



HM Government

Strengthening Scotland's Future



Strengthening Scotland's Future

Presented to Parliament
by the Secretary of State for Scotland
by Command of Her Majesty

November 2010

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PREFACE

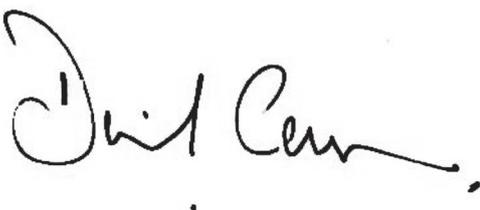
Right from the outset, this Coalition Government has shown its commitment to making the Devolved Administrations work well, and pursuing an agenda of respect between our Parliaments.

For Scotland, implementing the recommendations of the Commission on Scottish Devolution (the Commission) has been fundamental to this. It is absolutely right that Scotland has a greater degree of fiscal autonomy. And that is exactly what the Scotland Bill will deliver.

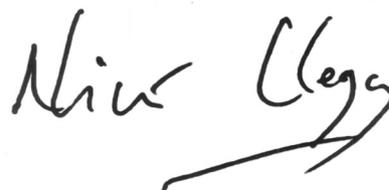
The proposals to devolve tax-raising powers mean that, for the first time, spending decisions made in Scotland will have proper consequences for taxation in Scotland. And this ability to take decisions on both spending and taxation will give the Scottish Parliament and the Scottish Government the responsibility to make policy decisions that reflect the needs of Scotland's economy and the will of Scotland's citizens.

Support for this commitment is spread wider than the Coalition Government itself. The Commission, chaired by Professor Sir Kenneth Calman, was established with the approval of the three largest UK-wide political parties. Its conclusions received support from those parties, the Scottish Parliament itself, and from individuals and organisations outside party politics. We are taking forward the Commission's recommendations in the spirit of this broad consensus.

We are determined to ensure that the Scottish Parliament is empowered to meet the needs of the Scottish people and that it is properly accountable to them. The Scotland Bill, together with the other actions outlined in this paper, will strengthen Scotland's democratic institutions and increase people's participation, and stake, in the decisions about Scotland's future.



Rt Hon. David Cameron MP
Prime Minister



Rt Hon. Nick Clegg MP
Deputy Prime Minister

FOREWORD

Today the UK Government has introduced the Scotland Bill in Parliament to deliver on the commitment in the *Programme for Government* to strengthen and deepen the Scottish devolution settlement. Our legislation, based on the recommendations of the Commission on Scottish Devolution (the Commission), will develop the arrangements set out in the Scotland Act 1998, which established the first democratically elected Parliament for Scotland. Drawing on support from different political parties and many different groups and individuals in civic Scotland, we will enhance the financial accountability of the Parliament and Government in Scotland, improve working arrangements between Westminster and Holyrood Parliaments and Governments, and extend the powers and functions of the Scottish Parliament and the Scottish Government.

The Commission was established to consider these issues by the Scottish Parliament, and was fully supported by the previous Government and the UK-wide parties. In June 2009 the Commission published its final report on the experience of ten years of the operation of the Scottish devolution settlement. The consensus arrived at by the Commission is clear. The devolution settlement created for Scotland in 1998 is fundamentally sound, but should be strengthened, and in particular the financial accountability of the Scottish Parliament should be improved.

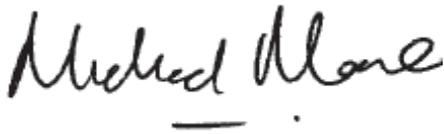
The Commission found that devolution has brought clear benefits to Scotland, ensuring Scottish solutions to Scottish problems. Those of us who have been fortunate enough to represent Scotland's people in Westminster and Holyrood have seen this success first hand. By implementing the Commission's recommendations, we will enable a new Scottish income tax to be set to increase the financial accountability of both the Scottish Government and Parliament. The Scotland Bill provides the framework for this; and careful, phased implementation, as the Commission envisaged, will ensure successful delivery of this increased power within the devolution settlement.

The Scotland Bill is just part of the Government's response to the Commission's recommendations. At the heart of the Commission's report is the desire to ensure that strong relationships exist between Governments and Parliaments. Alongside the Bill, this paper sets out how we are taking forward the recommendations from the Commission, not only improving the legal framework that established devolution in Scotland, but also supporting the relationships between officials, Ministers and Parliaments to ensure its continuing success.

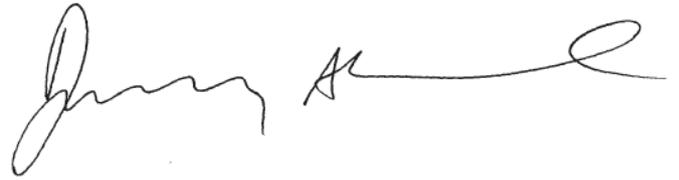
Since taking office in May 2010, the Coalition Government has demonstrated its firm commitment to implementing the recommendations of the Commission and strengthening Scottish devolution. The Queen's Speech made it clear that the Government

would introduce a Scotland Bill to deliver those recommendations requiring changes to be made to legislation. We are pleased today to fulfil that promise.

There are many people to thank for getting us here: Professor Sir Kenneth Calman and all of his Commission, the Independent Expert Group on Finance and all those who submitted evidence and gave their views to the Commission. We would also like to express our thanks to colleagues from across the political spectrum at Holyrood and Westminster, as well as those from across Scotland and other parts of the UK who have given us their expertise, advice and assistance.



Rt Hon. Michael Moore MP
Secretary of State for Scotland



Rt Hon. Danny Alexander MP
Chief Secretary to the Treasury

EXECUTIVE SUMMARY

The Scotland Bill and the measures outlined in this Command Paper signal the beginning of a new phase in Scottish devolution. The Government's proposals to further empower the Scottish Parliament will increase its capacity, enhance its responsibility and heighten its accountability. In doing so, we will strengthen Scotland's future within the UK.

The Coalition Government's *Programme for Government* promised this through its commitment to implement the recommendations of the Commission on Scottish Devolution (the Commission). Six months later, these detailed plans are fulfilling that promise.

The Commission – supported by all three major UK political parties – was tasked with assessing the first decade of devolved government in Scotland, identifying areas in which the settlement might be strengthened and suggesting the means to do so. The Commission concluded that devolution has been a success. It has brought Scottish government closer to the Scottish people and made it responsive to their needs. In the process, the Scottish Parliament has matured and acquired a central role in the governance of Scotland.

Whilst the Parliament has grown in stature, the Commission found that it has also been constrained by the limits of its powers. The final report outlined a number of areas in which the Parliament's competence should be altered and enhanced. This Command Paper examines

each of these areas, explaining how we have interpreted the recommendations and, where appropriate, modified or supplemented them. Throughout we have adhered to the spirit of the Commission's recommendations.

Central to these recommendations was the Commission's view that the Scottish Parliament should be responsible for raising more of its revenue rather than simply spending it. Without those powers, the Parliament lacks the accountability of devolved legislatures in comparable countries.

The Scotland Bill will solve that problem. The Government proposes the largest transfer of fiscal power from London since the creation of the United Kingdom. The Scottish Parliament will move from raising approximately 15% of its own budget to approximately 35%, a level similar to devolved legislatures in Belgium, Italy, Spain and Australia.

The proposals consist of:

- A Scottish income tax to replace part of the UK income tax
- The devolution of land tax and landfill tax
- The power to create or devolve other taxes to the Scottish Parliament
- Extensive new borrowing powers

- A Scottish cash reserve to manage fluctuations around devolved tax receipts
- A seat for Scottish Ministers on a new UK-Scottish tax committee

These powers will equip the Scottish Parliament and the Scottish Government to make policy choices that will shape Scotland's economic future. They will bring decision-making closer to the Scottish people, and make the political system more responsive to the needs of Scottish business and Scottish society. This is about empowerment and accountability, hand in hand.

In 1999, the creation of a Scottish Parliament was the settled will of the Scottish people. In recent years, a consensus has grown to take that process further. Far-reaching constitutional change can only happen where there is widespread support for that. The Commission's proposals achieved that support. As a result of the 2010 General Election the settled will is now for these proposals, and this Government will turn their principles into practice.

Increasing the financial accountability of the Scottish Parliament

The Government will be making changes to the way the Scottish Parliament is funded to strengthen its accountability to the people of Scotland. The Bill will include provisions to repeal the Scottish variable rate of income tax. In its place the Bill will include power for the Scottish Parliament to put in place a Scottish income tax. The tax will be derived from reducing the existing rates of income tax by 10 pence and adding a new amount on to each of the basic, higher and additional rates of tax. The Bill

will provide for the devolution of stamp duty land tax and landfill tax by firstly ceasing the application in Scotland of these UK-wide taxes and then giving the Scottish Parliament the competence to create an equivalent land tax and landfill tax of its own. The Bill will ensure that Her Majesty's Revenue and Customs (HMRC) can act on behalf of the Scottish Parliament to collect taxes although the Scottish Parliament may choose alternative collection arrangements. The Bill will also provide borrowing powers that are more generous than those envisaged by the Commission, providing a substantial power to borrow to finance capital expenditure and also a power to borrow to finance current expenditure when tax receipts are less than expected. A Scottish cash reserve will be introduced alongside these powers which can be used to manage fluctuations around devolved tax receipts.

The block grant will be reduced to compensate for the increased tax-raising powers of the Scottish Parliament. The Government will work with the Scottish Government and key stakeholders to determine how this can be achieved without negative impact on the Scottish or UK economies. Consistent with the Commission's recommendations, these financial measures will be implemented in a phased way, beginning in 2013. The Scottish Parliament elected in 2015 will be the first which is required to make substantial decisions about the levels of taxation in Scotland in order to fulfil the Scottish Government's programme.

The Commission recommended that aggregates levy and air passenger duty should be devolved. Aggregates levy is currently subject to legal challenge and it would not be sensible to

devolve this while issues are being considered by the European Courts. The Government will consider devolution of this levy when the court proceedings have been completed. On air passenger duty, the Government is considering the wider future of aviation duty, and it would not be practical to devolve this duty while these considerations are ongoing. The Government will consider devolution as part of the ongoing work on aviation taxation.

The Commission recommended that it should be possible to devolve other taxes to the Scottish Parliament in the future. The Government agrees and a clause is included in the Bill to enable this.

Going forward, the relationship between the two governments will need to reflect that both administrations now share a significant tax base in Scotland and there will be a new degree of interdependency around their policies. The UK Government will therefore establish a UK-Scottish tax committee, comprising Ministers from both Governments, which will discuss shared interests in taxation and macroeconomic policy.

The Commission placed great emphasis on the need for transparency around the new financial arrangements. The Government embraces this, and places emphasis on ensuring that the system is as transparent as possible with the key components either verified independently, such as by the National Audit Office, or dependent on independent sources such as the Office for Budget Responsibility.

Strengthening relations between Parliaments and Governments

The Commission made a number of recommendations aimed at strengthening the relationships between the UK and Scottish Parliaments and the UK and Scottish Governments.

The Government is committed to an agenda of mutual respect in its work with the Scottish Parliament and the Scottish Government. The Prime Minister made an early visit to the Scottish Parliament and Coalition Ministers have continued to engage with the Scottish Parliament. The Commission also made a number of specific recommendations as to how the UK and Scottish Parliaments could increase their communication and co-operation. These recommendations are for the Parliaments themselves to take forward and the Government will provide whatever support is asked of it to help implement them.

The Commission made a number of recommendations aimed at improving the operation of the Joint Ministerial Committee (JMC). The JMC is jointly owned by the Government and all three Devolved Administrations. The Government will, along with all members, keep the operation of the JMC under review to ensure that it works to increase co-operation, communication and mutual respect.

The Commission made a number of recommendations in relation to improving co-operation on European business. The Government is committed to working closely with Scottish Ministers, and Ministers from Wales and Northern Ireland, to ensure that their

views are taken into account when developing UK positions on European Union business. This will be achieved through bilateral contact and through the formal machinery of the JMC. The Government will respond positively to requests from the Devolved Administrations to attend, and speak at, EU Councils covering devolved matters, unless there are compelling reasons for them not to do so.

The Commission recommended that the Civil Service Code should be updated to reflect the need for mutual respect and co-operation between civil servants working for different administrations in the UK. This was included in the version of the Code published on 11 November 2010. The Prime Minister no longer plays a role in the appointment of senior Scottish civil servants; for example, the First Minister was fully involved in the appointment of the Permanent Secretary to the Scottish Government. To improve close working with the Scottish Government, the Cabinet Office supports a Whitehall devolution network involving the Devolved Administrations, and runs a comprehensive training and awareness raising programme.

Improving the constitutional framework

The Government is taking the opportunity provided by the Scotland Bill to make adjustments to the constitutional framework of the Scottish Parliament as set out by the Commission. These changes have been discussed in detail with the Scottish Parliament and are being made with its agreement.

The Bill will enable the Scottish Parliament to be able to set its own Members' interests regime.

The Bill will ensure that any member of the Scottish Parliament introducing a Bill must make a statement under section 31 of the Scotland Act 1998 as to whether the Parliament has the competence to deal with the legislation (at present this obligation is only imposed on Scottish Ministers). The Bill will ensure that the appointment of the Presiding Officer continues to be the first substantive piece of business that the Parliament considers, but will allow up to 14 days for this appointment to be made, should the election outcome be close. The Bill will also provide for the appointment of additional Deputy Presiding Officers. The Scottish Parliament Corporate Body (SPCB) currently comprises the Presiding Officer and four other members, reflecting the four major parties represented at Holyrood. The Bill will make an amendment to the composition of the SPCB to ensure that it comprises the Presiding Officer and at least four members to enable other political parties to be represented on the SPCB if there is a change in political composition of the Scottish Parliament.

The Bill will also make minor adjustments to the powers in section 30 of the Scotland Act 1998 to ensure that any Acts of the Scottish Parliament made on the basis of competence which has been temporarily transferred to the Scottish Parliament and returned to Westminster continue to have effect in law.

Administration of elections

The Bill will enable Scottish Ministers, rather than the Secretary of State, to exercise certain executive powers in relation to the administration of elections to the Scottish Parliament. Elections policy itself is an integral

part of the constitutional fabric of the UK and so will not be devolved.

Policing and justice

A number of powers are being devolved to the Scottish Parliament and Scottish Ministers to enable them to deal more effectively with concerns in the field of policing and justice.

The Bill will give the Scottish Parliament the ability to tackle specific Scottish concerns about air weapons. The Bill will transfer to Scottish Ministers the power to alter the drink-drive limit that applies when driving in Scotland. The Bill will also include a power to enable Scottish Ministers to exercise powers to set the 'national speed limit' in Scotland and to regulate the design of a traffic sign to indicate any 'national speed limit' they choose to set.

Health and public safety

The Bill will transfer to Scottish Ministers the function of determining which doctors in Scotland may be licensed to administer specific drugs for the treatment of drug addiction. The Bill will also reserve the regulation of all health professions and not just those currently regulated by the enactments listed in the Scotland Act 1998. Although health care is devolved, the Government believes that it is in the best interests of patients for the overarching responsibility for standards to be at UK level.

The Health and Safety Executive has been working closely with the Scottish Parliament, the Scottish Government and other Scottish authorities to improve the understanding of their respective responsibilities. This will help to

contribute to the effectiveness of the health and safety system in Scotland as envisaged by the Commission.

The Government agrees with the Commission that there should be a single framework for managing immigration in the UK, with the flexibility to meet Scottish needs. The UK Border Agency works closely with Scottish authorities to discuss approaches to immigration policy which work best for Scotland. The Migration Advisory Committee oversees a Scottish Shortage Occupation list to address specific gaps in the Scottish labour market. In respect of another of the Commission's recommendations, the Government is committed to working with Scottish authorities to ensure that their statutory obligations towards the children of asylum seekers are respected.

Business, corporate affairs and academic research

The Commission made a number of recommendations about the appointment of members of the BBC Trust, powers over corporate insolvency, food labelling and Research Councils.

The Bill will provide for UK Ministers to act jointly with Scottish Ministers in deciding who to recommend for appointment as the BBC Trust member for Scotland.

The Government recognises that changes in liquidation law have led to increasing discrepancies in the law between Scotland and England and Wales, which have caused problems for users of the legislation. The Bill will therefore adjust the powers of the Scottish

Parliament to reserve fully the winding-up of business associations.

The Commission recommended that 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. Having considered the recommendation with great care, the Government does not believe that the Scotland Act needs amending. Most of the law on food content and labelling is currently decided at European level. The scope for the Scottish Parliament to legislate differently on food content and labelling in a way that would create extra burdens within the UK is severely limited by the requirement to implement EU law consistently. The only way the Government could ensure the Scottish Parliament could not legislate on food labelling and content and impose extra burdens on business would be to remove entirely the Scottish Parliament's competence to legislate on food labelling and content for the purposes of protecting public health. This would go beyond the Commission's recommendation, and run counter to the spirit of devolution.

The Commission concluded that Research Council UK should re-examine its approach to funding, to allow Scottish institutions to have access to the same sources of funding as institutions elsewhere in the UK. Research Councils are responsible for determining eligibility criteria for research funding which apply consistently across the UK. They keep their criteria under review to ensure that there is no distinction in how funds are distributed to research institutions across the UK.

Natural environment and rural affairs

The Commission made a specific recommendation that funding for policy relating to animal health should be devolved. The Government agrees with the Commission and a project board comprising representatives from the Department for Environment Food and Rural Affairs and all three Devolved Administrations is working towards devolving budgetary responsibility by April 2011.

The Commission recommended that the agreement of the JMC on shared management of the marine environment should be kept under review. The Government will consider further devolution of powers to Scotland once it has assessed, with all members of the JMC, the effectiveness of current arrangements.

