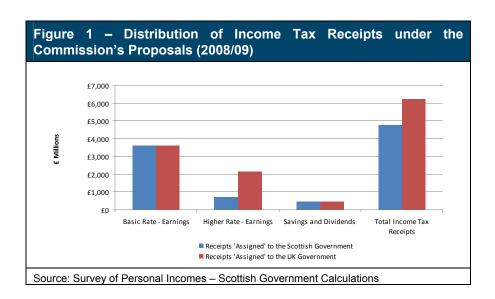
These recommendations are for Parliament to consider but the Scottish Government believes that as our Parliament and democratic culture continues to grow and to develop, the challenges are to make Parliament a relevant and accessible place for all Scots and to ensure it is open and responsive to change. As the Commission recognises, for the most part it will be for the Parliament to work through the detail of any changes proposed to the legislative process or how the Parliament functions. The Government would want to ensure that the Parliament's procedures remain effective and do not become unduly cumbersome and bureaucratic as a result of any change.

THE COMMISSION'S INCOME TAX RECOMMENDATIONS

- Under the Commission's recommendations, the Scottish Variable Rate of income tax would be replaced by a new Scottish rate of income tax, collected by HMRC, which would apply to the basic and higher rates of income tax on earned income. To make this possible, the basic and higher rates of income tax levied by the UK Government in Scotland would be reduced by 10p.
- If the Scottish Government wished to maintain an identical income tax rate in Scotland relative to the UK as a whole, the framework would be that set out in Table 1 below. It is important to note that Scotland would only be assigned 1/4 of revenues generated from the current higher rate, and only 1/5 of all revenues generated from the new top rate of tax, scheduled for introduction in 2010-2011.

| Table 1 - Summary of The Commission's Proposals | | | |
|---|-----------------|--------|----------------------|
| | Scottish Gov | UK Gov | Scotland' s Share |
| Basic Rate (20%) | 10% | 10% | 1/2 |
| Higher Rate (40%) | 10% | 30% | 1/4 |
| New Top Rate from 2010-11 (50%) | 10% | 40% | 1/5 |

 The Scottish Government's share of Scottish income tax revenue under these proposals is illustrated in Figure 1. Approximately 44% of total income tax receipts raised in Scotland would accrue to the Scottish Government under the recommendations. This would correspond to approximately 14% of the total Scottish Government budget in 2008/09.

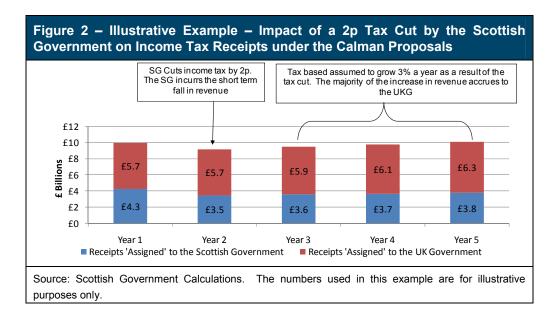


Accountability, Transparency and Economic Efficiency

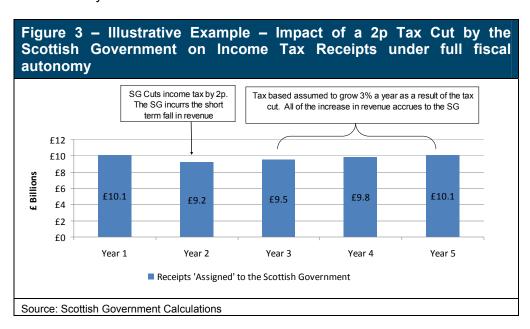
- As set out in the earlier National Conversation paper *Fiscal Autonomy in Scotlland*¹, accountability and transparency are vital in ensuring public support and trust in the political system, better governance and in delivering efficient policy choices and strategies.
- At the same time, a financial framework that encourages efficiency is vital to creating an
 environment conducive to best practice, innovative policies and enhancing competitive
 advantage.
- But, accountability and efficiency are limited in this framework.
- Firstly, it is not entirely clear that the proposed system represents a fundamental departure from the current framework. The Barnett formula will remain the single most important determinant of the Scottish Government Budget and will continue to be set at the discretion of the UK Government. At the same time, the process for varying income tax in Scotland is likely to remain similar to that under the current Scottish Variable Rate (SVR). The UK income tax rate will remain the baseline to which all changes are compared. For example, the choice to set a rate of 8 pence under the Calman proposals will be similar, in decision making and thought process, to setting a reduced rate of 2 pence via the Scottish Variable Rate. With expenditure pre-commitments, limited additional sources of revenue, a tight fiscal settlement and a like-for-like reduction in the block grant, the effective scope for differential income tax policy in Scotland vis-à-vis the rest of the UK is likely to be severely constrained.
- Secondly, key fundamental principles for establishing economic efficiency are not satisfied in this framework. For example, under the Commission's recommended income tax system, tax decisions by one government will create 'externalities' in terms of the amount of revenue collected by the other. Economic theory clearly demonstrates that such arrangements can lead to peculiar outcomes and efficiency will not be obtained.
- Illustrative Example: (based upon the Commission's own illustrative example) Scottish Government cut income tax by 2 pence. The example provided in the Commission's report demonstrates that the receipts accruing to the Scottish Government would fall by approximately £800 million between year 1 and year 2 as a result of this decision, as illustrated in figure 2. However, the Commission failed to consider the long term impact of a change in income tax, and this can have very significant implications. For example, suppose that following the cut in income tax, in subsequent years, total income tax revenues collected in Scotland rise by 3% a year in real terms. This figure is for purely illustrative purposes. The impact on the tax revenue accruing to the Scottish and UK Governments is illustrated in Figure 2.

