



BRIEFING PAPER

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Scotland Bill 2015-16 (Bill 3)

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Summary

The *Scotland Bill 2015-16* (Bill 3) was introduced into the House of Commons on 28 May 2015. Its Second Reading will take place on 8 June 2015. [Explanatory Notes to the Bill](#), and an [impact assessment](#), were also published on 28 May 2015. Further documents will be made available on the [Bill's pages on the Parliamentary website](#).

The Bill is the latest stage in giving effect to the 'Vow' - the cross-party commitments regarding further devolution to Scotland, made in the run-up to the referendum on independence on 18 September 2014. This was followed by the [report of the Smith Commission](#), published on 27 November 2014. This set out the details of cross-party 'heads of agreement' on the implementation of devolution of further powers to the Scottish Parliament.¹

Draft clauses, which would have given effect to many (though not all) of the Smith Commission's proposals, were published in January 2015 in the Command paper [Scotland in the United Kingdom: an enduring settlement](#) (Cm 8990).

This Bill would, if enacted, state that a Scottish Parliament and Scottish Government are recognised as permanent. It would devolve power to set the rates and bands of income tax on non-savings and non-dividend income. Receipts from these Scottish rates of income tax will be assigned to the Scottish Government's budget. The Bill also provides for a share of VAT receipts in Scotland to be assigned to the Scottish Government's budget. The Bill would devolve Air Passenger Duty and Aggregates Levy; powers over certain aspects of welfare and housing-related benefits; powers over speed limits and road signs, and rail franchising; control of the functions of the British Transport Police, Ofcom and the Crown Estate relating to Scotland; and control of the Scottish Parliament's electoral system, subject to a two-thirds majority within the Parliament for any proposed change.

A large number of the clauses in the Bill are the same as, or similar to, the draft clauses. Section 13 of this paper provides a reference table highlighting the clauses which are the same, those which have no substantive changes, and those which are new or different. The final Part of the Bill (clauses 59-64) did not feature in the draft clauses. These clauses are technical, permitting the smooth introduction of the Bill's provisions.

Analyses of the Smith Commission, and the subsequent Command paper, have been provided by:

- The Political and Constitutional Reform Committee, [Constitutional Implications of the Government's Draft Scotland Clauses](#), HC1022 2014-15, 2015

¹ Smith Commission, *Report of the Smith Commission on further devolution of powers to the Scottish Parliament*, November 2014

- The Scottish Affairs Committee, [*The Implementation of the Smith Agreement*](#), HC-835 2014-15, 10 March 2015.
- The House of Lords Constitution Committee, [*Proposals for the devolution of further powers to Scotland*](#), HL-145 2014-15, 24 March 2015.
- House of Commons Library, [*Draft Scotland Clauses: summary*](#) (SN07090), 28 January 2015

1. Constitutional arrangements²

Summary

The Bill includes a statement that a Scottish Parliament is recognised as a permanent institution within the UK, and places the Sewel Convention – that the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament – in statute. Both clauses are declaratory, and could be reversed by a future Parliament.

1.1 Permanence of a Scottish Parliament and Government

The Smith Commission Agreement said that “UK legislation will state that the Scottish Parliament and the Scottish Government are permanent institutions”.³ **Clause 1** of the Bill adds provisions to the *Scotland Act 1998* stating that both “A Scottish Parliament” and “A Scottish Government” (not “the” in either case) are “recognised as a permanent part of the United Kingdom’s constitutional arrangements”.

The implementation of the Smith Commission’s recommendation reflects the difficulty of creating a permanent institution within the unwritten constitution of the UK. The doctrine of Parliamentary sovereignty dictates that Parliament can enact or repeal any law, and that no Parliament can bind its successors. Hence, if this clause becomes law, in principle it would be open to a future UK Parliament to repeal it.