The Commission also recommended creating a specific Scottish Crown Estate Commissioner. The Bill will achieve this and require that Scottish Ministers are consulted on the Commissioner's appointment. The Commission recommended that the Secretary of State for Scotland should actively use his power to issue a Direction to the Crown Estate. The Government is working with the Crown Estate to improve transparency in relation to its Scottish operations, and the Government will keep the work of the Crown Estate under review, and it will use the power to issue a Direction only where necessary.

Social security and welfare reform

The Commission made a number of recommendations about social security and welfare provision. The Government agrees that there needs to be improvement in the

interaction between reserved and devolved responsibilities at the interface between welfare and areas such as health, skills and housing. The Government launched its White Paper '*Universal Credit: Welfare that works*' on 11 November 2010, setting out the Government's plans to reform the system of working-age benefits and Tax Credits by creating a new Universal Credit. New powers will be devolved to the Scottish Government and local authorities in Scotland as a result of the Government's proposed introduction of the Universal Credit. These powers will be brought forward in a Welfare Reform Bill in January 2011.

Charities

The Commission recommended that Parliament should, with the consent of the Scottish Parliament, legislate to ensure that there is a single statutory definition for charity and charitable purposes which applies across the UK. The Government recognises that different legal definitions have arisen as a historical consequence of the separate legal systems in Scotland and England and Wales. The Government will be conducting a review of the Charities Act 2006 (which applies across England and Wales) shortly, and will involve charities from across the UK, and the Scottish Government and the Scottish Parliament. In undertaking this review the Government will take the Commission's recommendations into consideration.

The Scottish Government

Reflecting the everyday usage of the term, the Bill will formally replace the term 'Scottish Executive' with 'Scottish Government'.

Technical amendments to the Scotland Act 1998

The Government is also taking the opportunity provided by the Scotland Bill to make technical changes to the Scotland Act. The Government will amend the powers of the Scottish Parliament to set time limits for human rights action against Scottish Ministers in UK statute (currently provided to Scottish Ministers under section 30 order as a result of the *Somerville* judgment), confirm the reservation of the Antarctic, ensure that criminal penalties that apply in the Scotland Act are updated to reflect the current standards applied in Scottish courts, enable powers transferred to Non-Departmental Public Bodies to be given to Scottish Ministers (on a case-by-case basis), make sure that UK-wide international obligations are always implemented, and enable single provisions of Bills to be sent to the Supreme Court for scrutiny, rather than require the whole Bill to be scrutinised, as is the case at present.

The Government is currently considering whether any change is needed to section 57(2) of the Scotland Act 1998. The Advocate General for Scotland established a group of experts to consider this issue and held a short informal consultation. The results of the consultation and the views of the group of experts are currently being considered. If the Government concludes that amendment to section 57(2) (or any other provision in the Scotland Act) is required to resolve any difficulties arising in relation to the acts of the Lord Advocate post devolution as head of the system of prosecutions in Scotland, amendments to the Scotland Bill will be brought forward at an appropriate stage.

CHAPTER 1: INTRODUCTION

Devolution has strengthened Scotland. The Scottish Parliament has brought decision-making – on education, health, the environment, justice issues, sport, transport – closer to the people those decisions affect. The devolution settlement has not stood still. Since 1998 Scotland has gained further powers. Ten legislative orders have been passed which have increased the competence of the Scottish Parliament and 16 orders have been passed which have extended the powers of Scottish Ministers¹. The broad settlement provided for in the Scotland Act 1998 has been shown to work, but after the first decade of devolution it was appropriate to review the settlement.

In December 2007, the Commission on Scottish Devolution (the Commission) was established by majority support in the Scottish Parliament, and with the support of the then UK Government, and was given the remit:

‘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 Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the

position of Scotland within the United Kingdom.’

Chaired by Professor Sir Kenneth Calman, the Commission’s membership included representatives of the three main UK parties in Holyrood: Conservative, Labour and Liberal Democrat. The rest of the Commission’s membership was drawn from business, education, the wider public sector and other figures from public life in Scotland. The Commission was independent of any political party and was also independent of the Scottish Parliament and the UK Government, although it reported to both.

Commencing its work in April 2008, the Commission gathered evidence from a wide range of sources and engaged directly with the people of Scotland and elsewhere in the UK, through consultation papers, public evidence sessions and surveys.

The Commission published a first report on 2 December 2008, outlining its interim progress and pointing to a range of issues where further evidence and engagement was required. It published its final and unanimous report on 15 June 2009. This report is widely regarded as a seminal analysis of Scotland’s place in the UK.

The Commission found that the people of Scotland welcomed the fact that Scottish issues were now debated and decided in Scotland. Innovative policies and working methods had helped to bring about important and pioneering

¹ For example, interception of communication is a reserved matter and governed by the Regulation of Investigatory Powers Act 2000 (RIPA). However, Scottish Ministers have responsibility for policing in Scotland. In 2007 the Government devolved to Scottish Ministers the function of issuing interception warrants to the police in Scotland for the purpose of combating serious crime. The legal framework in which the warrants are issued is still governed by Parliament, yet the function of issuing interception warrants is carried out in Scotland by Scottish Ministers.

legislation – the Scottish Parliament was the first in the UK to legislate on smoking in public places, a move that was followed across the whole of the UK. The Scottish Parliament had matured into a firm feature of public life, bringing Government closer to the electorate and giving Scotland a more accountable administration.

The Commission reached three central conclusions: that the financial accountability of the Scottish Parliament should be increased; that inter-governmental and inter-parliamentary relations should be improved; and that whilst the division of responsibilities between devolved and reserved powers was broadly right, some minor amendments should be made. The Commission also made specific recommendations aimed at strengthening processes and procedures in the Scottish Parliament.

The Commission proposed a new financial model, giving the Scottish Parliament the flexibility to set the level of income tax in Scotland, replacing the Scottish variable rate with a new Scottish rate of income tax which would apply to basic and higher rates and still be collected by Her Majesty's Revenue and Customs (HMRC). It also identified four less mobile taxes – stamp duty land tax, the aggregates levy, landfill tax and air passenger duty – and recommended that they be devolved to the Scottish Parliament. The Commission stressed that the implementation of the financial recommendations should be carefully managed over a period of time.

A second key strand in the Commission's report covered co-operation between the UK and Scottish Parliaments and Governments.

The report highlighted their different areas of responsibility and acknowledged the existence of political differences and competition between their members. It also recognised that these differences were a sign of a healthy democracy. The recommendations in this area centred around better and more transparent ways of working together, underpinned by the guiding principle of mutual respect between administrations and institutions at UK and Scottish levels.

In the third major area of the report, the Commission considered enhancing the devolution settlement. It concluded that the division of responsibilities in the Scotland Act had been carefully considered and worked well in practice. The Commission concentrated its efforts on specific areas where there appeared to be problems or pressure for change. In doing this the Commission identified a number of instances where matters should be devolved and other areas that would be better dealt with at a UK level.

The Government strongly supports the Commission's findings, and has been working since May to put these proposals into effect. The Government has worked closely with a range of stakeholders across Scotland and the UK to ensure that the proposals included in the Scotland Bill and the responses set out in this paper deliver for the people in Scotland.

It was the Scottish Parliament that established the Commission. Under the terms of the Sewel Convention, whereby the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament, it will be for the Scottish Parliament to indicate their

approval for the measures contained within the Scotland Bill. The previous Government established a Steering Group to ensure that the political consensus in support of the Commission's final report was maintained. Following the General Election this group has continued to meet to ensure that the Scotland Bill and this paper reflect the agreement and aspiration of the majority in Scotland.

At the same time the Government has been engaging with experts on particular parts of the Commission's recommendations. The Government established a High Level Implementation Group, chaired jointly by the Secretary of State for Scotland and the Exchequer Secretary to the Treasury, that includes taxation, accountancy and payroll practitioners along with representation from employers, employees and other organisations. Its remit is *'To advise the UK Government on the practical implications of the implementation of the Commission on Scottish Devolution's taxation proposals for those liable to the taxes or involved in their collection'*. This group is supported by further technical groups established by HMRC to consider specific aspects of the implementation of the new devolved taxes. These groups will have an especially important role as the Scotland Bill's taxation powers are only enabling provisions and will require the implementation arrangements to be defined in secondary legislation.

The Government has also been working closely with the Scottish Parliament. The Standards, Processes and Public Appointments Committee (SPPA) of the Scottish Parliament considered in detail how those recommendations that impact upon the operation of the Scottish

Parliament could be implemented. The SPPA published a detailed report on 26 September 2010 and the Scottish Parliament subsequently endorsed the findings of the SPPA in a debate on 29 September 2010. Scotland Office officials have been working closely with the SPPA to ensure that the relevant clauses in the Scotland Bill reflect the wishes of the Scottish Parliament.

The Bill published today, and this paper, set out in detail how the Government will implement the Commission's recommendations. Some of the recommendations in the Commission's report are purely administrative, and have been acted upon already. Some of the recommendations are for the UK and Scottish Parliaments to consider and determine how they wish to proceed. Some of the provisions in the Bill can be implemented quickly following Royal Assent, and the Government will work with the Scottish Government and Parliament and key stakeholders to make sure that this happens. However, the financial provisions will be implemented over a number of years to ensure that appropriate transition arrangements are put in place.

CHAPTER 2: INCREASING THE FINANCIAL ACCOUNTABILITY OF THE SCOTTISH PARLIAMENT

The Scotland Bill provides the legislative framework to deliver a step change in the financial accountability of the Scottish Parliament. This chapter details how these changes will operate and provides a timetable for their introduction.

Since devolution in 1999, the Scottish Parliament has had almost complete flexibility over how it spends its income, the bulk of which is provided in a block grant determined by the Barnett formula. Once enacted, the Scotland Bill, along with other administrative provisions set out in this chapter, will create a new system of financing which will allow the Scottish Parliament to determine how revenues are raised to supplement its existing responsibility to determine how they are spent. This will increase the Scottish Parliament's ability to make choices that benefit the people of Scotland and to be held accountable for these choices. At the same time, Scotland will retain the economic benefits of being a fundamental part of the United Kingdom.

Under the new system, the Scottish Parliament will be required to set the Scottish rate of income tax every tax year. It will be responsible for the design and level of taxation on land transactions and disposal of waste to landfill. The block grant from the UK Government will be reduced to reflect the new streams of income from the devolved taxes.

The Scottish Parliament will also be able to introduce new taxes applicable only to Scotland, with the agreement of the UK Government and Parliament. It will be given increased powers to borrow both for current and capital spending providing greater choice over how and when to invest in projects that will benefit future generations.

Combined, these measures represent a radical, historic and significant change to the financing of public services in Scotland. The accountability of the Scottish Government and the Scottish Parliament to the Scottish people will be considerably strengthened.

Increased financial powers also increase the exposure to risks. Income from taxation is much more likely to vary than that from the established UK Government grant, introducing a degree of risk to that part of the Scottish budget. The new public spending framework therefore provides borrowing powers to help manage this risk. This, combined with the continuance of a significant proportion of income from the block grant from central government, will allow stability and predictability of public service provision in Scotland.

The new borrowing powers will, in effect, mean that a proportion of UK borrowing and debt will derive from the actions of the Scottish Parliament. The Scotland Bill therefore identifies a means of ensuring the UK Government can

continue to retain overall control of the total of all UK public sector borrowing, consistent with the continuing reservation of overall macroeconomic policy. The new borrowing powers will sit within the UK fiscal framework as a whole, so the overall economic stability of the UK will be maintained and fiscal risk to the UK Exchequer will be minimised.

The UK Government believes that the new system needs to be as simple and transparent as possible. The Scottish income tax base will be shared between the UK Government – which will be responsible for decisions about the thresholds and scope of the tax – and the Scottish Government, which will set part of the overall rate that Scottish taxpayers will pay. This is a step change to the treatment of taxation within the UK, so it is crucial that businesses and individuals understand how they will be affected and that the administrative burdens of this system are proportionate and as low as possible.

The Commission specifically recommended that changes to the system of financing the Scottish Parliament be introduced in a phased way so as to manage the risk of adverse shock or windfalls to the Scottish budget. The UK Government considers this recommendation especially important and the timetable for implementation described in this document identifies how this will be achieved to enable the Scottish Parliament elected in 2015 to use these powers.

The phased implementation will also allow the new arrangements to be introduced in a manner that reflects the Scottish Parliamentary electoral cycle and affords those affected by the changes sufficient opportunity to work closely with the UK Government to ensure this framework is

implemented as efficiently as possible. This document and the Scotland Bill therefore set the broad framework for the new system. Over the next four years, the UK Government will work collaboratively with the Scottish Government and Parliament to finalise all elements of this system so that it operates effectively for each Government, businesses and individuals across the UK.

A new framework for Scotland's public finances

Once all the changes are in place, the budget for public services determined by the Scottish Parliament will derive from two separate funding streams.

The first of these will comprise revenues from devolved taxes, specifically the new Scottish rate of income tax, a Scottish land transaction tax and a Scottish landfill tax. The level of revenue available through this stream will be determined by the decisions the Scottish Parliament makes on the level of income tax, the design and rates of the smaller taxes, and any new taxes it may decide to introduce with UK Parliamentary agreement.

The second funding stream will continue to be a block grant from the UK Government, as currently determined by the Barnett formula. The UK Government recognises some of the concerns expressed about the current system of devolution funding whereby changes to the block grant are calculated by the Barnett formula, but the UK Government's priority is to reduce the deficit and does not have any plans to change arrangements before the stabilisation of the public finances. However,

the block grant will need to be proportionately reduced to reflect the reduced revenues to the UK Exchequer from the taxes the Scotland Bill devolves to the Scottish Parliament. This approach is consistent with the Commission's recommendations. It is also the case that the mix of block grant and devolved taxes could apply to alternative means of deriving the block grant and hence this framework is sufficiently robust to endure into the long term.

The creation of the devolved tax funding stream means that the Scottish Parliament is moving away from relying almost totally on the UK Government for funding. Once all the measures are in place, and taking into account local taxes already devolved to the Scottish Parliament, the total of current spending decided by taxes determined in Scotland will move from around 14% of expenditure to an estimated 35%.²

In addition to these two revenue streams, the Scottish Government will also have access to borrowing to fund capital expenditure and extended borrowing powers to fund current expenditure. A new Scottish cash reserve will be introduced alongside these powers which can be used to manage fluctuations around devolved tax receipts.

Timetable for implementation

The UK Government intends to introduce the new system in a phased way as described below. Each of the different measures will be implemented responsibly, with transitional arrangements in place until the system operates smoothly, ensuring stability and predictability

for the provision of devolved public services in Scotland.

From enactment of the Scotland Bill

New taxes

The Scottish Parliament will be able to introduce new Scotland specific taxes, subject to the agreement of the UK Government. This will provide an important new means of achieving policy outcomes, as well as potentially raising additional revenues. Further details are set out at page 32.

From April 2012

Forecast of Scottish tax receipts and assignment of tax revenues to the Scottish Parliament

Neither the UK Government nor the Scottish Government currently forecast the Scottish share of income tax, although estimates of outturn are provided in the Government Expenditure and Revenue in Scotland National Statistics series³. To facilitate the robust and transparent forecasting of Scottish tax receipts, the independent Office for Budget Responsibility (OBR) will start to provide forecasts of Scottish income tax, landfill tax, stamp duty land tax and aggregates levy receipts from April 2012.

HM Treasury will notionally assign these forecast receipts to the Scottish budget to show, transparently, how much of what is currently grant funding will be replaced by tax, although the Scottish budget would not vary as tax receipts vary whilst this arrangement is in place. The forecast receipts

² This is based on the Scottish Government keeping the current rate of income tax

³ For the latest GERS report, published in June 2010, see <http://www.scotland.gov.uk/Publications/2010/06/22160331>

will form part of an open letter from the Chancellor and Secretary of State for Scotland to the First Minister of Scotland.

From April 2013

New borrowing power for capital expenditure

The UK Government intends to make the new power to borrow to fund capital expenditure operational from April 2013. In line with our phased approach to implementation, for the first two years this will be subject to HM Treasury consent for specific projects, with the wider scope for borrowing for capital expenditure purposes becoming available in April 2015. Such borrowing will be based on the ability to repay the debt from future increases in taxes or reductions in public spending and be subject to an overall limit set at £2.2 billion. This important power will enable the Scottish Parliament to spread the costs of capital investments across the lifespan of the associated assets. It can also deliver additional flexibility for the Scottish Parliament to invest in projects that will stimulate economic investment in difficult times. Further details on borrowing powers to finance capital expenditure and how they will operate are described at page 39.

From April 2015

Devolution of stamp duty land tax and landfill tax

The Scotland Bill provides for stamp duty land tax and landfill tax to be entirely devolved. The two taxes will cease to apply in Scotland and the Scottish Parliament will be able to levy its own taxes in respect of land transactions and disposals of waste to landfill in Scotland.

The UK Government's intention is to provide these powers from April 2015, superseding the assignment of forecast receipts described above. If the Scottish Government has made the appropriate decisions and legislated in the Scottish Parliament, the UK-wide versions of the taxes will be 'switched off' in so far as they apply to Scotland in April 2015, and a corresponding adjustment made to the Scottish block grant as detailed at page 33.

If the Scottish Parliament is not ready to introduce its taxes in April 2015, the UK Government would consider delaying 'switching off' the UK-wide versions of the taxes in Scotland. The timing of introducing the new Scotland-specific taxes is ultimately for the Scottish Parliament, but the UK Government would be reluctant to delay this beyond a year given the primary purpose of the Scotland Bill. Further details on the Scottish land transaction tax and Scottish landfill tax are set out at page 30.

New borrowing power

The Scottish Parliament will have a new borrowing power to finance current expenditure to allow it to manage potential deviations between forecast and outturn receipts for the newly devolved taxes. Further details on current borrowing are set out at page 38.

From April 2016

New Scottish rate of income tax, with transitional arrangements

From April 2016, the main UK rates of income tax will be reduced by 10p for those defined as Scottish taxpayers, and the Scottish

Parliament will be able to set a new Scottish rate of income tax. The timing allows the Scottish Government formed in 2015 to propose a budget based on the new tax-raising powers that will be applied in the following tax year.