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¹ Scottish Government (2009) Fiscal Autonomy in Scotland: The case for change and options for reform.



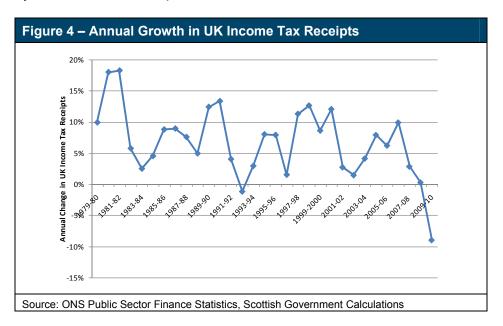
- Pesult: decision by Scottish Government to reduce the rates it controlled would permanently reduce its share of total Scottish income tax receipts. Therefore, although in year 5 total income tax receipts in Scotland would have returned to their year 1 level, there will have been a permanent relative transfer from the Scottish Budget to the UK Government. In this scenario, receipts accruing to the Scottish Government will have fallen by £500 million between year 1 and year 5. Receipts assigned to the UK Exchequer will have risen by £600 million. Clearly financial accountability is not obtained.
- In effect, under the Commission's proposals, the Scottish Government would incur the short run cost in year 2 from reducing the tax rate, but it would be the UK Government which received the majority of any benefit in future years if the policy successfully increased tax receipts. This may raise questions of credibility and accountability.
- In contrast, as highlighted in Figure 3, all the costs and benefits of the proposal would be captured by policy makers under a system of full fiscal autonomy. The system is therefore more efficient, more likely to encourage best practice and to deliver greater financial accountability.



Furthermore the transparency of the system proposed by the Commission, a vital condition
for ensuing financial accountability, is open to question. Taking all the Commission's
proposals together, a system which retains the Barnett Formula, alongside a complex mix
of devolved taxes, HM Treasury discretion, tax assignment, tax sharing and reserved taxes,
may in fact hinder transparency rather than improve it.

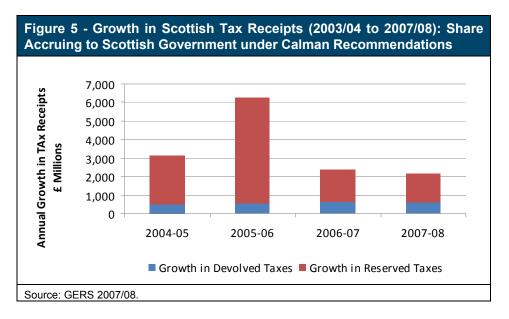
Implications for Public Spending

- Ensuring predictability in public finances is a vital pre-condition for delivering efficient public services and facilitating sustainable economic growth.
- The Commission's proposals could expose the Scottish Budget to a significant degree of volatility, with only limited levers to mitigate these effects.
- Under the Commission's proposals, the Scottish Budget would be dependent upon the revenue raised from one particular element of the tax system. In contrast, most governments utilise a basket of taxes for funding. Diversification can provide greater stability and predictability in budgeting.
- For example, between 2008/09 and 2009/10, UK income tax revenues are forecast to fall by £13 billion. Under the framework proposed by the Commission, and assuming that the impact in Scotland was the same as in the rest of the UK, this could have resulted in the Scottish Government Budget falling by £400 million during 2009/10, at precisely the point of the economic cycle where an increase in government spending is necessary to support the economy and offset the fall in private sector demand.