Reports in early 2015 from the Political and Constitutional Reform Committee (PCRC) and the House of Lords Constitution Committee argued that the “real significance of the new clause was political rather than legal”.⁴ Both Committees drew attention to the constitutional principle of parliamentary sovereignty and both concluded that there was nothing in the provision that restricted the rights of the UK Parliament.⁵

The PCRC then considered alternative approaches to achieve the policy objective of permanent establishment of the Scottish Parliament. The Committee discussed “contingent entrenchment” (for instance, via a supermajority requirement or a referendum), federacy and formal federation.

The Lords Constitution Committee also drew attention to the question “as to whether draft clause 1 might be open to differing

² Library specialist: Richard Kelly.

³ The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), November 2014, para 21

⁴ Political and Constitutional Reform Committee, [Constitutional implications of the Government’s draft Scotland clauses](#), 22 March 2015, HC 1022 2014-15, para 33; Constitution Committee, [Proposals for the devolution of further powers to Scotland](#), 24 March 2015, HL 145 2014-15, para 61

⁵ Political and Constitutional Reform Committee, [Constitutional implications of the Government’s draft Scotland clauses](#), 22 March 2015, HC 1022 2014-15, para 28; Constitution Committee, [Proposals for the devolution of further powers to Scotland](#), 24 March 2015, HL 145 2014-15, para 64

interpretations". It noted that, for example, the Scottish Parliament was described as "self-standing" in a 2011 Supreme Court judgment. It argued that if there were already different interpretations as to the status of the Scottish Parliament, then clause 1 could be interpreted by certain judges as a form of entrenchment. It also expressed concern that while the clause did not restrict the power of the UK Parliament, it did "create the potential for misunderstanding or conflict over the legal status of the Scottish Parliament which may result in legal friction in the future".⁶

1.2 The Sewel Convention

The Sewel Convention states that "the UK Government will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament". It was established at the time of the creation of the Scottish Parliament in 1999. Section 28 of the *Scotland Act 1998* gives the Scottish Parliament the power to make Acts, but it also provides that "This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland".⁷

The Smith Commission Agreement recommended that "The Sewel Convention will be put on a statutory footing".⁸ To this end, **Clause 2** would add the following provision to section 28 of the *Scotland Act 1998*:

But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.

The PCRC heard concerns that the clause did not address the full scope of the Sewel Convention as currently applied – the convention "is also applied to legislation affecting the competences of the devolved institutions".⁹

The PCRC argued that the convention would not be given force of statute in the way it was drafted,¹⁰ and the Constitution Committee agreed with this assessment.¹¹ The Constitution Committee concluded that:

76. As with Draft Clause 1, Draft Clause 2 seems unlikely to have any legal effect and is purely a declaratory statement of intent, restating the existing Sewel convention rather than attempting to make it enforceable.

⁶ Constitution Committee, [Proposals for the devolution of further powers to Scotland](#), 24 March 2015, HL 145 2014-15, paras 62-64

⁷ *Scotland Act 1998* (chapter 46), section 28

⁸ The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), November 2014, para 22

⁹ Political and Constitutional Reform Committee, [Constitutional implications of the Government's draft Scotland clauses](#), 22 March 2015, HC 1022 2014-15, paras 51-52

¹⁰ Political and Constitutional Reform Committee, [Constitutional implications of the Government's draft Scotland clauses](#), 22 March 2015, HC 1022 2014-15, para 54

¹¹ Constitution Committee, [Proposals for the devolution of further powers to Scotland](#), 24 March 2015, HL 145 2014-15, para 71

77. Nonetheless, we note that both these draft clauses appear to be moving the United Kingdom in a federal direction, attempting to crystallise by way of statute, if not a written constitution, the status and powers of the devolved institutions in a way that has hitherto not been the case. We would welcome a clarification from the Government as to whether this was their intention. This is a matter that we trust will receive further scrutiny by the House when a Scotland Bill is introduced in the next Parliament.¹²