The Scottish rate of income tax represents a significant funding stream – a 1p increase in the income tax rate would currently yield approximately £450m or 1.7% of the present Scottish budget. It is important that the introduction of this new system of finance does not introduce adverse shocks or windfall gains to the Scottish budget. For this reason, there will be a period from 2016 for which transitional arrangements will apply. Once there is clear evidence that the new forecasting and collection systems are operating correctly, these transitional arrangements will cease.

During the transition period, the value of the deduction from the block grant corresponding to the reduced UK rate of income tax in Scotland will be calculated annually. The forecast receipts accruing from whatever rate of Scottish income tax is determined by the Scottish Parliament, will be paid to the Scottish Consolidated Fund with no subsequent reconciliation to the actual tax revenues. Hence, under this temporary arrangement, if the Scottish Parliament chooses to levy a Scottish rate of income tax of 10p, so the overall rates of income tax in Scotland are the same as in the rest of the UK, it will be no better or worse off. Equally, as the reduction in block grant is calculated annually, any change by the UK Government to the income tax structure or personal

allowances would not change the forecast yield from the Scottish income tax. This can only be a transitional arrangement, as it does not deliver full financial accountability.

Post transition

Once there is clear evidence that the arrangements for forecasting Scottish income tax receipts and the new tax collection arrangements are operating effectively, the transitional arrangements will be terminated. Presently, the UK Government anticipates that this would be after a period of either two or three fiscal years. At this point the permanent reduction in block grant corresponding to the new income tax power will need to be calculated. This is fundamental to the future success of the new financing arrangements and will be based on both outturn tax receipt data and forecasts by the independent OBR. The policy decision on which methodology to use for this calculation is fundamental to the future success of the new financing arrangements and will be taken in consultation with the Scottish Government. The UK Government will ensure that this process is transparent, available for public audit and scrutiny and informed by analysis based on both outturn tax receipt data and the OBR forecasts.

Furthermore, as the Scottish income tax base will in future be shared, a decision by the UK Government to change the income tax structure or personal allowances could have either a positive or negative impact on Scottish income tax receipts. During the proposed transitional period this would not occur as the value of the deduction is recalculated annually. After the transition

period, the UK Government will adopt a principle of 'no detriment', meaning that any policy changes to the UK tax base that impact (either positively or negatively) upon the Scottish budget will be compensated by an appropriate adjustment to the block grant. This is explained in more detail below.

Scottish rate of income tax

In order to deliver increased financial accountability to the Scottish Parliament, the Commission recommended that the Scottish budget should in future be dependent in part on devolved taxes under its control alongside a continuing, but correspondingly reduced, block grant from the UK Government. The Scotland Bill provides for this and full enactment would see the basic, higher and additional⁴ rates of income tax levied by the UK Government reduced by 10 pence in the pound for those defined as Scottish taxpayers. The Scottish Parliament will then levy a new Scottish rate of income tax which will apply equally to all of the main UK rates. Consistent with the recommendations of the Commission, the rest of the income tax structure will remain a reserved matter, and continue to be determined by the UK Parliament.

This power will completely supersede the Scottish Parliament's existing tax varying power – the Scottish variable rate (SVR) – set out in the Scotland Act 1998, which the Scotland Bill will repeal.

⁴ The Commission reported before the introduction of the additional rate and therefore its recommendation refers only to the basic and higher rates. However, given that the changes will need to apply across the tax base as a whole, the 10p reduction will apply to all the tax bands in the same way. This section therefore covers the changes to the basic, higher and additional rates.

The Bill determines that the new Scottish income tax will be collected by HMRC, which would allow collection using the existing PAYE and Self Assessment income tax systems. HMRC will work closely with all parties potentially affected by this change (including the UK and Scottish Governments) and will receive input from a number of technical groups established by HMRC, which include representatives from business and individual taxpayers. The detailed rules around the operation of this tax, including how it will relate to reliefs around charitable contributions and particular savings products, will be determined in secondary legislation.

Deciding the Scottish rate of income tax

The new Scottish rate will need to be set every year by the Scottish Parliament, with a resolution passed in such time as to allow the taxes to be collected at the start of each tax year. In order to allow the necessary administrative and compliance measures around the collection of a Scottish income tax to be taken by HMRC and by those paying and remitting income tax in Scotland, the rate to apply in a particular tax year will need to be formally communicated to the UK Government by the end of December in the preceding calendar year. This timetable will allow taxpayer compliance burdens to be minimised. The rate will then need to be passed by resolution in the Scottish Parliament by 5 April at the latest, to provide the statutory basis for the collection of receipts from the start of the tax year. Once this date has passed the resolution will not be able to be cancelled or amended. The UK Government will work closely with the Scottish Parliament and Government to ensure the parameters of the existing annual Scottish budgetary cycle and of the UK tax year support this process.

How the Scottish income tax receipts will be managed

Income tax receipts inevitably vary from one year to the next, but also, the sums received are not constant for each month in a given tax year. This is primarily attributable to the timetable around the current UK income tax Self Assessment system, which results in a large proportion of receipts being remitted at particular times of each year. Furthermore, a proportion of income tax is not received by HMRC until well into the following tax year. In order to protect the funding for public services in Scotland from these effects, the UK Government will make payments, when they are required, to the Scottish budget corresponding to a forecast of Scottish income tax receipts. This will protect the Scottish budget from the in-year risk associated with income tax receipts, with estimated revenues being drawn down alongside the block grant over the course of the year as and when they are needed rather than when actual tax revenues are received.

To ensure absolute transparency and impartiality, the forecast upon which these payments will be based will be made by the OBR. The final judgements and assumptions regarding the forecast and forecast methodology will remain theirs. In order to ensure that the Scottish Government is protected from unexpected economic shocks which would require a revision to their Spending Review spending plans, the forecast available at the start of the Spending Review will be used. HMRC will then collect the actual receipts from the Scottish income tax and pay them into the UK Consolidated Fund. As data on the actual amount collected (outturn receipts) becomes available over the course of the Spending Review period, the Scottish

Government will have an indication of how far the actual receipts collected are likely to vary from those forecast, affording the opportunity to alter spending if the Scottish Parliament felt it appropriate.

The outturn receipts will be reconciled with the amounts forecast (and paid to the Scottish budget) with a corresponding transfer either to or from the Scottish budget to the UK Consolidated Fund. This reconciliation will be when nearly all of the outturn receipts are known and no later than 12 months after the end of the financial year. Typically, 99.3% of income tax will have been collected by this point and no further reconciliation payment will be made. This reconciliation process would not apply during the transition period which the Government proposes to commence in April 2016.

Where the outturn is above forecast, the UK will transfer this amount alongside the block grant for the following year. The Scottish Government will be able to retain this surplus in a new Scottish cash reserve. This is to allow saving in the good years to be retained in order to offset any future poor years. Any outstanding borrowing will however have first call on surplus outturn receipts in future years. If the outturn receipts are below forecast and there is no reserve, and if the deviation is more than 0.5% of the Scottish total resource budget,⁵ the Scottish Parliament will be able to borrow to cover the shortfall over a period of up to four years. If the difference between forecast and actual tax receipts is less than 0.5% of the Scottish resource budget for that year, it is

⁵ Spending Review 2010 determines that for 2014-15 this would translate to c. £127m

expected that this pressure will be absorbed by the Scottish budget for that year.

Overall, this model will provide stability within each Spending Review period. The Scottish budget can be maintained each year with unexpected fluctuations in tax revenues being managed by use of the Scottish cash reserve and/or the new current borrowing powers. This facilitates an approach to spending control broadly equivalent to that adopted by the UK Government that determines spending on the basis of estimated tax receipts for the duration of the Spending Review period, with borrowing making up for any shortfall in the outturn tax revenues. It is also the case that the continuing block grant is fixed during the Spending Review period, irrespective of tax receipts, and so will underpin the stability of the budget available to the Scottish Parliament. When taken alongside the new power to borrow to fund current expenditure and the Scottish cash reserve, this mechanism will ensure stability in the Scottish budget. This system protects public service provision from large fluctuations in tax receipts and delivers the direct financial accountability associated with determining a significant tax. Furthermore, by linking the Scottish budget to the income tax base, it gives the Scottish Parliament a direct stake in the Scottish economy.

Cost of delivering the Scottish rate of income tax

It is an established principle that the costs of devolution will be borne by the Scottish budget. At the time of devolution, a payment was made from the then Scottish Executive to HMRC in respect of work performed to create the capacity to implement the former tax varying power (the SVR) of the Scottish Parliament with specific

provision for this being made in section 80 of the 1998 Act. The Commission envisaged that the proposed new Scottish rate of income tax could be implemented by developing existing systems.

Initial work suggests that the scope to collect the new Scottish income tax using existing PAYE and Self Assessment systems will result in this significant devolution of fiscal powers being made at marginal rather than total cost. The final costs of implementing the new Scottish income tax will be dependent on approaches to some of the specific areas, for example, around overall transparency, reliefs for charitable donations and for certain savings products. Indicative costings of changes to these systems are provided in the associated Regulatory Impact Assessment (RIA). These are currently under consideration by HMRC in consultation with external experts and practitioners. The Scottish Government is already engaged in this process, although other intrinsic parts of the way in which the Scottish taxes are collected will impact upon final costs and will rightfully need to reflect the views of the Scottish Government.

Impact of Scottish rate of income tax on taxpayers and businesses

HMRC are consulting representative bodies on the detailed implementation issues for the Scottish rate of income tax in order to keep the administrative burdens on businesses and individuals across the UK to a minimum. These discussions will include how best to communicate the changes closer to the implementation date to help both businesses and individuals understand what the changes will mean for them.

A RIA has been prepared for the proposed new Scottish rate of income tax. However, as many of the detailed tax collection arrangements, including the interaction with reliefs associated with charitable donation and certain savings products, will be identified and enacted by Order, the RIA cannot yet be fully comprehensive. The UK Government is already working closely with those likely to be impacted to ensure compliance costs are minimised. However, until this work on final operational details is concluded, definitive compliance costs cannot be derived.

Definition of a Scottish taxpayer

The Scottish rate of income tax will apply to UK resident taxpayers who are defined as Scottish taxpayers. This definition was set out for the purposes of the SVR in the Scotland Act 1998. The Scotland Bill refines these definitions whilst simplifying their presentation to make it clear that a Scottish taxpayer is a UK taxpayer either resident in Scotland or whose closest connection is with Scotland. HMRC are working closely with the members of technical groups convened to consider the implementation of the Scottish rate of income tax and to ensure the definition of a Scottish tax payer can be applied efficiently.

Interest and penalties

An existing feature of the UK tax system relates to the charging of interest on taxes paid late. HMRC is required to pay interest on tax overpayments and charge interest on late payments. As the Scottish Government will be able to draw down forecast receipts, the impact of late paid or overpaid tax will be on the UK Exchequer rather than the Scottish Government. Interest payments received will not therefore

be included as part of revenue allocated to the Scottish Government. This will also simplify administration. For example, where part payment has been made it will not be necessary to consider whether the Scottish or UK part of an income tax debt has been paid. Similarly, any interest paid by HMRC to taxpayers due to overpayment of tax will not be charged to the Scottish Parliament.

HMRC also administers a number of penalties which act as deterrents and safeguards for the UK tax system. These include, for example, penalties for late payment, late filing and incorrect returns, and are intended to encourage taxpayers to meet their obligations as regards making tax returns or paying their tax liabilities. These penalties are therefore associated with the administration of the tax system by HMRC and will not be allocated to the Scottish Government.

Income tax on savings and distributions

The Commission recognised that the changes that would have been necessary in order to apply the Scottish rate to income tax on savings and distributions were prohibitive. For this reason the Commission recommended, instead of devolving this tax, that half of the yield from income tax on savings and distributions be assigned to the Scottish Government.

We have examined how this might be done, but have concluded that the technical changes required to identify Scottish savings and distributions in order to assign the associated tax revenue would be equally onerous, complex and costly given the role of third parties such as banks and building societies in withholding and remitting this tax. Furthermore, we are

persuaded that assigning tax revenues would not in itself contribute to financial accountability. Therefore, after careful consideration and in the light of the views of representative bodies, the UK Government considers that it would not be appropriate to assign the revenues from income tax on savings and distributions and this does not feature in the Scotland Bill.

Other taxes

Stamp duty land tax and landfill tax

The Scotland Bill provides for the complete devolution of stamp duty land tax (SDLT) and landfill tax (Lft). This means the Scottish Parliament will have complete control over these taxes, subject to them remaining a tax on land transactions and waste disposed to landfill. The two taxes will cease to apply in Scotland and the Scottish Parliament will be able to levy its own taxes in respect of land transactions in Scotland and in respect of disposals of waste to landfill. These will be associated with a corresponding reduction in the block grant.

The design of the devolved taxes and their administration will be a matter for the Scottish Parliament. The UK Government anticipates that the Scottish Government will consult on the intended design and administration of the devolved taxes following enactment of the Scotland Bill.

The Scottish Parliament and Government will determine which body should collect the devolved taxes. It may choose to set up a contract with a commercial operator or an existing executive agency such as Registers of Scotland, or, it may approach a UK Government department such as HMRC to undertake the

work. The Scotland Bill makes provision for HMRC to operate the devolved taxes on behalf of the Scottish Government if this solution were to be agreeable to both parties. The terms of any such arrangement would be agreed between HMRC and the Scottish Government.

The UK Government anticipates that the devolved taxes will be introduced in April 2015. However, this will depend on the necessary legislation to introduce the devolved taxes being passed by the Scottish Parliament. At the same time, it is anticipated that the new current borrowing power will also become available, thus enabling the Scottish Parliament to manage large⁶ fluctuations in their forecast receipts and actual outturn figures.

Impact of devolution on stamp duty land tax taxpayers

The change to the compliance burden for taxpayers transferring land in Scotland will depend upon the design of the devolved tax, which is for the Scottish Parliament to determine.

The existing SDLT return already identifies the local authority area in which a land transaction takes place and this will allow HMRC to identify transactions to which SDLT still applies. From the date of devolution, this return will no longer be applicable to transactions in Scotland but will continue to be required, and will not need to be amended, for transactions in England, Wales and Northern Ireland.

A separate tax return may be required for Scottish land transactions, depending on the

⁶ Above 0.5% of their resource budget (see page 38)

design of the tax and the organisation tasked with its collection. This will be for the Scottish Parliament to determine. There is no reason in principle why the compliance burden for taxpayers purchasing a single property in any part of the UK should increase. There will be a single set of rules for Scotland and one for the rest of the UK. Those engaged in the purchase of multiple properties in both Scotland and elsewhere in the UK in a single transaction may experience an increase in compliance burden as two tax returns may be needed. As the devolved tax will be levied on transactions of land in Scotland it will affect anyone choosing to purchase Scottish property, whether resident in Scotland or elsewhere. In practice, the burden will be on the conveyancing and legal professionals acting for the parties choosing to purchase Scottish property. Scottish land already needs to be registered separately from land in England, Wales and Northern Ireland so any additional compliance burden should be minimal.

The SDLT return collects data for the Valuation Office Agency that is used in other parts of the tax system and for wider HMRC compliance work. The Bill provides for the Scottish Government to provide this data in future in respect of Scottish land transactions, from information in their possession.

Impact of devolution on landfill tax taxpayers

The current UK-wide tax return for LfT does not identify the geographical location of the taxable activity. A separate tax return for waste disposed in Scottish landfill may be required, depending on the design of the tax and the organisation tasked with collection of the tax. This will be for the Scottish Parliament to determine.

The compliance burden on landfill operators in Scotland will be determined by the rules that are set by the Scottish Parliament arising from their design and administration of the Scottish tax on disposals of waste to landfill. In principle, and subject to the arrangements put in place by the Scottish Parliament, there should be little or no increase in the compliance burden for taxpayers operating at a single site in any part of the UK: there will be a single set of rules for Scotland and one for the rest of the UK. Landfill operators operating sites in both Scotland and elsewhere in the UK may experience an increase in compliance burden as two landfill tax returns may be needed in future where one is needed at present.

A number of minor amendments to the existing LfT regime will be necessary following devolution.

The landfill communities fund (LCF) was introduced alongside LfT and aims to address some of the impacts of landfill activity by improving the environment in the vicinity of landfill sites. The LCF is financed by contributions from landfill site operators, who receive a LfT credit worth 90% of any qualifying contribution they make to environmental bodies enrolled in the scheme. Once LfT is devolved to Scotland, landfill operators in Scotland will no longer be eligible for a UK LfT credit, which will subsequently only be available for contributions benefiting the environment in England, Wales and Northern Ireland.

In 2015, when it is proposed this tax is devolved, environmental bodies will be holding unspent funds derived from contributions by landfill operators across the UK, including Scotland. For

two years after the devolution of this tax, these unspent funds will be allowed to be spent on projects throughout the UK. This will provide for any contributions made in respect of landfill activities in Scotland to be used for projects in that locality.

LfT is a key lever for the UK Government to achieve its 2020 landfill reduction target under the Landfill Directive (relating to biodegradable municipal waste). If changes to the devolved Scottish landfill tax were solely responsible for the UK missing its target, the Scottish Government would be liable to pay the fines imposed on the UK.

Cost to Scottish Government of devolution of stamp duty land tax and landfill tax

Page 28 above repeated the established principle that the costs of devolution will be borne by the relevant Devolved Administration. Both SDLT and LfT will be completely devolved with the design of the taxes and the collection arrangements being entirely the responsibility of the Scottish Parliament. The UK Government will discuss in more detail with the Scottish Government the potential administration cost of implementing the changes.

Aggregates levy

The Commission recommended the devolution of aggregates levy to the Scottish Parliament. Aggregates levy is currently subject to legal challenge in the European Courts and the UK Government does not consider it appropriate to devolve it at this time. The Government will continue to keep the devolution of aggregates levy under review with the intention, subject to the outcome of proceedings in the European

Courts, of devolving this tax to the Scottish Parliament in the future.