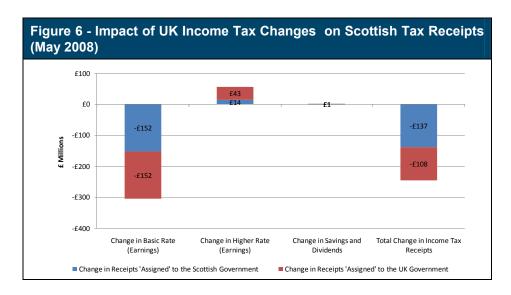


- The possible implications of fluctuations in revenue for public services can be mitigated through effective management of borrowing and end of year flexibility. But these powers are severely constrained under the Commission's proposals for borrowing autonomy.
- Under the Commission's proposals, Scotland would only be able to borrow for capital investment and management of 'cash flow'. However, borrowing to facilitate automatic stabilisation is explicitly ruled out.

- There is therefore a risk that without cyclical borrowing powers, an economic slowdown could put pressure on the Scottish Government budget, and could force a future Scottish Government to cut public spending or raise taxes at the wrong point in the economic cycle. At a given point in time, the ability to borrow for cash flow purposes may already be being used to account for different periods in collection of revenue and therefore there will be no scope to use this mechanism to protect public services.
- In addition, the unique nature of the Commission's proposals mean that while the Scottish Budget would be exposed to significant vulnerability from declining revenues in one particularly element of the tax system, it would not share in the full benefit of increased revenues when the economy grows. For example, between 2003-04 and 2007-08, public sector revenue in Scotland increased by an average of £3.4 billion a year, including a geographical share of North Sea revenues. The Commission's proposals mean that the Scottish Budget would have only received around 17% of this increase Figure 5.



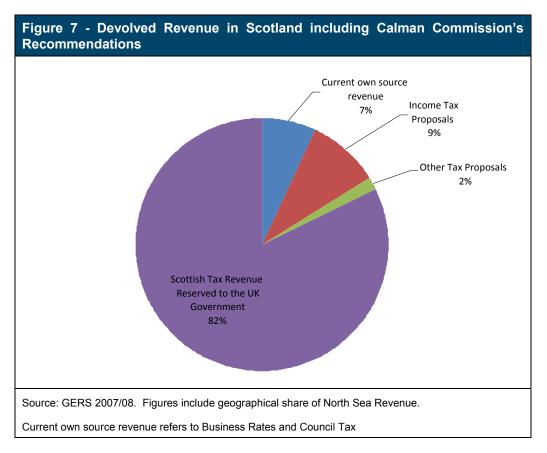
- There is also a risk that the Scottish Budget could be squeezed inadvertently following a technical or administrative adjustment at the UK level.
- Unlike a system of full fiscal autonomy, the Scottish Budget would be subject to risks arising
 from unilateral decisions taken at Westminster which shifted the balance of the income tax
 system, even if the total amount of taxation collected in Scotland remained the same (or
 even increased).
- For example, in May 2008, the UK Government announced an immediate, and unplanned, increase in income tax personal allowances and a corresponding reduction in the upper threshold for higher tax payers. This decision led to a reduction in the amount of income liable for tax at the basic rate, and an increase in the income liable for tax at the higher rate.
- Under the Commission's proposals, the Scottish Budget would have borne the brunt of this
 decision. As highlighted in Figure 6, the Scottish Government would have suffered 56% of
 the adjustment costs despite only collecting approximately 44% of total tax revenues.



- More generally, in the future the Scottish Government Budget could be exposed to budgetary cuts as a result of unilateral decisions by the UK Government to alter the balance of the overall tax system in the UK from income tax – e.g. to national insurance, 'green taxes' etc.
- In this regard, the Scottish Government and wider public sector in Scotland, may be held accountable for changes in policy which are the result not of direct policy decisions in Scotland, but changes at the UK level.

Fiscal Autonomy

 Under the Commission's proposals, the Scottish Government would be assigned less than half of total income tax receipts raised in Scotland. On most recent estimates, approximately 80% of total tax revenue raised in Scotland would continue to accrue to the UK Government.



Under the Commission's proposals, key policy levers for enhancing Scotland's competitiveness and delivering environmental sustainability, including corporation tax, VAT, national insurance contributions, capital gains taxation and environmental taxation would remain reserved. The Commission also chose not to recommend devolving control over North Sea taxation, or the establishment of a Scottish Oil Fund².

² The Scottish Government has set out the case for establishing an oil fund in the report An Oil Fund for Scotland http://www.scotland.gov.uk/Publications/2009/07/28112701/0

- In addition, responsibility for key elements of the income tax system, such as personal allowances, tax thresholds, the tax rates on savings and dividends, the opportunity to establish tax breaks for particular groups such as pensioners and the self-employed and the integration with the wider tax and welfare system, would remain reserved. The Scottish Government would only be able to apply relatively broad brush changes to the income tax system, and even then, constraints on funding prior service commitments would limit the practical opportunities to deliver real policy autonomy.
- Targeted and potentially redistributive measures, open to the UK Government, through adjusting the structure of the income tax regime and its interaction with other taxes would not be possible.