The PCRC examined alternative approaches that might have the effect of giving statutory force to the Sewel Convention. Both Committees also drew attention to the use of the word “normally” in legislation. The PCRC commented that ‘Retention of the word “normally” sits ill with the Government’s stated intention to “formalise” the Convention’.¹³ The Constitution Committee considered that “since this provision will at the very least strengthen the political commitment inherent in the Sewel convention, it can be said that the powers of the Scottish Parliament would be, in political terms, more firmly beyond the unilateral competence of the UK Parliament than ever before”.¹⁴

¹² Constitution Committee, [Proposals for the devolution of further powers to Scotland](#), 24 March 2015, HL 145 2014-15, paras 76-77

¹³ Political and Constitutional Reform Committee, [Constitutional implications of the Government’s draft Scotland clauses](#), 22 March 2015, HC 1022 2014-15, para 63

¹⁴ Constitution Committee, [Proposals for the devolution of further powers to Scotland](#), 24 March 2015, HL 145 2014-15, para 73

2. Elections¹⁵

Summary

Clauses 3 to 10 of the Bill devolve electoral matters relating to Scottish Parliament elections and the franchise for local government elections. An order under section 30 of the [Scotland Act 1998](#) has already given the Scottish Parliament the power to legislate to extend the franchise to 16- and 17-year-olds in time for the Scottish Parliament elections in 2016; a Bill to this end is currently before the Scottish Parliament.

The *Scotland Bill* devolves the regulation of campaign expenditure and controlled expenditure in relation to Scottish Parliament elections. The Boundary Commission for Scotland's functions in relation to Scottish Parliament boundaries are to be transferred to the Local Government Boundary Commission for Scotland.

2.1 Elections in Scotland

Clause 3 splits Section B3 of Schedule 5 to the [Scotland Act 1998](#) into two parts; the first part, Section B3 (A), reserves all matters concerning elections to the House of Commons and to the European Parliament. Electoral matters relating to Scottish Parliament elections and the franchise for local government elections are no longer reserved. There are some exceptions, given in the new Section B3 (B). Under this section, the combination of polls and the timing of polls is reserved, with the exception of combining ordinary local elections with a Scottish Parliament by-election, or a local by-election with a Scottish Parliament general election. The timing of local government elections in Scotland when these would fall on the same day as an ordinary Scottish Parliament election is also reserved.

Other electoral matters that remain reserved under Section B3 (B) include:

- The Individual Electoral Registration (IER) Digital Service for electoral registration for elections in Scotland;
- Parts 5 and 6 (campaign expenditure) of the *Political Parties, Elections and Referendums Act 2000* [PPERA], which relate to the combination of Scottish elections with UK Parliamentary elections and European Parliamentary elections;
- The establishment and constitution of the Electoral Commission, with the exception of many of the Commission's general functions which relate to Scottish Parliament elections.

Clause 4 substitutes new Sections 12 and 12A of the *Scotland Act 1998*. The new sections set out the powers of Scottish Ministers and the Secretary of State in relation to making provision for elections in Scotland. Scottish Ministers already have executive competence over the conduct of Scottish Parliamentary elections, under Section 12 of the *Scotland Act 1998* (as amended by the *Scotland Act 2012*). Subsection (2) of the new Section 12 clarifies the scope of the order-making

¹⁵ Library specialist: Isobel White.

powers given to Scottish Ministers, but subsection (4) would prevent them from making any provision about the use of the Individual Electoral Registration Digital Service for applications for registration. The new Section 12A would allow the Secretary of State to make provision about the combination of polls at certain Scottish Parliament elections with polls at certain UK Parliamentary and European Parliament elections, but this must be done with the agreement of Scottish Ministers.

Clause 5 amends Section 2 of the *Scotland Act 1998* and relates to the timing of elections in Scotland. The new subsection (2A) to be inserted into the 1998 Act provides that an ordinary Scottish Parliament election cannot take place on the same date as, or within the two months before, either the date of a UK Parliamentary election or the date of a European Parliamentary election. The [Explanatory Notes](#) to the Bill state that this is to avoid confusing electors with different polling information, and having a negative impact upon levels of participation.