In the interim, the UK Government will assign to the Scottish Government receipts from aggregates levy as it relates to Scotland. From April 2012, an estimate of Scottish aggregates levy will be calculated based on the forecast of UK aggregates levy receipts. This estimated revenue will be allocated to the Scottish Government, with the equivalent amount deducted from the Scottish Government's block grant each year. Although this will not have a financial impact on the Scottish Government's block grant, it will illustrate the amount of revenues that would be attributable to a Scottish aggregates levy were it to be devolved.

Air passenger duty

The Commission recommended the devolution of air passenger duty. The UK Government is exploring changes to aviation duty, including the scope for a per plane duty, as set out in the *Programme for Government*. The UK Government does not therefore intend to devolve air passenger duty at this time, but will include devolution of this tax base in future work on aviation taxation.

New taxes

The Commission recommended that 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.

This is an important new power for the Scottish Parliament, providing an instrument that will help deliver desired policy outcomes as well

as potentially raising additional revenues. The Government accepts the Commission's recommendation and commits to consider all proposals from the Scottish Parliament for new taxes in Scotland to be introduced following enactment of the Bill. A specific clause is included in the Scotland Bill to enable new tax raising powers to be devolved to the Scottish Parliament, following approval by both the UK and Scottish Parliaments.

In reaching an assessment of a proposal for a new tax, the UK Government will consider the impact against a number of predetermined criteria. Foremost will be the need to ensure that the proposed tax would not impose a disproportionate negative impact on UK macroeconomic policy or impede, to any degree, the single UK market. The Scottish Parliament will be expected to provide supporting evidence confirming a proposed new tax complies with these criteria, which will include:

- the potential for the new tax to create or incentivise economic distortions and arbitrage within the UK;
- the potential the new tax might create for tax avoidance across the UK;
- the impact of the proposed tax on compliance burdens across the UK;
- the compatibility of the new tax with EU Legislation and Rules, such as those covering State Aid and the Single Market, and the Human Rights Act.

The evidence expected from the Scottish Parliament to support such a proposal would therefore include:

- the rationale, intended tax base/taxable activity and expected revenue;
- the expected distributional impact, impact on business and individuals and wider economic impact;
- an assessment of compatibility with the Human Rights Act, EU State Aid rules and other directives;
- plans for the collection and administration of the tax, including means of ensuring compliance;
- an assessment of any interaction of the proposed new Scottish tax with UK-wide taxes (including plans to protect policy and geographical borders). This should include the impact of any new tax on UK tax revenues; and
- any underlying material used to answer the questions above.

The block grant

The block grant and devolved taxation

The Commission recommended that the block grant, as the means of financing most associated with equity, should continue to make up the remainder of the Scottish budget. The continuance of a significant proportion of income from a block grant from central government will deliver stability and predictability of public service provision in

Scotland by providing a continuing bedrock of funding to the Scottish budget.

For the duration of the current Spending Review period, changes to the block grant derived from overall changes to UK Government expenditure will continue to be calculated by the Barnett formula, as set out in the Statement of Funding Policy document⁷. The UK Government recognises some of the concerns expressed about the current system of devolution funding but at this time the priority is to reduce the deficit and any changes must await the stabilisation of the public finances.

The fundamental principle of the new system of finance is that some of the block grant is exchanged for the scope for the Scottish Parliament to levy its own taxes. It is essential that this process is transparent, equitable to both the UK and Scottish Governments and Parliaments and based on the best data available, which will include outturn data on Scottish income tax receipts accrued during the transition period and independent forecasts of Scottish tax receipts published by the OBR.

The changes to the block grant will be introduced in a phased way, to allow for the staged devolution of the taxes and transitional period for income tax.

Phase 1: to allow for the devolution of the smaller taxes

When the smaller taxes are devolved, currently planned to be April 2015, there will be a one-off

reduction which will then be deducted from the block grant for all future years.

Actual outturn data for SDLT paid in respect of sales of property in Scotland is already available, enabling the calculation of the appropriate reduction in the block grant relating to the devolution of this tax to be readily identified. Data for LfT paid in Scotland, despite the tax base being a fixed location, is not available although accurate estimates of past and future revenues, in contrast to income tax, may be derived with relative ease. Upon the passage of the Scotland Bill, the UK Government will engage with both the Scottish Government and Parliament on the means of calculating the reduction in block grant associated with the devolution of SDLT and LfT. The resulting calculations will be transparent, published and open to scrutiny or audit by external parties and based on outturn tax receipts data as well as the tax receipts forecast carried out by the independent OBR.

In contrast to income tax, which will in future apply to a tax base shared between the Scottish and UK Parliaments, these taxes will be completely devolved to the Scottish Parliament and hence any changes to the rates or structure of a tax by one jurisdiction will not have a direct impact on the receipts of the other in the way described at page 36 below. Hence there will be no need for subsequent adjustments to the block grant to compensate for changes to these taxes after their devolution.

Phase 2: to allow for the devolution of income tax in a period of transition

For income tax, the deduction from April 2016 in each year of transition will be based on an OBR

⁷ *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: A Statement of Funding policy*, published by HM Treasury and revised at each Spending Review.

annual forecast of Scottish income tax receipts. These will not be reconciled during transition and the UK Government will bear the risk of any deviation of outturn from forecast.

During the transition period, a change made by the UK Government to the structure of income tax would not have an impact on the Scottish Government as the value of the deduction will be recalculated annually.

Phase 3: income tax: post transition

Following the transition period, there will be a one-off deduction to the block grant with the total budget derived by the Barnett formula adjusted proportionately going forward to make this deduction permanent. The transition period will have provided real outturn data for Scottish tax receipts and allowed the forecasts produced by the independent OBR to be proven, ensuring the reduction in block grant will be based on evidence and the best data available.

Calculating the permanent deduction

The Commission made no recommendation for how the reduction in the block grant exchanged for the devolved tax powers should be calculated. We infer from the examples provided in the Commission's final report that the reduction would be a percentage based on the average worth of the devolved tax receipts over a number of years, not a single year. This approach poses the question of which years to base the percentage reduction upon; for example the forthcoming period of fiscal tightening would not be a suitable base period to calculate the initial reduction. The actual outturn receipts from the Scottish income tax during the transition period will therefore be instrumental in informing

the reduction in block grant associated with the new income tax power.

It is also the case that a definitive knowledge of the actual yield from a Scottish rate of income tax does not yet exist, although it is possible to use the Survey of Personal Incomes⁸ to derive accurate estimates of the position in past years. These circumstances make a definitive statement on the correct reduction to the block grant inappropriate at this time.

Going forward, it will always be possible to compare the new Scottish budget derived from the mix of block grant and devolved taxation with what the Scottish budget would have been without the devolution of tax powers. This will provide a means of ensuring that, beyond the initial transition period, any unintended consequences of the proposed system are evident. For example the size of the Scottish budget, and variations to it, will be determined by the growth of the block grant element and the growth of income tax receipts. We would expect the relationship between these two elements to be broadly neutral over time. The block grant element will continue to operate on the same basis as now, but the extent to which the part financed by income tax will grow will depend on decisions made by the Scottish Government – for example choosing different tax rates to those in the rest of the UK, or economic policies which result in the Scottish economy growing at a different pace to that of the UK.

The UK Government will continue reviewing the system to ensure that the relative levels of public expenditure going forward remain consistent with what the Commission described

⁸ http://www.hmrc.gov.uk/stats/income_distribution/menu.htm

as the social and economic unions between Scotland and the rest of the United Kingdom. This approach is intended to serve as a safeguard to both the Scottish and UK Parliaments once the new arrangements are implemented, for example by limiting the risk of an unintended transfer of resources one way or the other.

The implications of a shared tax base

As described above, changes to the structure of the UK income tax system, such as to personal allowances, potentially impact upon the income tax receipts available to the Scottish Parliament. It is an established principle of devolution finance that where a policy decision taken by one administration incurs a cost to another, the body whose decision leads to that additional cost will meet that cost. In such circumstances the UK Government would operate a principle of 'no detriment', with adjustments made to the block grant that either compensated the Scottish budget or vice versa.

Adjustments to the block grant to reflect changes to the income tax structure will be obtained from the OBR. The OBR will estimate the financial impact (either cost or benefit) to the UK Exchequer of any changes to the tax system at the annual budget and other fiscal events. Given the 'no detriment' principle stated above, such costs will necessarily include estimates of any consequent adjustments to the Scottish block grant. Consequently, such adjustments will be based on OBR estimates of the impact of any changes to the income tax system to the Scottish budget and will be transparent, published and open to scrutiny or audit by external parties. It may be practical for such adjustments to be subject to a *de minimis* threshold which would

apply, whether the policy change works to the Scottish Parliament's detriment or advantage.

The timing of an announced change to the UK income tax system will also have a bearing on the Scottish Parliament's deliberations on the rate of Scottish income tax. Moving forwards, the UK Government expects the announcement of the new income tax policy will ordinarily be made at least 12 months in advance from when the actual changes would be implemented. Therefore it is highly unlikely that a UK Budget announces a change in income tax policy that is implemented in that same fiscal year. However, in all circumstances, the principle of 'no detriment' would apply, with the appropriate adjustment to the block grant being made to ensure the change is neutral to the Scottish budget.

The Government is aware that the Independent Commission on Funding and Finance for Wales (the "Holtham" Commission) considered in some detail an alternative to a one-off deduction although practical constraints mean their recommended method could not at present be applied. Although we have set out a clear methodology for achieving the principle of 'no detriment', we will further analyse such alternatives and engage with the Scottish Government and the independent OBR to ensure that the optimal and most equitable model is the one ultimately adopted.

Borrowing

Overview

The Commission recommended that Scottish Ministers should be given additional borrowing powers beyond those provided by the Scotland Act 1998. Specifically, the Commission

recommended that the existing short term borrowing power set out at section 67 of the 1998 Act should be available to manage cash flow when devolved taxes are used. The Commission also recommended an entirely new capital borrowing power to increase capital investment in any one year, by setting up a system similar to that defined by the Prudential Code applying to local authorities.

The 1998 Act allows Scottish Ministers to borrow up to £500m for short term current spending, although this power has never been used. The Scotland Bill will replace this power with a more extensive one to reflect the increased financial accountability of the Scottish Parliament, and gives a substantial additional power that allows Scotland to be able to borrow for capital purposes.

The extended current borrowing facility will provide Scottish Ministers with the fiscal levers necessary to deal with the deviation between forecast and actual outturn receipts that may be associated with the devolved taxes, and will come into operation when these taxes are devolved.

In addition, Scottish Ministers will be allowed to borrow to fund capital expenditure. From 2013 this will be available for specific projects based on HM Treasury consent. From 2015 the full power will come into force, where the Scottish Government will be able to borrow up to the set limit for any capital purposes and not subject to HM Treasury consent on a project specific basis. Consequently, after 2015, borrowing to finance capital expenditure will not be subject to Treasury consent but to the controls and limits set out below. This will mean that Scottish Ministers will be better able to spread the

costs of capital investment across the lifespan of the associated assets and to choose more readily when to make additional investment in the Scottish economy to benefit economic growth. Such capital borrowing will need to be self financed through increased revenue from taxation in Scotland or a reduction in public spending and the Scottish Government will need to describe in its budget how it will intend to meet the repayments.

In summary, the Scotland Bill proposes that Scottish Ministers have powers to borrow for three purposes:

- to provide the Scottish Consolidated Fund with an appropriate cash working balance in case of temporary shortfalls between revenues and expenditure;
- to provide the Scottish Government with the fiscal levers necessary to deal with deviations between forecast and outturn receipts;
- for capital purposes.

Scottish Ministers' borrowing powers will be subject to controls and limits set in the Scotland Bill and in this paper. Given the continuing reservation of overall macroeconomic policy, such limits and controls are necessary to allow the UK Government to retain overall control of the total of all UK public sector borrowing. Hence, because the new borrowing powers will sit within the UK fiscal framework as a whole, the overall economic stability of the UK will be unaffected and fiscal risks to the UK Exchequer will be minimised.

The Scotland Bill provides the powers to borrow up to £500m for cumulative current debt and £2.2bn for capital debt. Switches between the capital and current limits will not be allowed, and these separate totals should not be exceeded. The budgetary classification of the Scottish Government's borrowing will be determined by the Office of National Statistics in due course.

Borrowing to fund current expenditure

The Scotland Bill provides Scottish Ministers with the power to borrow up to £500m cumulative current debt to smooth the differences arising when outturn receipts from devolved taxes deviate from forecasts, subject to HM Treasury's controls and limits determined in this paper.

Scottish Ministers will be allowed to borrow to finance current expenditure up to £200m in any one year when:

- A temporary mismatch between tax and spending occurs during the course of the year, due to the irregular nature of tax receipts within that year. This circumstance will affect the receipts from the Scottish taxes on land transactions and disposals to landfill which will be fully devolved and where Scotland will be receiving receipts on a cash basis. It will not affect income tax since tax receipts will be paid to Scotland at the beginning of the year based on the Spending Review forecast (see page 27);
- The difference between devolved tax receipts forecast from the Spending Review and outturn is negative and is above 0.5% of the Scottish resource budget in the relevant year. Discrepancies between forecast and outturn

below this threshold would be absorbed from within the Scottish budget, typically by using unallocated provision.

Such borrowing will be subject to the following specific terms and conditions:

- It will be from the National Loans Fund (NLF) via the Secretary of State for Scotland at NLF rates. The terms and conditions on the loan will be agreed between the Scottish Ministers and the NLF;
- To respect the principle of inter-parliamentary fairness, Scottish Ministers will not be allowed to obtain maturity loans from the NLF for these purposes;
- The Scottish Ministers will be required to repay their loan within a maximum of four years. This can run between Spending Review periods;
- The maximum outstanding stock of such borrowing would never be above £500m;
- HM Treasury would have the power to revise the current borrowing and debt limits upwards or downward through secondary legislation at each UK Budget or other fiscal event to account for any exceptional circumstances and to ensure consistency with the UK fiscal mandate. However, this will never be below the original £500m.

Scottish cash reserve

The above determines how borrowing would be facilitated and regulated when the tax receipt outturn figures are below forecast. In those years when the outturn figures are above forecast,

the first call on such sums would be to pay off previous debt. However, should that not exist, additional revenues should be credited to a Scottish cash reserve, with the intention that they are used for any potential future deficits.

The creation of a Scottish cash reserve would provide the flexibility to offset good and bad years. Such a mechanism would provide an instrument to manage deviations in tax receipts between forecast and outturn over the longer term. It would mean that when outturn receipts from taxes are lower than forecast by more than 0.5% of the Scottish resource budget, any accrued cash reserve and subsequently, borrowing, would then be drawn upon.

The Scottish cash reserves would operate similarly to the existing local authority cash reserve with the exception that the Scottish cash reserve would have to be held within the UK Government and not in commercial banks. The functioning of the Scottish cash reserve will be independent from the end year flexibility system.

Borrowing to fund capital expenditure

As the Scottish Parliament would have control over certain revenue streams, a further dimension of financial accountability will be that it can borrow against the expected receipts. The Scotland Bill provides for Scottish Ministers to borrow to fund capital spending, subject to HM Treasury controls and limits. This important power will enable the Scottish Parliament to spread the costs of capital investments across the lifespan of the associated assets. It will provide the Scottish Parliament and Ministers with a new fiscal lever to stimulate economic growth, by giving them flexibility over when to embark upon new capital projects.

As described in the section covering the timetable for implementation, this power will be introduced in a phased way. Initially borrowing for capital purposes will only be available for specific purposes as agreed in advance with HM Treasury, for example prepayments for the Forth Replacement Crossing. From 2015 the controls and limits applied to capital borrowing are the following:

- Scottish Ministers will be allowed to borrow up to 10% of the Scottish capital budget any year to fund capital expenditure; approximately £230m in 2014/15. The overall stock of capital borrowing cannot be above £2.2bn;
- Scottish Ministers will not be able to borrow for capital expenditure far in advance of need, for example to build up a store of capital which is not spent for many years;
- The Scottish Government should inform the UK Government about their capital spending plans, including how they intend to fund this by borrowing, at each Spending Review or, if that is not possible, at least six months before the start of the relevant financial year;
- The Scottish Government will be able to obtain loans from the NLF via the Secretary of State for Scotland for capital expenditure. They will also be able to borrow from additional sources such as commercial banks, subject to the condition that their Accounting Officer is satisfied that this represents good value for money. The Scottish Government will not be able to issue its own bonds;

- Borrowing to finance capital expenditure funded by a loan from the NLF will be for a maximum of 10 years. However a longer timeframe may be negotiated, for example 25 years, if this better reflects the lifespan of the associated assets for example, in the case of the Forth Replacement Crossing.

Inter-governmental arrangements

The Commission recognised that the new funding arrangements would require new inter-governmental arrangements between the UK Government and the Scottish Government.

Relationship between the UK Government and the Scottish Government

The Commission recommended the creation of a new Joint Ministerial Committee (Finance) to replace the existing Finance Ministers' Quadrilateral which brings together HM Treasury and counterparts from the Devolved Administrations, including the Scottish Government. The Government has considered this carefully, but proposes a different solution to the need for appropriate mechanisms through which inter-governmental finance issues can be discussed. Since the provisions of the Scotland Bill create fiscal powers unique to Scotland, we do not believe it is right to bring the relevant discussions to the Quadrilateral. There will, of course, be an ongoing need to discuss many issues with all the Devolved Administrations. Accordingly, the UK Government does not propose to change the existing Finance Ministers' Quadrilateral, as a body for all of the Devolved Administrations. The UK Government believes that the new funding arrangements for Scotland, including greater tax responsibilities and a shared tax base, do require bilateral

discussions between the UK Government and Scottish Government which will not be relevant to the other Devolved Administrations.

Therefore the UK Government will establish a new UK-Scottish tax committee – the Intergovernmental Bilateral Committee on Fiscal Devolution – which will discuss the shared interest in taxation and macroeconomic policy. The committee will be chaired by the Exchequer Secretary, as Minister for HMRC and, in addition to the relevant Scottish Government Ministers, will also include the Secretary of State for Scotland. It is envisaged that the Committee will meet twice a year following the OBR's bi-annual forecasts. The UK Government intends for the Committee to begin to meet from enactment of the Scotland Bill, to support the development and implementation of the Scottish rate of income tax and devolved taxes. Terms of reference for the Committee will be published in due course.

Relationship between the Scottish Government and HMRC

The Commission identified the need for a formal 'line of sight' between the Scottish Government and Parliament and HMRC as the collection of the Scottish income tax will be a function of HMRC.

The relationship between HMRC, the Department for Work and Pensions, and the Scottish Government on income tax will be set out in a Memorandum of Understanding, which will be published in advance of implementation.

For the Scottish Parliament and Government, the lines of accountability in relation to the Scottish

rate of income tax will be similar to those of HMRC to the UK Parliament and Government.

The Scottish Parliament will receive a report on the administration of the Scottish income tax receipts, as part of the National Audit Office (NAO)'s annual report on HMRC's overall performance. Scottish Parliamentary Committees will be able to request HMRC Accounting Officers to give evidence.

The Commission recommended that Scottish Ministers should be consulted on the appointment of HMRC Commissioners. However, as HMRC Commissioners have a shared responsibility in relation to all HMRC functions and are appointed by the Queen, this would not be appropriate. Instead, an HMRC Additional Accounting Officer will be made specifically accountable for the collection of the Scottish rate of income tax. This will have the effect of delivering the degree of accountability that the Commission was seeking. The Government will also inform Scottish Ministers in writing of HMRC Commissioner appointments.

Consistent with the provisions in the 1998 Act around the costs associated with the Scottish Parliament's tax varying power, the Scotland Bill enables the Scottish Parliament to compensate HMRC for the additional costs associated with implementing and maintaining the Scottish rate of income tax. Estimates of these costs will be drawn up for discussion at the Bilateral Committee at the appropriate time.

For the taxes that are to be wholly devolved (SDLT and LfT) and any new taxes, the Scottish Parliament will need to agree formal arrangements, for example a contract or

accompanying service level agreement with the body they wish to administer the taxes.

Impact on other UK Government departments

If the Scottish Government choose to vary their rate of income tax so that the combined UK rate in Scotland and UK rate in the rest of the UK differs, this could have an impact on wider UK Government policies where the needs of individuals are calculated net of income tax, such as income-related benefits, including the new Universal Credit. A fuller picture of these possible impacts will be developed with the departments concerned, in the lead up to implementation and as policy is developed and current consultations draw to a close. Where a varying tax rate could lead to an increase or decrease in liabilities for the UK Government, the principle which is set out in the Statement of Funding policy that 'the body whose decision leads to the additional cost will meet that cost' will be adhered to. HMRC and other relevant departments will consult the Scottish Government over the size and implications of these costs as more information becomes available.

Transparency and independence

The UK Government wants to make sure that the system is as transparent as possible with the key components either verified independently or dependent on independent sources.

As already determined, the OBR will be responsible for forecasting Scottish tax receipts, based on data that will include information provided by the Scottish Government. A memorandum of understanding between the OBR, HMRC and HM Treasury will be published

in the lead up to implementation alongside more detail on the forecasting methodology.

The UK Government will invite the Comptroller and Auditor General as head of the NAO to prepare a report to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax. If the Scottish Government decides to approach HMRC to administer the smaller taxes, and HMRC agree, then it will be up to the Scottish Government to decide how any audit arrangement should work.

The Commission recommended that the NAO should have a role in determining whether the block grant has been administered correctly. Since May 2010, the UK Government has increased the transparency of the Barnett formula by publishing all the data underpinning the Barnett calculations and hence already available for scrutiny by the Scottish Government and Parliament and any third party audit they may desire.

The financing system described is crucially dependant on how adjustments to the block grant are calculated. This document determines that the initial reductions made in respect of the reduced receipts to the UK Exchequer will be based on both outturn tax receipt data and forecasts by the OBR. The final judgements and assumptions regarding the forecast and forecast methodology will remain those of the OBR. These calculations will be conducted in a transparent way, available for public audit.

This paper also sets out a principle of 'no detriment', meaning that any policy changes to the UK tax base that impact upon the Scottish budget will be compensated by an appropriate

adjustment to the block grant. The amount by which the block grant should be adjusted in these circumstances will be readily identified from published estimates by the OBR of the costs to the UK Exchequer of any changes to the tax system. Such estimates are routinely provided at UK Budgets and other fiscal events. These estimates will be in the public domain and open to independent audit or scrutiny.

CHAPTER 3: STRENGTHENING RELATIONS BETWEEN PARLIAMENTS AND GOVERNMENTS

The recommendations in the Commission's report relate as much to improving and strengthening relations between the UK Parliament and Government on the one hand, and the Scottish Parliament and Government on the other, as they do to altering the devolution settlement. This chapter sets out how the Government is responding to the recommendations for establishing closer and more effective working relationships between the administrations and the legislatures.

Improving inter-parliamentary relations

The Commission considered that, since devolution, few formal mechanisms had been created to allow co-operation and contact between the UK and Scottish Parliaments. The Commission concluded that this had resulted in over reliance on informal networks and individual contacts which, whilst often productive, provided only a limited flow of information between the Parliaments. The Commission recommended that there should be formal committees established by the two Parliaments and any barriers to the two Parliaments working together should be removed; that there should be better and more detailed communication between the two Parliaments about legislative consent motions and that the Sewel Convention should be entrenched in the standing orders of each House in the UK Parliament; that UK and Scottish Ministers should respond positively to

requests to appear before committees of each others' Parliaments; and that there should be a greater degree of engagement between the two Parliaments, recognising that it is a proper function of members of either Parliament to visit and attend relevant meetings at the other.

Coalition Ministers established a relationship with the Scottish Parliament immediately after the General Election. The Prime Minister visited Scotland on 14 May 2010, holding constructive meetings with the Presiding Officer and Members of the Scottish Parliament. Since then the Secretary of State for Scotland visited the Scottish Parliament, meeting the Committee Convenors on 17 June 2010 to discuss the Government's legislative programme as set out in the Queen's Speech. The Chief Secretary to the Treasury visited the Scottish Parliament on 29 June 2010 to explain how the Coalition planned to cut the deficit, how it would deal with the challenging economic situation, and how this would impact upon Scotland. He followed this with an appearance before the Scottish Parliament's Finance Committee on 25 November 2010. Other Coalition Ministers have visited the Scottish Parliament to share their views on how the UK Government has been tackling issues which are of interest to the Scottish Parliament.

The Commission recommended that the relationship between the UK Parliament and the Scottish Parliament should be one

of mutual respect. The Government agrees, and will respond positively to future requests for Ministers to appear before the Scottish Parliament. If invited, the Secretary of State for Scotland will present the UK Government's legislative programme following each Queen's Speech and appear before a committee of all Committee Convenors on an annual basis. In visiting the Scottish Parliament, UK Ministers are mindful of the need to improve the flow of information between the UK Government and the Scottish Parliament, whilst ensuring that the lines of accountability to respective legislatures do not become blurred.

Respecting the independence of the UK and Scottish Parliaments, the Government believes that those legislatures are best placed to determine what changes are necessary in their own procedures and processes to improve communication and co-operation, as set out in a number of the Commission's recommendations. The Parliamentary authorities in Holyrood and Westminster have indicated that they will take forward this work together, and the Government stands ready to provide any necessary support, and to take forward any actions needed, to implement the decisions of the two Parliaments.

Improving inter-governmental relations

The Commission concluded that inter-governmental relations, whilst good in some important respects, were under developed. They noted that the formal machinery designed to ensure regular contact between the Devolved Administrations had not operated systematically. The Commission concluded that good inter-governmental relationships are essential to the most effective operation of the devolution

settlement, and more emphasis should be placed on them.

Improving the Joint Ministerial Committee

The Joint Ministerial Committee (JMC) is jointly owned by the UK Government and all three Devolved Administrations. Working with the Devolved Administrations, the Government has already made good progress on those elements of the Commission's report that relate to improving inter-governmental relations, building on the progress made by the previous administration and the agreement of a new memorandum of understanding (MoU) between the UK Government and the Devolved Administrations in March 2010. Since the General Election there have been a number of meetings of the JMC. The top level of the JMC, JMC plenary comprising the Prime Minister and the heads of the Devolved Administrations, met on 8 June 2010 to discuss the UK Government's priorities. This was an important meeting that brought together key Ministers from the UK Government and from all of the Devolved Administrations. JMC (Europe) has continued to meet regularly ahead of European Councils to enable the UK Government to consult the Devolved Administrations on the approach the Government intends to take, and to ensure devolved concerns can be considered.

The Commission made specific recommendations in relation to the JMC and improved relations on European Union (EU) business. The Commission recognised that the JMC format is effective but believed that it needs to be developed. It rightly recognised that the JMC involves the UK Government and all Devolved Administrations, and is not just a

forum for improving relations between the UK and Scottish Governments.

The Commission recommended that the primary focus of the JMC should be on championing good relations and ensuring close working and co-operation, rather than dispute resolution. The UK Government agrees that this is the primary focus of the JMC. The MoU states that *'All four administrations are committed to the principle of good communication with each other, and especially where one administration's work may have some bearing upon the responsibilities of another administration.'* (paragraph 4). All administrations party to the MoU are committed, through this principle, to close working and co-operation. Indeed, the Commission recognised that co-operation is the key principle enshrined in the MoU, and cites the close working between the UK Government and the Scottish Government on regulation of the marine environment as a good example of close co-operation.

The JMC is supported by a secretariat comprised of civil servants drawn from the UK Government and the three Devolved Administrations. At official level it is supported by a JMC (Officials) group, comprised of senior civil servants from all members of the JMC, which enables close co-operation at all levels and the ability to resolve any disputes at an early stage without escalation to Ministerial level.

The JMC plenary meets on at least an annual basis, and also sits more frequently in its JMC (Domestic) format and in its JMC (Europe) format. A broad range of subjects have been discussed in these formats including the economy, marine planning, how the UK Government and the Devolved Administrations

should work together, and increasing co-operation on EU business. The agenda for JMC meetings is agreed by all members of the Committee, and any member is able to suggest items for discussion at the meetings.

The JMC provides a valuable forum to allow matters of common concern to be discussed amongst all members. The MoU was reissued in March 2010 (<http://www.cabinetoffice.gov.uk/devolution.aspx>), since the Commission's final report was published, and now includes a specific agreement on dispute avoidance and resolution (Annex A3). All members of the JMC are committed to working within this framework, and to resolving disputes without escalation to Ministers. Since the new dispute resolution procedures were agreed earlier this year, disputes on North Sea fishing allocations and on the financial implications of Building Britain's Future have been resolved.

The Commission's report makes a number of recommendations regarding openness and transparency and the JMC process. The JMC now publishes an annual report which sets out what activity has been undertaken in the various JMC meetings in the previous year. The report for 2009-10 can be found at http://www.cabinetoffice.gov.uk/newsroom/news_releases/2010/100608-jmc.aspx. The JMC also issues communiqués following plenary meetings. The UK Government publishes these on the Cabinet Office website, and each Devolved Administration also places them on their websites.

The Commission recommended that the JMC should be more transparent and should publish agendas and timelines in advance of each JMC

meeting. The UK Government is committed to openness and transparency where this aids the public's understanding of Government. The UK Government believes that the information currently made public by the JMC enhances the public's understanding of the work of the JMC. The Government accepts that publishing agendas and timelines for meetings may increase the public's understanding further. Having made important steps forward, the Government will, along with all members of the JMC, keep the publication policy under review.

Co-operation on European Union business

The UK Government is committed to working closely with Scottish Ministers, and Ministers from Wales and Northern Ireland, to ensure that their views are taken into account when developing UK positions on EU business. This close working is achieved through bilateral contact between the relevant UK department and the Devolved Administrations, and JMC (Europe) provides the formal mechanism to ensure that this takes place. The Commission recommended that, when devolved issues are to be discussed at EU meetings, there should be a presumption that Scottish Ministers, and Ministers from other Devolved Administrations, should be able to join the UK delegation, subject to the agreement of the lead UK Minister. The UK Government will respond positively to requests from the Devolved Administrations to attend, unless there is a compelling reason not to do so.

The Government also accepts that Scottish Ministers, and other devolved Ministers, should be able to speak to the agreed UK Government line. Again, subject to the agreement of the lead UK Minister, these requests will be considered positively.

Improving the civil service machine

On 11 November 2010 the Government revised the Civil Service Code which, for the first time, reflects the need for all civil servants to recognise the importance of mutual co-operation and mutual respect between civil servants working for the UK Government and the Scottish Government and other Devolved Administrations. The Prime Minister's role in making senior civil service appointments in Scotland has been delegated to the Cabinet Secretary (the head of the UK Civil Service) and the only political input into Scottish senior civil service appointments comes from the First Minister of Scotland, who was involved in the recent appointment of the Permanent Secretary to the Scottish Government.

UK Government officials have a good history of working well with Scottish Government officials, both bilaterally and within formal networks. Cabinet Office officials support a regular cross-Whitehall meeting to discuss devolution issues. Devolved Administration officials are present at these meetings, to ensure that there is clear visibility and understanding of how devolution impacts upon UK policy making. The Government recognises the importance of ongoing training and awareness raising programmes across Whitehall, and is working closely with the Devolved Administrations to improve the understanding of devolution across Government. Officials from the Scotland Office, Wales Office and Northern Ireland Office, alongside colleagues from the Cabinet Office, have been engaged in a long-running, and successful programme of education and awareness-raising events across Whitehall.

CHAPTER 4: THE RIGHT POWERS AND FUNCTIONS FOR THE SCOTTISH PARLIAMENT AND SCOTTISH MINISTERS

The Commission judged that, from the evidence they received, the division of responsibilities in the Scotland Act was well thought through and works well in practice. However, devolution has been described as a process, not an event; and to be successful, devolution needs to adapt over time. Since 1998, ten orders have been made to provide the Scottish Parliament with extra powers and 16 orders have been made to provide Scottish Ministers with extra powers. The current Scotland Bill provides the opportunity to develop the settlement further.

Improving the constitutional framework

The Government is using the opportunity provided by the Scotland Bill to strengthen the working of the Scottish Parliament. Since 1999, the Scotland Act has provided a solid framework for the Scottish Parliament to operate in. However, as has been recognised by the Parliament itself and by the Commission, the arrangements should be amended to provide the Scottish Parliament with extra powers and responsibilities to enable it to shape more of its processes and procedures.

Members' interests

The Commission considered the issue of Members' interests in detail and noted that there was a particular problem in that the Scotland Act directly proscribes certain conduct (such as failure to register or declare certain interests, or undertake paid advocacy), and

makes it a criminal offence subject to a specified level of penalty. The Commission noted that this prevented the Parliament, in passing its own legislation, from providing defences to certain offences in appropriate circumstances, for example when a member has a reasonable excuse for failing to register an interest within the specified time limit.

The Standards, Procedures and Public Appointments Committee (SPPA) of the Scottish Parliament made detailed recommendations in its report (published on 24 September 2010) which were endorsed in a debate in Holyrood on 29 September 2010. The SPPA state that *'the current Scotland Act provisions effectively make no distinction between a minor or excusable breach of the registration and declaration requirements and a serious, intentional breach. All are criminal offences potentially subject to the same criminal sanctions. This may result in disproportionate attention being given to relatively unimportant breaches of the requirements, undermining the overall credibility of the interests regime. In contrast, the parliamentary sanctions can be much more flexibly calibrated to the gravity of the offence (including in some cases no sanction being imposed at all). Even there, however, there is no scope for the Parliament or the Commissioner to*

*determine that there is a reasonable excuse for a member's breach of the requirements.*⁹

The Government agrees that the Scottish Parliament should have the ability to set its own Members' interests regime. This will improve the accountability of MSPs to that Parliament, and to the people of Scotland, and it will enable it to become increasingly self-regulating. This will ensure that the Nolan principles on standards in public life¹⁰ are adhered to in a way which makes sense for that legislature and its members. Consequently, the Government has included a clause in the Scotland Bill which will enable the Scottish Parliament to adopt its own Members' interests regime. Full implementation of this clause will require a specific Act of the Scottish Parliament. Until that time, the current regime, (as provided for by section 39 of the Scotland Act 1998 and the Interests of Members of the Scottish Parliament Act 2006) will remain in force.

Presiding Officers

As the Commission noted, it is important that the appointment of the Presiding Officer is the first substantial piece of business the Parliament completes after MSPs take their oaths. The Commission concluded that the current drafting of section 19(1) of the Scotland Act 1998 caused some practical difficulties following the 2007 Holyrood election, when the close result made the main political parties reluctant at first to allow one of their members to take on the non-voting role of Presiding Officer.

9 5th report, 2010 (Session 3) 'The recommendations of the Commission on Scottish Devolution regarding Scottish Parliament procedures' paras 131-132. <http://www.scottish.parliament.uk/s3/committees/stanproc/reports-10/stpr10-05.htm#36>

10 Further information on the Committee can be found at <http://www.public-standards.org.uk/>

Whilst the Parliament was able to work around the restriction imposed in section 19(1), the Commission recommended that there should be a period of 14 days for the Parliament to elect a Presiding Officer after MSPs have taken their oaths.

The Government agrees that it is important there is sufficient time for political parties to conduct any negotiations necessary to form a Government. The Government has discussed this matter on several occasions with the Scottish Parliament's SPPA Committee. The subsequent Scottish Parliamentary debate on that Committee's report on 29 September 2010 endorsed the recommendation made by the Commission. The Government is therefore including a clause in the Scotland Bill to ensure that the election of the Presiding Officer continues to be the first substantive piece of business of the Parliament (after the oath is taken), but to allow a 14 day period for that election, should the result of the Holyrood election be close.