Clause 5 would also prevent the poll at a local government election in Scotland from being held on the same day as a poll for an ordinary Scottish Parliament general election, unless it is to fill a casual vacancy. If the dates are the same, Scottish Ministers may specify an alternative date for the local election by order.

Clause 6 of the Bill makes further provision for certain functions of the Secretary of State relating to the IER Digital Service relating to Scotland to be exercised concurrently with Scottish ministers.

2.2 Boundaries and campaign expenditure

Clause 7 transfers the powers of the Secretary of State over matters such as campaign expenditure limits to the Scottish Ministers, as regards Scottish Parliament elections. The sections of PPERA that are amended by this clause cover election campaign expenditure; controlled expenditure of third parties; and control of donations to recognised third parties.

Clause 8 transfers the Boundary Commission for Scotland's functions in relation to Scottish Parliament boundaries to the Local Government Boundary Commission for Scotland. The Local Government Boundary Commission for Scotland would report to Scottish Ministers, instead of the Secretary of State for Scotland, on Scottish Parliament boundaries. It must submit its next report on the boundaries no earlier than 1 May 2018 and no later than 1 May 2022. Draft Orders in Council to implement the recommendations of the Local Government Boundary Commission for Scotland would in future require approval from the Scottish Parliament.

Clause 9 makes minor and consequential amendments to existing legislation, mainly the *Scotland Act 1998*. **Clause 10** amends Section 31 of the Act to require certain electoral legislation to be passed by a two thirds-majority in the Scottish Parliament. These protected matters are outlined in the [Explanatory Notes](#):

The matters are, in relation to elections to the Scottish Parliament, and unless a provision is incidental to or consequential on any other provision of the Bill: the franchise for elections, the electoral system, the number of constituencies and regions or other such areas and the numbers of members to be returned in each constituency or region or other such areas.

Provision is made for the Advocate General, the Lord Advocate or the Attorney General to refer to the Supreme Court the question of whether a Bill or a provision of a Bill relates to one of the protected subject matters.

3. Financial powers¹⁶

Summary

There are no substantial differences between the tax powers that the Smith Commission proposed devolving and those contained in this Bill. Legislation is not required to implement the changes to Scotland's 'fiscal framework' recommended by the Commission. The framework is to be agreed jointly by the Governments through the Joint Exchequer Committee.

These issues are discussed in more detail in [Devolution of financial powers to the Scottish Parliament: recent developments](#), Commons Library briefing paper SN7077.

3.1 The Scottish Parliament's current tax powers

At present there are two sources of revenue under the control of the Scottish Parliament: local taxes (council tax and business rates), in respect of its responsibilities for local government, and the power to impose a 'Scottish Variable Rate' (SVR) of income tax: that is, amending the basic rate of tax by up to 3p in the pound.

The *Scotland Act 2012* devolved three further powers: the power to set a Scottish rate of income tax (SRIT) from April 2016, and to introduce taxes on land transactions and on waste disposal from landfill, replacing the existing UK-wide taxes Stamp Duty Land Tax and Landfill Tax, from April 2015. The Scottish rate is to apply to income from earnings, profits and pensions, but not to income from savings and dividends. The Act also provides powers for new taxes to be created in Scotland and for additional taxes to be devolved, subject to certain criteria.¹⁷

3.2 Smith Commission proposals and the Bill

On tax powers, the parties to the Smith Commission agreed that the Scottish Parliament should have the power to set the rates and thresholds of income tax on non-savings and non-dividend income. There was also agreement that Air Passenger Duty and Aggregates Levy should be fully devolved. All other taxes should remain reserved. Receipts from all income tax paid by Scottish taxpayers on non-savings and non-dividend income would be received by the Scottish Government, as well as receipts from both Air Passenger Duty and Aggregates Levy. In addition, the receipts raised in Scotland by the first 10 percentage points of the standard rate of VAT would be assigned to the Scottish Government's budget.

¹⁶ Library specialists: Antony Seely, Matt Keep.