The Commission also recommended that there should be flexibility in the Scotland Act to enable the Scottish Parliament to appoint additional Deputy Presiding Officers. The Scotland Act 1998 currently provides for two Deputy Presiding Officers (at section 19(1)) and the Commission received evidence that such a strict limit could cause problems should one or more of the Presiding Officer and Deputy Presiding Officers be unable to act. The Government agrees that there should be more flexibility, and is including a clause in the Scotland Bill to enable the Scottish Parliament to elect from amongst its members additional Deputy Presiding Officers if

the Presiding Officer or Deputy Presiding Officers are for any reason unable to act.

Corporate Body

The Scottish Parliament Corporate Body (SPCB) is responsible for ensuring that the Parliament is provided with the property, staff and services it requires. Its key aim is to ensure that the Scottish Parliament can operate effectively, and that MSPs are able to carry out their duties. The SPCB deals with a wide range of issues to do with the running of the Parliament, including the financing of the Parliament and allocation of the budget to enable the Scottish Parliament to function; the staffing of the Parliament; accommodation; and the use and security of Parliamentary facilities at Holyrood.

The SPCB's membership is determined by section 21 of the Scotland Act 1998 which currently provides for the SPCB to comprise the Presiding Officer and four members. As part of the general review of the provisions in the Scotland Act that constrain the Parliament in terms of its procedures or working arrangements, as recommended by the Commission, the Scottish Parliament's SPPA committee came to the conclusion that there should be flexibility in the composition of the SPCB. The SPPA believed that there should be a minimum number of members of the SPCB, which they believed should be four members alongside the Presiding Officer as now, rather than a set number of members. This would mean that, should the political composition of the Parliament change, with more than four major parties in Scotland, this could be reflected in the composition of the SPCB. The Government is therefore including a clause in the Scotland Bill which provides that

the SPCB should comprise the Presiding Officer and at least four other members.

Statements of legislative competence

The Scotland Act 1998 constrains the Scottish Parliament in that all Acts passed by that Parliament must be within competence of that Parliament, and Scottish Ministers must act within the powers devolved to them. This means that Acts of the Scottish Parliament must only deal with matters devolved to the Scottish Parliament, and the Scottish Parliament cannot legislate on matters which are reserved to the UK Parliament and Government.

Importantly, section 31 of the Scotland Act 1998 puts a duty on any Minister introducing a Bill into the Scottish Parliament to state that in his view the provisions of the Bill would be within the legislative competence of the Parliament, and the Presiding Officer must make a similar statement. These are statements of opinion, and are not definitive rulings. They have the benefit of clearly stating that, in the opinion of the Bill's sponsor, the matter being brought forward can be dealt with by the Parliament.

However, this requirement does not extend to any backbencher introducing a Bill into the Scottish Parliament; and the Commission recommended that section 31(1) of the Scotland Act should be amended to require any person introducing a Bill into the Parliament to make a statement that it is, in that person's opinion, within the Parliament's legislative competence. The Commission also recommended that the explanatory notes accompanying each Bill should give a general account of the main considerations that informed this account.

The Government agrees with the recommendation of the Commission. Such a requirement is similar to the obligation placed on all MPs who introduce a Bill into the UK Parliament, whether from the Government or backbenches, to make a statement on the European Convention on Human Rights compatibility of that Bill. The Government believes that it is only right that any MSP introducing a Bill should be obliged to have considered whether such a Bill would be within the competence of the Parliament. Whilst that opinion is not binding, and such matters can only be determined by the Courts, it will help ensure that legislation is drafted in such a way as to be within the competence of the Scottish Parliament, and ensure that the Parliament is aware, through the explanatory notes, of the main considerations taken into account in determining the competence. Such a requirement will not be onerous, and will bring parity of approach for all MSPs, whether from the Scottish Government or from the backbenches.

The Government is therefore including a clause in the Scotland Bill to amend section 31(1) in the manner proposed by the Commission, and as agreed with the SPPA. It will be for the Scottish Parliament to bring forward amendments to their Standing Orders to ensure that explanatory notes accompanying Bills provide the main points taken into consideration when a MSP introduces a Bill.

Extending temporary competence

While the Commission considered that the current powers in the Scotland Act were suitable for transferring extra competence to the Scottish Parliament and Scottish Ministers, it believed that there should be a new mechanism to enable

the Scottish Parliament formally to request from Westminster the ability to legislate temporarily in reserved areas. The Commission believed that this mechanism would be appropriate for considering the transfer of more tax raising powers in the future.

The Government agrees that there needs to be more flexibility in how competence is transferred to the Scottish Parliament. It is therefore including a clause in the Scotland Bill to amend the current powers contained in section 30 of the Scotland Act. The clause will make it clear that section 30 orders can be 'sunsetting', meaning competence can be temporarily transferred; and will ensure that any Act of the Scottish Parliament which relies on competence which has temporarily been transferred, and has then returned back to Westminster, would still be in force in Scotland. This would then allow the Scottish Parliament to bring forward specific legislation to deal with specifically Scottish problems that would otherwise be out of competence, while maintaining the reservation in the long term. One such problem occurred in 2009 when, as a result of the *Somerville* case, the UK Government extended competence to the Scottish Parliament to introduce a time limit for bringing actions against Scottish Ministers under the Scotland Act which would be equivalent to time limits in the Human Rights Act. This was considered to be an expedient temporary solution to be reversed after it had been used: but the current Scotland Bill has proved to be the first opportunity to reverse this extension of competence. This issue would have been an ideal candidate for the new procedure to enable the Scottish Parliament to have temporary competence to deal with a real situation within a specified time period, whilst

ensuring that the overall reservations in the Scotland Act 1998 could have been maintained.

The Government believes that this approach is the best way to implement the Commission's recommendation, and so does not believe that any new order-making power is necessary. The current powers under section 30, which amend the competence of the Scottish Parliament, are well understood, are well used (10 orders have been made under section 30), and with appropriate adjustment can be made to deliver the flexibility of approach that was at the heart of the recommendation.

Administration of elections

The Commission considered whether the electoral system for the Scottish Parliament should be reformed or devolved to the Scottish Parliament. Previously, the Arbuthnott Commission had reported in 2006 stating that there should be a review of the electoral system after the 2011 elections to the Scottish Parliament – the Government will consider this recommendation, taking into account the views of the new Scottish Parliament, following the May 2011 elections. The 2007 Gould Report had also considered the responsibility for devolution of responsibility for elections in Scotland following problems encountered during the combined local Government and Scottish Parliamentary elections of 2007. Gould argued that fragmentation of responsibility was a major factor in the problems encountered during that election, and had concluded that the Scottish Parliament should have full responsibility for Scottish Parliamentary elections.

The Commission accepted that there were a range of arguments for devolving the administration of elections, but did not consider, on the basis of the evidence provided to it, that the electoral system should be generally devolved to Scotland. The Commission did, however, conclude that it was appropriate for Scottish Ministers to be made responsible for the conduct or administration of the Scottish Parliament elections. The Commission believed that devolving those elements of responsibility currently vested in the Secretary of State for Scotland is consistent with the principle that matters should be decided at the level closest to those affected, unless there are good reasons for determining them at a UK level.

The UK Government agrees with this approach. Accordingly, the Scotland Bill includes a clause to transfer to Scottish Ministers certain of the executive functions which are currently the responsibility of the Secretary of State for Scotland relating to the conduct of elections (under section 12(1)(c) of the Scotland Act 1998). These functions are described in a non-exhaustive list in section 12(2). However, some elements of the powers should remain the function of the Secretary of State (in particular the franchise and the combining of Scottish Parliament polls with polls at other reserved elections) as they relate to reserved matters, ensuring that issues of UK constitutional importance continue to be dealt with at UK level. Scottish Ministers will be able to make general provision for the conduct and administration of elections to Holyrood, subject to necessary constraints.

Policing and justice

The separate Scottish legal system is an enduring symbol of Scottish identity. Whilst the Scottish Parliament has general responsibility for policing and justice, the UK Parliament has responsibility for national security, terrorism and human trafficking – all issues where a common UK approach is essential to ensure that international obligations are met and the safety and security of all citizens of the UK are ensured. There are no plans to devolve responsibility for these to the Scottish Parliament, but some aspects of what would otherwise be considered policing and justice issues have been previously reserved to the UK Government.

Air weapons

The Commission considered whether it would be appropriate to devolve responsibility for firearms legislation to the Scottish Parliament and concluded that it would be confusing and potentially damaging to create a situation in which the entire body of firearms law in Scotland could differ from that in England and Wales, particularly at a time when greater harmonisation within Europe is being sought.

Legislation by successive UK Governments has resulted in some of the most stringent firearms laws in the world, geared towards the key goal of securing public safety. Access to firearms is mainly controlled through a certification system administered by local police forces. The police have powers to attach conditions to a certificate to restrict how and where the firearm can be used, and there are also strict security requirements. They have powers to revoke certificates where they feel there is a risk to public safety. The most dangerous

types of firearm, such as machine guns and automatic rifles, are prohibited and can only be possessed with the written authority of the Home Secretary. These controls are kept under close review; and the Government is prepared to tighten them further if necessary. Particular attention will be paid to any lessons to be learnt from the shootings in Cumbria on 2 June 2010.

The Commission heard that a large number of people participate in rough shooting and deer stalking activities on both sides of the border. There is no evidence to suggest that the free movement of certified firearms for such purposes has caused problems; and any differing requirements for the grant of certificates which might emerge over time would do nothing to help public understanding of controls. Different regimes would introduce an additional layer of bureaucracy, which could only impact adversely on the police's workload and have significant economic consequences if people from the shooting community were to be deterred from travelling to different parts of the country.

Tackling problems associated with gun crime and its causes is not straightforward: but there have been notable operational successes across the UK in recent years. The problem is markedly different in different areas, and strong local engagement and partnership working are crucial. In the Government's view, it is essential to have a robust, consistent and stable legislative framework for the control of firearms in Great Britain governing the unauthorised possession, supply, production, import and export of firearms. Local, tailored enforcement and sentencing approaches to tackle misuse in Scotland are not impeded by this common legislative framework, which has been common

throughout Great Britain since controls were first imposed in 1920. This framework forms an important part of the fight against violent crime, by preventing organised criminals from exploiting any differences which might emerge from separate regimes; it also avoids confusion for both businesses and the shooting community.

The Commission also recognised that the current control framework for firearms, whilst being a single, strong network applied across Great Britain, does already allow particular Scottish circumstances to be taken into account. It is chief police officers across Great Britain who determine whether individuals are fit to be granted a firearms licence, and local police forces enforce firearms legislation.

The Commission did see merit in devolving legislative competence for air weapons to the Scottish Parliament, whilst recognising that significant new legal measures have been introduced to address problems of misuse. Since October 2007, any business wishing to sell air weapons must register with the local police as a firearms dealer. As such, they have to keep records of all sales, including details of the purchaser, and they must complete sales in person. A person must be aged 18 or over to purchase or hire an air weapon, and it is an offence to sell or let on hire an air weapon to someone under 18. It is an offence to make a gift of an air weapon or ammunition for an air weapon to a person under 18, subject to certain exemptions. It is also an offence for a person under 18 to have an air weapon or ammunition for an air weapon unless supervised by someone aged 21 or over.

These measures have had a positive effect in reducing the number of air weapon offences in Scotland and in England and Wales. Nevertheless, the misuse of air weapons has remained an issue of concern in Scotland, and in the UK, and the Commission concluded that the Scottish Parliament should have the power to respond to specific Scottish concerns.

The Government has included a clause in the Scotland Bill to devolve competence over air weapons to the Scottish Parliament. These powers will enable the Scottish Parliament to pass new laws to require different controls over air weapons in Scotland, if they wish to do so. However the Government is clear that there will remain a single regime to cover all other firearms on a consistent basis.

Traffic regulation

The Commission recommended devolving further powers to Scottish Ministers to enable them to set the national speed limit for Scotland, and to determine the drink-driving limits in Scotland. Both of these matters are currently reserved to the UK Government. The Government agrees that these powers should be devolved to Scottish Ministers, in line with the Commission's recommendations.

Drink-drive limit

As the Commission's report pointed out, the Scottish Parliament and Government currently have responsibility for the criminal justice system and other policies in relation to alcohol. The ability to set the prescribed drink-drive limit links closely to the competence Scottish Ministers have in promoting health and well-being across

Scotland, and their responsibilities for cutting down on alcohol abuse.

The Scotland Bill will be devolving regulation-making powers relating to the prescribed alcohol limit for driving to Scottish Ministers, by amending the Road Traffic Act 1988. The Government believes that devolving this power will allow Scottish Ministers to tailor the overall approach to drink-driving specifically for Scotland and the users of Scotland's roads. The power which the Commission recommended for transfer in this way is to set a single prescribed alcohol limit for driving for all drivers.

The Commission did not recommend that this power should be modified so that different limits could be set for different groups of drivers. The Road Traffic Act currently provides that some drivers who have failed an evidential breath test, should have the right to replace the evidential breath sample with a sample of blood or urine. This is called the 'statutory option' and currently applies to those whose breath sample is up to 40% in excess of the prescribed alcohol limit. The Act has a power for this limit to be changed by Regulations. That power will also be devolved to Scottish Ministers, so that they are able to maintain the relationship between the two limits, should the prescribed alcohol limit for driving be changed.

Any variation in the prescribed drink-drive limit in Scotland will need to be carefully managed by the Scottish Government and they will have to ensure that drivers in Scotland, and across the UK, are aware of the differential limits.

National speed limits

As the Commission noted, there is already a considerable degree of flexibility for the local variation of speed limits in Scotland; local authorities are already able to set their own speed limits. However, Scottish Ministers are unable to determine the national speed limit in Scotland – the limit that applies on roads where there is no local limit. That is currently set by UK Ministers and applies across Great Britain and Northern Ireland.

The Government, like the Commission, believes this responsibility ought to be devolved to Scottish Ministers. This devolution of power will match Scottish Ministers' responsibilities for road safety, and allow those with direct knowledge of the geography and road system in Scotland to take decisions that affect it and its users.

The Government is including a clause in the Scotland Bill to amend the Road Traffic Regulation Act 1984 which will devolve power to Scottish Ministers to determine the level of the national speed limit in Scotland. Any new national speed limit in Scotland would have to be indicated through a unique Scottish road sign, which would appear in UK-wide road signs information and publications to ensure cross-border awareness. The changeover to any new signage would be carefully managed and publicised. The Scottish Government would be responsible for running appropriate driver awareness training should they decide to alter the national speed limit for Scotland.

Health and public safety

Since devolution the Scottish Government has had control over the provision of comprehensive

health services and most health functions. Along with responsibility for policing and criminal justice, it is one of the major responsibilities of Scottish Ministers and the Scottish Parliament. They are able to tackle current healthcare problems such as obesity, alcohol and drug abuse from a distinctive Scottish perspective.

Drug licensing

The Commission believed that responsibility for those aspects of the licensing and control of controlled substances that relate to their use in the treatment of addiction should be devolved to Scottish Ministers. The Commission argued that devolving this responsibility would be commensurate with the responsibilities Scottish Ministers already have for public health and drug rehabilitation. It was clear that the wider drug control mechanisms and responsibilities for drug classification should not be devolved. The Government wants to ensure that the Scottish Government has the necessary powers to tackle drug abuse effectively. Regulations relating to the licensing of controlled drugs for the use of controlling addiction are currently made by the Home Secretary and apply across England and Wales and Scotland. The Government considers that Scottish Ministers are better placed to consider the particular circumstances in Scotland when deciding which doctors should have the authority to prescribe or administer specific drugs in the treatment of addiction, and is therefore devolving responsibility to them by including a clause in the Scotland Bill. It will implement the clause as soon as Scottish Ministers want to take on this responsibility.

Healthcare professionals

The Commission considered that there was an issue with the regulation of healthcare professionals under the existing devolution arrangements, in that there is a split between reserved and devolved regulation. The Scotland Act 1998 reserved the regulation of healthcare professionals by referring to various other pieces of UK legislation which regulate professions. So the ability to create UK-wide regulation for healthcare professionals depends upon whether those professions were subject to statutory regulation at the time of the Scotland Act 1998. This has meant that regulation of a small number of professions¹¹ introduced to regulation after Royal Assent of the Scotland Act are devolved, whereas the vast majority are reserved. The Commission considered this in detail, and concluded that there should be a single regulatory framework for healthcare professions across the UK.

The need for clear and common standards is essential for the professions themselves. Highly trained healthcare professionals, valuable to the UK as a whole, and Scotland specifically, need to know that their qualifications have parity and operate to the same standards wherever they choose to practice.

The Government therefore agrees with the conclusion of the Commission, and in particular the need to ensure that new healthcare professions that become regulated in the future will be reserved. This will be done by amending Schedule 5 to the Scotland Act 1998 in the Scotland Bill. The Government also believes that

¹¹ The devolved professions are: Operating Department Practitioners, the Professions Complimentary to Dentistry, Practitioner Psychologists, and Pharmacy Technicians.

despite the fact that healthcare is devolved, the overarching responsibility for regulatory standards sensibly rests at UK level, and that the best interests of patients are at the heart of this decision. A common framework for healthcare professionals will ensure mobility across the UK for professionals, and avoid any potential for confusion.

Health and safety

The Commission recommended that there should be a closer relationship between the Health and Safety Executive (HSE) and the Scottish Parliament, given the close interaction of the HSE's reserved functions with areas of devolved policy. The Government agrees. HSE has been working to develop its relationship with the Scottish Parliament and with Scottish authorities; and considers that increasing MSPs understanding of what HSE does, as well as HSE's understanding of the Scottish Parliament's and Government's competence to act in areas related to health and safety, will contribute to the effectiveness of the health and safety system in Scotland. HSE works closely with the Scottish Government as well as the Scottish Parliament. It is proactive in responding to Scottish Government consultations where it has an interest, and it has strengthened their links with Scottish Government officials on delivery programmes in which workplace and public health overlap.

The Partnership on Health and Safety in Scotland (PHASS) – mentioned in the Commission's report – is a further mechanism for managing devolved and reserved interests. The HSE Board has approved proposals for PHASS to engage directly with those responsible for health and safety by holding open events in communities

around Scotland, allowing HSE and its partners – including the Scottish Government – to offer support and hear feedback.

Immigration

Whilst judging that immigration should not be devolved, the Commission recognised the need for an over arching framework for immigration that offers the flexibility to reflect Scottish needs. The Government agrees with this. It is essential that there is a single framework for managing immigration into the UK. The Government has committed to reducing levels of non-EU migration to the UK from the hundreds of thousands to the tens of thousands. The Government will ensure public services are not put under unnecessary additional pressures, and that our own graduates and workforce have opportunities for employment. However, the Government recognises that our industries, universities and communities thrive in part by attracting and retaining the brightest and best individuals to the UK.

Within Scotland, the UK Government is committed to working with the Scottish Government and corporate partners to ensure a flexible approach to migration wherever this is possible. UK Border Agency (UKBA) has a regional office for Scotland and Northern Ireland, based in Glasgow, and officials meet regularly with the Scottish Government and corporate partners throughout the private and public sectors to discuss approaches to immigration policy which work best for Scotland. The Migration Advisory Committee oversees a Scottish Shortage Occupation List which addresses Scottish specific gaps in the labour market in addition to the UK-wide list. UKBA and the Scottish Government have

developed a close working relationship. There is constant dialogue between UKBA and the Scottish Government at official level, and regular meetings are held on policy and operational matters.

UKBA recognises the statutory responsibility of Scottish authorities for the well-being of children in Scotland. The UKBA regional office hosts quarterly meeting of corporate partners from across the asylum community, including refugee charities, to provide a forum to discuss pertinent asylum issues. Regular events are also hosted to inform Scottish MPs of the work done by UKBA, and UKBA officials recently gave evidence at the Scottish Parliament Equal Opportunities Committee inquiry into migration and trafficking.

Business, corporate affairs and academic research

The Commission also considered a number of changes to the powers of the Scottish Parliament and Scottish Ministers on corporate insolvency; appointments to the BBC Trust; and food labelling. The Commission believed that these adjustments needed to be made to ensure that both Scottish and UK needs were properly and fully taken into account on matters which cut across the whole of the UK. The Commission also considered that Research Council 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.

Insolvency

The Commission carefully considered the position on insolvency law and winding-up as it applied in Scotland. Since 1998, windings-up taking place in Scotland have been partly reserved (general and legal matters) and partly devolved (procedural matters). The Commission found that the division has not always been clear and has caused problems for users of the legislation, as winding-up law changed in one jurisdiction but not the other. These changes have resulted in an increasing number of discrepancies between the law relating to windings-up in Scotland and those in England and Wales, which greatly increased in April 2010 when a range of modernisation changes were introduced into insolvency processes in England and Wales.

The Commission also identified an absence of clarity as to where responsibility lies for drawing up the rules to be followed by insolvency practitioners dealing with winding-up; and that there have been unnecessary and damaging delays in introducing new rules in Scotland. The Commission therefore concluded that it would be desirable to have a common approach to winding-up. This would be of significant benefit to insolvency practitioners and to creditors and others dealing with insolvent companies in both England and Wales and Scotland, and strong representations were made to this effect to the Commission by stakeholders.

The Government agrees that a common approach is necessary, so it is including a clause in the Scotland Bill to make amendments to Schedule 5 to the Scotland Act 1998. Responsibility for the rules on winding-up in Scotland will be reserved, which will enable

rules on winding-up to remain properly aligned throughout Great Britain. Windings-up in Scotland will remain subject to supervision where necessary by Scottish Courts. Matters which are the subject of common law, such as set off and disclaiming onerous property, will not be affected, with Scottish law still applying.

The re-reservation of legislative responsibility for winding-up itself will not require any further secondary legislation to implement. However as a consequential effect of re-reservation, the Accountant in Bankruptcy, (AiB) an agency of the Scottish Government, will no longer be required to maintain a register of windings-up taking place in Scotland. Liquidators are currently required by law to file certain documents with the AiB, in order that this register can be maintained. Companies House, which received this information prior to the enacting of the Scotland Act 1998, will do so again after re-reservation. The legal requirements on liquidators are found in both primary legislation, with the necessary amendments to them included in the Bill; and secondary legislation, which will require an amending instrument to commence at the same time as the Bill clauses are enacted.

It is the practice of the Secretary of State for Business, Innovation and Skills, acting through the Insolvency Service, to consult key stakeholder representative organisations on the detail of draft amending statutory instruments in the reserved insolvency policy areas. This will extend to any changes proposed for windings-up in Scotland. Receiverships and personal insolvency procedures in Scotland will be unaffected by this change.

BBC Trust

The Commission took evidence from a range of stakeholders before coming to the conclusion that responsibility for the appointment of the BBC Trust member for Scotland should be exercised by Scottish Ministers, but continue to be subject to the normal public appointments process. The Commission believed that this would help ensure that the BBC, as a national broadcaster, is more accountable and responsive to Scottish needs. The Commission believed that such a move would build upon the positive steps taken by the BBC to ensure that the devolution settlement is respected across the organisation; and it is consistent with the Scottish Broadcasting Commission's recommendation following its report into broadcasting in Scotland.

At the moment, all BBC Trust members, including the BBC Trust member for Scotland, are appointed by the Queen on the recommendation of the Prime Minister, following the advice of the Secretary of State for Culture, Olympics, Media and Sport. The Government is committed to involving the Scottish Government throughout the process for the selection of the BBC Trust member for Scotland to be recommended for appointment, once Scottish Ministers have been given the necessary legislative authority. Following careful consideration of the Commission's recommendation, the Scotland Bill includes a clause that requires UK Ministers to obtain the agreement of Scottish Ministers on the selection of the BBC Trust member for Scotland. The UK Government considers that this meets the spirit of the recommendation and is the most appropriate outcome, as the appointment is primarily that of a member of a UK body, the

BBC Trust, and broadcasting remains a reserved matter.

Food labelling

The Commission examined food standards and labelling, and specifically considered the impact that policy divergence may have on the market within the UK. The Commission recommended that 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 that Schedule 5 to the Scotland Act should be amended accordingly. Currently, food labelling and content are devolved to the Scottish Parliament and Scottish Government, subject to the constraints of EU law. The Commission's recommendation had regard to those businesses which trade throughout the UK and would encounter practical difficulties if food labelling and content legislation varied in different parts of the UK.

The Government agrees that the protection of UK businesses, whether trading within or outside the UK is extremely important. However, the Government recognises that this has to be balanced with regional needs and identities. The Commission discussed the need to ensure that the Scottish food industry would not be placed at a disadvantage. The Government agrees that the Scottish Parliament and the Scottish Government should not have their ability to promote Scottish foodstuffs hindered.

The Commission noted that food standards and labelling are closely aligned to public health, which is a successful area of devolution, and

stated that the Scottish authorities should have appropriate powers to deal with risks to public health at a national or local level. The Government agrees that Scotland has benefitted from the devolution of healthcare and does not want to impair the Scottish Parliament's or Scottish Government's ability to respond to local challenges in this area.

The Government accepts the spirit of the recommendation, and has considered carefully how to implement it. It has listened attentively to the concerns of businesses in this area. Three options have been identified. The first would be to amend Schedule 5 to re-reserve food content and labelling. However this would have a consequential impact upon the competence of the Scottish Parliament and Scottish Government to deal with public health matters. The UK Government considers this option to be undesirable, and against the spirit of devolution. For example, a complete re-reservation of food content and labelling could prevent the Scottish Parliament from bringing forward such legislation as the Schools (Health Promotion and Nutrition) (Scotland) Act 2007, which set nutritional requirements for school meals. Re-reserving food content and labelling in its entirety would also go much further than the Commission's recommendation.

A second option is to implement the recommendation exactly as the Commission discussed. However, the area of food standards is complex, with interdependencies across the policy areas of food standards, food content, food labelling, food safety, and nutrition. Seeking to amend Schedule 5 to reflect the differences between these policy areas would be legally complex. The Government believes

that the Scottish Parliament's competence with regards to public health should be preserved but Schedule 5 cannot be amended to protect business and have no impact upon the competence of the Scottish Parliament to legislate on nutrition and public health.

The third option is not to legislate. Most of the law on food content and labelling is currently decided at European level, so as to maintain the Single European Market, and protect the manufacture, distribution and supply of foodstuffs across the EU from localised requirements. Whilst implementing these EU directives will be done separately by the Scottish Parliament and Government, the effect will be equivalent across the UK. Additionally, in the future general food and nutrition labelling rules will be governed by an EU Regulation that is currently the subject of negotiation. The scope for the Devolved Administrations within the UK to legislate differently on food content and labelling is severely limited by the requirement to implement EU law consistently. The practical effect of this is that businesses are unlikely to have an additional burden placed on them by separate legislation in this area.

The Government recognises that currently the Scottish Parliament cannot legislate on food content and labelling in a way that breaches the Single European Market. The Commission's recommendation aims to prevent a breach of the single market in the UK. A 'UK single market' does not exist in law, and so identifying a breach is difficult. The closest legal entity we have is the Single European Market, where there is existing protective legislation in place. The European Court of Justice has confirmed that the free movement rules apply to restrictions within one

part of a Member State. The Single European Market rules therefore apply to Scotland as part of the UK.

For food labelling and standards, there is very limited flexibility at Member State level for introducing national measures. If the Scottish Parliament or Government wished to introduce any such measure, this would have to be done at Member State level through the Department for Business, Innovation and Skills (BIS). This gives the UK Government oversight of any differing legislation in Scotland in this area, and as such it would be aware if such legislation could create an additional burden for businesses.

Where this area is not covered by EU law, the Scottish Government and Parliament can only legislate for public health or safety purposes. These were instances that the Commission envisaged, and did not seek to prevent. Even where there is no related legislation at an EU level, free movement principles mean that any food which can lawfully be sold in any Member State must be saleable throughout the UK and vice versa. Extending this principle to the market within the UK would mean that Scotland would not be able to prevent food being sold in Scotland that could freely be sold in the rest of the UK or indeed the EU. The only possibility for it to do so might be on public health grounds, as it has done in banning the sale of raw milk. Again, any such measure would need to be notified to the European Commission via BIS before adoption at the UK level.

Given that the situation envisaged by the Commission in this recommendation is largely prevented by EU legislation, the Government concludes that it is unnecessary to legislate

in this area. Doing so would be to write superfluous legislation. The Government also notes that many of the changes in food content and labelling are brought about by voluntary schemes or guidance, and it does not wish to impinge on Scottish Ministers' ability to do this. In addition, food law in this area is devolved to Wales and Northern Ireland: the Government recognises that removing this power from Scotland while leaving it in place for Wales and Northern Ireland would create an unjustifiable anomaly.

Research Councils

As the Commission recognised, the issue of eligibility for Research Council funding is a matter for the Research Councils themselves. The policy adopted by the Research Councils since October 2006 is applied UK-wide and kept under regular review. There is no distinction in the rules applied to Scottish institutions and those applied to institutions elsewhere in the UK.

All UK Higher Education Institutions are eligible to receive funds for research, postgraduate training and associated activities. The higher education funding councils for England, Wales, Scotland and Northern Ireland determine whether an organisation meets the criteria to be a Higher Education Institute.

While Higher Education Institutions automatically qualify, all other institutions, wherever they are located, can apply to become recognised as Independent Research Organisations (IROs) and become eligible to receive funding from Research Councils.

IROs across the UK may be eligible if they possess an existing in-house capacity to carry out

research that materially extends and enhances the national research base, and are able to demonstrate an independent capability to undertake and lead research programmes. They must also satisfy other criteria related to their financial and legal status: these are set out in full in the Research Councils' joint statement on eligibility, which can be viewed at: <http://www.rcuk.ac.uk/research/eligibility.htm>. These rules apply throughout the UK, ensuring institutes delivering similar functions receive comparable treatment.

Natural environment and rural affairs

The Scottish Government has had extensive control over the natural environment and rural affairs since devolution, with responsibility over climate change, the countryside and landscape, pollution, waste, sustainable development, wildlife and their habitats, environmental appeals and funding and grants. It has also played an important role in protecting and developing Scotland's marine resources. The Commission considered that the balance of responsibilities was broadly right and did not recommend any significant adjustment to these powers. However, it did make recommendations on specific points.

Animal health and welfare budget

The Commission noted that funding arrangements for animal health and welfare remained the responsibility of the Department for the Environment, Food and Rural Affairs (Defra), although animal health and welfare are devolved to the Scottish Parliament. This means that Defra funds the majority of animal health and welfare activity across Great Britain. Consequently, the Commission recommended

that funding for policy relating to animal health should be devolved. However, the Commission argued that funding for exotic disease outbreaks should be retained at the UK level, given the UK Government's responsibility for the integrity of the UK border, and given that funding any major outbreak would usually be the subject of a call on the national contingency reserve.

The Government agrees with the Commission that funding for policy relating to animal health should be devolved. As policy is already devolved for animal health and welfare, it is appropriate to align budgets and devolve the appropriate fund accordingly, subject to necessary safeguards protecting matters reserved to the UK Parliament relating to animal health and welfare, such as European and international obligations. However, it is a long-standing principle that responsibility for budgets also carries with it responsibility for associated financial risks. In the case of animal health and welfare, this relates to unforeseen expenditure on animal health and welfare including exotic disease outbreaks. This raises a conflict with that part of the recommendation that relates to the retention of responsibility at UK level for funding exotic disease outbreaks.

A Project Board comprising representatives of Defra and the Devolved Administrations in Scotland, Wales and Northern Ireland is considering devolution of the animal health and welfare budget. With the assistance of colleagues from HM Treasury this consideration includes the financial arrangements for handling exotic disease outbreaks. Discussions are still in progress with the objective of achieving devolution of funding, including resolving

matters over responsibility for financial risks, by April 2011.

Marine environment

The Commission also recommended that the effectiveness of the agreement reached by the UK and Scottish Governments in relation to management of the marine environment should be kept under review by the inter-governmental machinery; and that nature conservation should be devolved to the Scottish Parliament at the earliest opportunity. The report recognised that the agreement on the UK Marine Bill (as it was at the time) between the UK Government and the Devolved Administrations in November 2008 represented an effective approach to the complex issues and overlapping responsibilities which govern the management of the marine environment. The Government believes that the agreement reached was a demonstration of close working and co-operation with all of the Devolved Administrations, and was a notable success for the JMC machinery.

The draft UK Marine Policy Statement, published on 21 July 2010, is the first step in this new marine planning system. The policy statement sets the direction for the use of our seas and shapes marine plans and licensing decisions. It has been developed jointly with all of the Devolved Administrations, and sets out the specific policy objectives which the UK Government and Devolved Administrations are seeking to achieve in the UK marine area to achieve the vision of clean, healthy, safe, productive and biologically diverse seas and oceans.

The Government will keep the agreement reached by the JMC under review to ensure

that it delivers for the UK and for Scotland; and will consider further devolution of powers to Scotland once it has assessed, in conjunction with the Devolved Administrations, the effectiveness of the arrangements currently in place.

Crown Estate

The Crown Estate manages The Queen's hereditary UK property assets which She holds as Monarch, including certain properties in Scotland. The Commission recognised the links between the responsibilities of the Crown Estate and responsibilities of Scottish Ministers in relation to planning and the marine environment. The Commission concluded that the Crown Estate plays an important role in helping to manage the environment in the UK. The Commission highlighted the benefits that Scotland gains from being part of a much wider and profitable Estate, with flexibility to make investments in Scotland using capital raised from assets outside Scotland.

The Commission recommended that there should be a specific Crown Estate Commissioner appointed to represent Scottish interests who can demonstrate significant knowledge and understanding of interests in Scotland. The Government accepts this recommendation; the Scotland Bill therefore includes a clause to establish in law a Scottish Commissioner, rather than simply relying on the current arrangements, where there is an understanding that Scottish interests will be simply represented in the composition of the Crown Estate. In addition, the Bill contains a requirement that Scottish Ministers should formally be consulted on the appointment of the Scottish Commissioner.

The Commission also highlighted the powers of the Secretary of State for Scotland under the Crown Estates Act 1961 to direct the Crown Estate within the ambit of its statutory powers. The Government remains committed to keeping the work of the Crown Estate under review, and believes that it is right to use this reserve power only where necessary.

The Government looks forward to an ongoing and productive relationship between the Crown Estate, the Scotland Office and the Scottish Government. It is important that the Crown Estate's work is properly understood in Scotland, and that it is sensitive to local concerns and interests.

Social security and welfare reform

The Commission looked in detail at social security and welfare provision and concluded that there were strong practical arguments for maintaining a single, Great Britain-wide model for key parts of the welfare state, within what the Commission referred to as 'the social union'.

The Commission also recognised that some elements of the welfare system were closely aligned to areas of responsibility already devolved to the Scottish Parliament. The Commission identified Housing Benefit and Council Tax Benefit as two key benefits that fitted closely to the Scottish Government's responsibilities for housing and homelessness. The Commission identified the importance of the connection between Welfare to Work programmes and the Scottish Government's responsibilities for skills. The Commission also recommended devolving discretionary

welfare funding: Deprived Areas Fund and the discretionary elements of the Social Fund.