¹⁷ The changes to be made by the 2012 Act are discussed in [Devolution of tax powers to the Scottish Parliament: the Scotland Act 2012](#), Commons Briefing Paper SN5984, 22 January 2015. See also HM Revenue & Customs, [Scotland Act 2012 guidance](#), 19 January 2015

The provisions in the draft clauses differed in one respect from the Smith Commission agreement, in relation to the assignment of VAT revenues. They provided for the first 10 percentage points of the revenue from the standard rate of VAT to be assigned, *along with 2.5* percentage points of the revenue from the reduced rate. In other regards, the draft clauses are mirrored by the provisions in the Bill. In their report on the draft clauses the Scottish Parliament's Devolution (Further Powers) Committee recommended that the UK Government should clarify "whether the current provisions would permit the Scottish Parliament to set a zero rate of income tax".¹⁸ At present the Scottish Parliament may set a Scottish rate of income tax, though that rate must be "a whole or half a whole number".¹⁹ **Clause 12(5)** of the Bill would amend this, to specify that the rates of income tax to be set by the Scottish Parliament may include zero.

The parties also agreed that "the devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework."²⁰ One aspect of this framework is that the devolution of these tax powers, and (partial) assignment of Scottish VAT revenues, is to be accompanied by appropriate adjustments to the block grant received from the UK Government - currently the Scottish Government's largest source of revenue. Changes in the block grant are determined by the 'Barnett formula' (see Box 1).

Box 1: Funding the Scottish Government's budget – the block grant and the Barnett formula

Provisions in the Scotland Bill 2015-16 would result in the Scottish Government raising around 50% of its budget from its own tax revenues.

The vast majority of the rest of the Scottish Government's public spending would continue to be funded by a block grant from the UK Treasury. Currently around £30 billion is provided to Scotland from this source.

Changes in the block grant are determined by the Barnett formula. This non-statutory mechanism links the increase (or decrease) in funding for Scotland to three factors:

- the increases (or decreases) of budgets of UK Government departments covering matters that are devolved;
- Scotland's population relative to England; and,
- a "comparability percentage" which in effect captures the extent to which spending by a UK Government department is comparable with equivalent services carried out by the Scottish Government.

The Scottish Government is free to spend the block grant as it wishes. Changes in the block grant which arise from changes in, for example, health spending in England, do not have to be reflected in changes in health spending in Scotland.

¹⁸ Scottish Parliament Devolution (Further Powers) Committee, [New Powers for Scotland: An Interim Report on the Smith Commission and the UK Government's Proposals](#), 14 May 2015, 3rd Report, Session 4 (2015) para 165)

¹⁹ See section 80C(5) of the *Scotland Act 1998*, as amended

²⁰ [The Smith Commission](#), 27 November 2014, pp23-7

In the first year a tax is devolved, an adjustment would be made to the block grant equal to the Scottish Government's additional revenue from the tax. Adjustments to the block grant after the first year should then be indexed to reflect the dynamic nature of tax revenues and ensure that neither the UK nor the Scottish Government is worse off simply from the devolution of the tax. The block grant would also be adjusted to reflect any new devolved spending powers.

The Bill would result in the Scottish Government raising around 50% of devolved expenditure.²¹ Provisions in the *Scotland Act 2012* will see the Scottish Government raise in the region of 21% of its expenditure from April 2016.²²

Replacing some of the block grant – a relatively predictable source of revenue – with less predictable tax revenues will impart volatility to the Scottish public finances. Just how much volatility will depend on how the block grant is adjusted, but the Smith Commission suggested that the Scottish Government should receive further borrowing powers to manage the fiscal risks resulting from tax devolution.

Legislation is not required to update the UK fiscal framework, as proposed by the Smith Commission. The Government has stated that this will be negotiated "alongside the Bill."²³

²¹ This calculation includes assigned VAT receipts. If assigned VAT receipts are not included, and devolved taxes alone are considered, then the Scottish Government would be raising around 36% of devolved expenditure.

²² All data are from Table 2.9 of the Scottish Government's Government Expenditure and Revenue Scotland 2013-14. All figures are based on 2013/14 data.