This Coalition Agreement committed this Government to undertaking the most wide-ranging review of welfare provision in the last 50 years, to assess how the system has developed and to ensure that it can deliver for the demands of today's society. Since May, the Government has undertaken a fundamental review of welfare provision, with two simple aims: ensuring that work pays and reducing the complexity of the existing system. The Government launched its White Paper *'Universal Credit: Welfare that works'* on 11 November 2010. The White Paper sets out the Government's plans to introduce legislation to reform the system of working-age benefits and Tax Credits by creating a new Universal Credit. The Universal Credit will ensure that people are better off in work, rather than out of it and remove the complexities of the current benefit system. The Universal Credit will provide a basic amount with additions for those with children and other caring responsibilities, people with disabilities and those with housing needs. It will replace the complicated and inefficient patchwork of existing support, including Working Tax Credit, Child Tax Credit, Housing Benefit, Income Support, Income-based Jobseekers' Allowance and Income-related Employment and Support Allowances.

Under the proposals for the new Universal Credit, the Government has set out a system that will see support withdrawn slowly and rationally as people return to work and increase their working hours, meaning they get to keep more of their earnings for themselves and their families. It is estimated that, in the long run, the

reforms will lift 350,000 children and 500,000 adults out of poverty.

The Government accepts the Commission's considerations, and agrees that there needs to be improvement in the interaction between reserved and devolved responsibilities at the interface between welfare and areas such as health, skills and housing. The Government's proposals for the Universal Credit take account of the central aim of the Commission's recommendations: to ensure that welfare provision is fair, and that it interacts effectively with devolved policy areas. The individual recommendations made by the Commission refer back to the current welfare system that we will replace with the Universal Credit. The Government has therefore looked again at each of the recommendations in light of our proposals for reform in order to ensure that our response is consistent both with the overall aims of the Commission and with the need for simplicity and coherence.

As the Commission acknowledged, consistency of welfare provision is an important feature of the social union. The Government has therefore determined that the Universal Credit will apply across Great Britain, providing the same minimum standard of support and same encouragement to work. The Government will take the powers to deliver the new Universal Credit in a Welfare Reform Bill to be introduced in early 2011.

Housing Benefit will be subsumed within the new Universal Credit. As a result, the Government does not feel it would be appropriate for the Scottish Government to have a right to request different levels to be set

in Scotland. The White Paper on the Universal Credit proposes that local authorities should have a greater say in decisions relating to eligibility for Council Tax Benefit, taking account of local need. The Government will review the existing powers of local authorities; and will work with local authorities in Scotland, and with the Scottish Government, to give effect to necessary changes to Council Tax Benefit. The Convention Of Scottish Local Authorities is represented on the Local Authority Association Steering Group that the Department of Work and Pensions (DWP) runs, it has been invited to nominate representatives to join the new consultative forum that will be established to discuss how the changes to the welfare system will work and to provide perspective from the front-line.

The Commission recommended that formal consultation should be built into DWP commissioning processes for those welfare to work programmes that are based in, or extend to, Scotland. The Government agrees that closer working on this issue will ensure that Scottish needs are fully taken into account. Consultation and engagement with partners is central to the commissioning processes that DWP has developed for the introduction and development of the Work Programme.

The Work Programme will provide an integrated, personalised welfare to work programme based around customer need, not centrally specified support that will not provide the help a person needs. Once implemented, it will supersede many of the confusing and inflexible programmes currently on offer. The Work Programme will give providers longer to work

with individuals and greater freedom to decide the appropriate support for them. It will offer significant new opportunities for contractors from the private and voluntary sectors to deliver truly flexible and personalised support, building appropriate partnerships to do so.

Jobcentre Plus and DWP are in discussion with the Scottish Government and other strategic partnerships in Scotland, to share thinking on the Work Programme contract package areas, and develop local information that will form part of the invitation to tender for the Work Programme. This action will enable bidding organisations to develop, with local strategic partners, high quality proposals that take account of local needs, priorities, strategies, and resources within Scotland.

The Government has established a Scottish Employability Forum, jointly chaired by Jobcentre Plus and the Scottish Government to enable the Scottish Government to have direct input into the development of the Work Programme in Scotland. The Government is aiming to have the Work Programme in place by the summer of 2011.

The Commission recommended that the Deprived Areas Fund should also be devolved to Scotland, given the strategic fit with wider responsibilities of the Scottish Government. However, this funding will end in March 2011; the Government considers this recommendation has been overtaken by events.

The Commission also considered that the UK Government should consider devolving the discretionary elements of the Social Fund to Scotland. The Government accepts this

recommendation and consulted on it in *'Social Fund Reform: debt, credit and low income households'*¹². The recent White Paper *'Universal Credit: Welfare that works'* contains the UK Government's plans for reform of the Social Fund. Budgeting Loans will be replaced by a non-discretionary advance of credit facility within Universal Credit. The remaining discretionary elements, Community Care Grants and Crisis Loans will be reformed and devolved to Scotland and Wales, and administered by local authorities in England. This provision will no longer constitute social security. The Scottish Government will be responsible for determining the most appropriate arrangements for delivery of the devolved provision.

The proposals outlined in the Universal Credit White Paper will provide an improved welfare system that delivers benefits across Great Britain, whilst taking account of specific Scottish concerns in line with the Commission's recommendations; and maintaining the social union.

The Commission felt it would be helpful to clarify and amend the interpretation provision in relation to 'social security purposes' in the Scotland Act 1998 to make it clear that the reservation refers to social security as provided by DWP. The Government feels that the current definition provides a clear statement of reserved social security matters which has worked effectively to date and has not prevented the Scottish Parliament from legislating in devolved areas such as legal aid and prescription charges, where there are references to low income or other social factors.

Charities

The Commission undertook a detailed study of the statutory framework surrounding the operation of charities in Scotland. They noted, in particular, the different approaches to the definition of 'charitable purposes' and 'charity' in the Charities and Trustee Investment (Scotland) Act 2005 and in the Charities Act 2006 (which only applies to England and Wales). This raises particular problems for regulatory and tax purposes, in that there are two definitions for regulatory purposes in the two Acts and a single definition for tax purposes set out in the 2006 Act.

The Commission received evidence that this could lead to a body being registered as a charity in Scotland, but not in England, and yet would be subject to the tax arrangements set out in the 2006 Act. It found that there have been difficulties which have arisen in securing tax exemption for Scottish charities which have been resolved through negotiation with HMRC, but that there was no guarantee that this would always be so.

Consequently the Commission recommended that the UK Parliament, with the consent of the Scottish Parliament, should legislate to ensure that there is a single statutory definition for 'charity' and 'charitable purposes' across the UK. In addition, a charity registered in one jurisdiction of the UK should be able to conduct its charitable activities in any other without being required to register separately in different jurisdictions, and without being subject to the reporting and accounting requirements of the regulator in each jurisdiction. This is already the case for Scottish charities that operate

¹² Cm 7750

in England and Wales: but it is not the case for English or Welsh charities that operate in Scotland, where they are required to register and meet additional reporting and accounting requirements.

The Government is keen to ensure that the legislation regulating charities across the UK does not place undue burden upon those doing such valuable work. The Government is indebted to those who volunteer their time and energies to help those who need it – our country needs more people who are willing to engage positively with their communities in order to bring about real and lasting change.

The Government is committed to reviewing all legislation after it has been in operation for five years, and so the Government will be reviewing the operation of the Charities Act 2006 shortly. This will be a review of the whole legislation, and we will be asking charities from across all parts of the UK to take part in this process to ensure that they can go about their vital business without unnecessary interference. The UK Government will also engage with the Scottish Government to ensure that the operation of charities legislation in England and Wales and in Scotland is consistent in its approach. In undertaking this review, the Government will ensure that the Commission's recommendations are taken into account. However, the Government does not believe that it is right to take a piecemeal approach to amending charities legislation, and so it will not be taking forward the specific recommendations the Commission made on the operation of charities at this time. It will instead take forward any change, with the consent of the Scottish Parliament where necessary, following the review.

The Scottish Government

The 'Scottish Executive' is the technical term for the First Minister, Ministers of the Devolved Administration in Scotland and the Lord Advocate. In 2007, the Devolved Administration re-named itself the 'Scottish Government'. The UK Government recognises that the term 'Scottish Government' has now become broadly recognised in Scotland and across the UK, and is part of the common parlance of Scottish political discourse. However, the fact that the Scotland Act 1998 refers to the term 'Scottish Executive' prevents the use of the term 'Scottish Government' in contracts and other legal matters. The UK Government believes that this should be remedied, and the Scotland Bill will include a clause to change the term 'Scottish Executive' to 'Scottish Government'.

Technical amendments to the Scotland Act 1998

The Government is including clauses in the Scotland Bill to make a number of technical amendments to the Scotland Act 1998. These changes are set out below.

Setting out time-limits for human rights action against Scottish Ministers in UK statute

As a result of the *Somerville* case a section 30 order gave the Scottish Parliament legislative competence to introduce a time-limit in the Scotland Act equivalent to that in the Human Rights Act. At the time that the section 30 order was agreed, it was recognised that this was simply a pragmatic solution to avoid further delay, and that it was in fact more appropriate for any significant amendments to the Scotland Act to be made through primary legislation at

Westminster. The Scotland Bill will consequently include a clause to repeal the section 30 order which transferred competence and amend Schedule 4 to remove the competence of the Scottish Parliament to set time-limits for bringing actions against Scottish Ministers for breaches of human rights.

Confirming the reservation of the Antarctic

The Bill will include a clause to amend Schedule 5 of the Scotland Act 1998 to reserve retrospectively the regulation of activities in Antarctica. This would result in retrospectively validating any legislative and executive acts of the UK Government in relation to Antarctica in-so-far as they made provision for Scotland; and it would also take the regulation of activities in the Antarctic outside the legislative competence of the Scottish Parliament altogether.

Ensuring that the criminal penalties that apply in the Scotland Act are updated

The Scotland Act contains extensive powers to make subordinate legislation. There are general restrictions which apply to how those powers can be exercised, including a maximum limit on the criminal sentences that can be created of a maximum three months imprisonment or a level 5 fine on summary conviction and two years imprisonment on conviction on indictment. These penalties have become out of step with recent summary justice reforms made by the Scottish Parliament. The Scotland Bill will include the necessary clauses to ensure that the penalties match existing Scottish legislation.

Enabling powers conferred on Non-Departmental Public Bodies (NDPBs) to be transferred to or subject to agency arrangements with Scottish Ministers

Sections 63 and 93 are commonly used provisions of the Scotland Act which allow functions to be transferred from UK Ministers to the Scottish Ministers (known as 'executive devolution') or functions to be exercised by the Scottish Ministers and UK Ministers on each others behalf under agency arrangements. The enabling powers only relate to the transfer or exercise of functions of a Minister of the Crown. The Scotland Bill will include clauses to amend sections 63 and 93 to extend those powers to be exercisable in relation to functions of NDPBs, as well as those of a Minister of the Crown. This will enable functions exercisable by NDPBs to be transferred, if necessary, to Scottish Ministers.

Ensuring that the UK Government can implement international obligations in place of the Scottish Government to ensure compliance

Scottish Ministers are responsible for implementing European Community law and international obligations in relation to devolved areas in Scotland. UK Ministers generally cannot act where a function has been transferred to Scottish Ministers. The Scotland Bill includes clauses to amend this rule to allow UK Ministers to implement international obligations on a UK basis where it would be more convenient to take action on a UK basis, rather than Scotland separately having to implement the obligations.

Enabling scrutiny of Bills by the Supreme Court to be amended to allow single provisions to be identified for consideration, as opposed to whole Bills only

UK and Scottish Law Officers have a power in the Scotland 1998 Act to refer the question of whether a Scottish Parliament Bill is within legislative competence to the Supreme Court. At present only a full Bill can be referred. The Scotland Bill will include clauses which will enable part of a Scottish Parliament Bill to be sent for review, without affecting the remainder of the Bill.

References to the Electoral Commission

The Scottish Parliament (Constituencies) Act 2004 replaced Schedule 1 to the Scotland Act so that it contained references to the Electoral Commission rather than the Boundary Commission. As a result of previous legislation, this is now incorrect; the Scotland Bill will include a clause to amend Schedule 1 to ensure that the text reflects the current position, and is more transparent and less confusing to the reader.

Orders giving effect to Boundary Commission recommendations: Schedule 1, para 6

Paragraph 6(1) of Schedule 1 to the Scotland Act 1998 provides that the draft Order in Council laid before Parliament by the Secretary of State for giving effect to the recommendations contained in the report by the Boundary Commission for Scotland may make provision for any matters which he thinks are incidental to or consequential on the recommendations. The Scotland Bill will include a clause to amend the power at paragraph 6(1) to state explicitly

that the power can be exercised to make modifications of the Scotland Act 1998 itself.

Constituency rules and references to local government areas: Schedule 1, para 12

The constituency rules govern how constituency boundaries are to be reviewed. Rule 1(1) provides that so far as practicable, regard must be had to the boundaries of local authority areas, which are defined as having the same meaning as in the Local Government (Scotland) Act 1973. The Scotland Bill will update this reference to the definitions set down in the later 1998 Act.

Section 57(2)

In submissions made to the Commission, an issue was raised as to the application of section 57(2) of the Scotland Act in relation to the acts of the Lord Advocate as head of the system of prosecutions in Scotland. The Commission did not consider it appropriate to make any recommendation on this matter. While the Commission recognised that this matter gave rise to important issues affecting prosecutions in Scotland, it considered that it was beyond the Commission's remit and concluded, therefore, that it would be inappropriate to make recommendations in that regard.

As a result, the Advocate General established a group of experts in September 2010, to assess the extent to which the application of section 57(2) to the Lord Advocate in her role as head of the system of prosecutions in Scotland causes problems in practice for the courts and the operation of the criminal justice system and to make recommendations in relation to any reform that the group considered appropriate. At the

same time, the Advocate General launched an informal consultation to seek wider views on these issues.

That group has now reported to the Advocate General, and its report, together with the consultation responses, is now under consideration. The report, the consultation responses and the Government's response will be published shortly. If, following such consideration, the Government concludes that amendment to section 57(2) (and any other provisions to the Scotland Act) is required to resolve any difficulties arising in relation to the role of the Lord Advocate as head of the system of prosecutions in Scotland, amendments to the Scotland Bill will be brought forward at an appropriate stage.

CHAPTER 5: CONCLUSION

The Scotland Bill demonstrates the determination of the Coalition Government to ensure that the Scottish Parliament is empowered to meet the needs of the Scottish people. Both the Bill and this paper set out the bold reforms the Government is taking to strengthen the Scottish Parliament and the Scottish Government.

The Scotland Bill marks a significant step in the constitutional evolution of the United Kingdom. It strengthens the devolution settlement and strengthens Scotland's position in the United Kingdom. Balancing accountability for raising finance with accountability for spending decisions will result in a Scottish Parliament and a Scottish Government with responsibility that reflect the will of Scotland's citizens.

Once the measures included in the Scotland Bill and this paper are fully implemented, a historic shift in power will have been accomplished, giving the Scottish Parliament and Scottish Ministers more power, making them more accountable to their electorate, and more flexible and responsive to the needs of Scotland within the United Kingdom.

ANNEXES

Glossary

Aggregates levy

It is an environmental tax on the commercial exploitation of aggregate in the United Kingdom.

APD

Air passenger duty – It is an excise duty which is charged on the carriage, from a UK airport, of chargeable passengers on chargeable aircraft.

The Commission

The Commission on Scottish Devolution.

CTB

Council Tax Benefit – It assists those on a low income, whether working or not, who need financial help to pay their council tax bill.

HMRC

Her Majesty's Revenue and Customs – the UK Government department that is in charge of assessing and collecting tax.

JMC

The Joint Ministerial Committee – the formal mechanism to improve co-operation and communication between the UK Government and the Devolved Administration.

LfT

Landfill tax – landfill tax is a tax on the disposal of waste. It aims to encourage waste producers to produce less waste, recover more value from waste, for example through recycling or

composting and to use more environmentally friendly methods of waste disposal.

NAO

National Audit Office – the role of the National Audit Office is to:

- Audit the accounts of all government departments and agencies as well as a wide range of other public bodies;
- Report to Parliament on the economy, efficiency and effectiveness with which these bodies have used public money.

It is independent of Government.

OBR

The Office for Budgetary Responsibility – formed in May 2010 to make an independent assessment of the public finances and the economy for each Budget and pre-Budget Report.

Sewel Convention

The Sewel Convention states that Westminster will normally legislate on devolved matters only with the express agreement of the Scottish Parliament.

SDLT

Stamp duty land tax – stamp duty land tax is charged on land and property transactions in the UK. The tax is charged at different rates and has different thresholds for different types of property and different values of transaction.

SPCB

Scottish Parliament Corporate Body – it plays an important role in the day to day running of the Scottish Parliament.

SPPA

Standards Procedures and Public Appointments Committee of the Scottish Parliament.

SVR

Scottish variable rate – the ability of the Scottish Parliament to vary income tax by +/- 3p in the pound.

List of the recommendations of the Commission on Scottish Devolution

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.

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.

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.

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.

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.

Recommendation 3.5: This system will require a strengthening of the inter-governmental arrangements to deal with finance.

a. The present Finance Ministers' 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Recommendation 4.9: Where legislation interacts with both reserved and devolved matters there should be continued co-operation:

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.

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.

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.

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 co-operation 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 co-operation 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.

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).

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.

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.

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.

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.

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.

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 Minister 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.

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.

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.

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.

Recommendation 4.23: The Civil Service Codes should be amended to recognise the importance of co-operation and mutual respect.

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

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.

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.

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.

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

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.

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.

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.

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

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.

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.

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

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

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.

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

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

Recommendation 5.17: The effectiveness of the agreement [on marine planning] reached by the UK and Scottish Governments should be kept under review by the intergovernmental 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.

Recommendation 5.18: Research Councils UK should re-examine its approach to funding so that Scottish institutions [such as the Scottish Agricultural College] 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.

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.

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 Scottish Government on particular skills or other needs that require to be addressed in Scotland are properly taken into account.

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.

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.

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.

Recommendation 5.24: The interpretation provision in relation to "social security purpose" 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.

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 subcommittees 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 Scotland 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.



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