²³ Prime Minister's Office, [Queen's Speech 2015: background briefing notes](#), 27 May 2015 p51

4. Welfare benefits²⁴

Summary

The precise meaning of some of the Smith Commission's recommendations on further devolution of welfare powers has been the subject of some debate. The Scottish Parliament's Devolution (Further Powers) Committee concluded that the draft welfare clauses published in January 2015 did not yet meet the "spirit and substance" of Smith's recommendations.

With the exception of a new power to top-up reserved benefits, there are no substantive differences between the welfare provisions in the Bill and the previous draft clauses. For full details, see *Scotland Bill: Welfare & Employment Support*, Commons Library briefing paper 07207.

4.1 Smith Commission proposals

Under the Smith Commission proposals, State Pensions and Pension Credit would remain reserved. Universal Credit (UC) would also remain reserved, but the Scottish Parliament would have the power to vary the housing element of UC in Scotland, and powers to vary UC payment arrangements.

The Commission proposed devolving responsibility for certain benefits outside UC:

- Disability Living Allowance, Attendance Allowance, Personal Independence Payment, Carer's Allowance, "Industrial Injuries Disablement Allowance" and Severe Disablement Allowance;
- Benefits which currently comprise the Regulated Social Fund - Winter Fuel Payments, Cold Weather Payments, Funeral Payments and the Sure Start Maternity Grant;
- Discretionary Housing Payments.

The Scottish Parliament would have "complete autonomy" over these benefits, or over any benefits or services which might replace them. Devolution of these powers would be accompanied by an increase in the block grant equivalent to the existing level of spending on the benefits in Scotland (currently around £2.5 billion a year).

In addition to having the power to create new benefits in the areas of devolved responsibility, the Scottish Parliament would have new powers to make additional discretionary payments at its expense in any area of welfare. Prior permission from DWP would not be required, although the agreement of DWP would have to be sought if it were to deliver any additional payments on behalf of the Scottish Government. The Commission stated that any new benefits or discretionary payments to top up reserved benefits "must provide additional income for a recipient

²⁴ Library specialists: Steven Kennedy, Wendy Wilson.

and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment.”²⁵

The Commission also proposed giving the Scottish Parliament “all powers over support for unemployed people through the employment programmes currently contracted by DWP.”²⁶

In its May 2015 report on the draft clauses and associated Command Paper, the Scottish Parliament’s [Devolution \(Further Powers\) Committee](#) questioned whether some of the welfare clauses met the “spirit and substance” of the Smith Commission’s recommendations and posed potential challenges to implementing them. A key concern was that the powers to create new benefits in areas of devolved responsibility and to make discretionary payments in any area of welfare were narrowly defined.

4.2 The Bill

The Bill includes a new clause enabling top-up payments to reserved benefits, including ongoing entitlements, but “discretionary” payments may only be made on a case-by-case basis to meet short-term needs.

The draft clauses and the Bill limit the power to create new benefits to devolved areas of **welfare** responsibility – a narrower interpretation of Smith than that of some commentators. There is also concern that the specific definitions of some of the benefits to be devolved – in particular carer’s benefit – further limit the scope for policy innovation.

Before exercising regulation-making powers to vary the housing element of Universal Credit, or to provide for alternative UC payment arrangements, Scottish Ministers must consult the Secretary of State about the practicability of the changes, and obtain his/her agreement on when they are to take effect. The UK Government states that this is necessary to ensure that the changes being sought can be implemented within a certain timeframe, and does not constitute a power of veto, pointing to the requirement that consent must not be “unreasonably withheld.” However, the Scottish Parliament’s Devolution (Further Powers) Committee suggested that the requirement could be perceived as a blocking or delaying power.

The Bill also makes provision to devolve legislative competence in relation to creating employment schemes to help those at risk of becoming long-term unemployed and to help disabled people into work. It would also give the Scottish Parliament the power to create schemes which seek to help employers find suitable employees.

The Scottish Parliament’s Devolution (Further Powers) Committee underlined the importance of effective inter-governmental relations to the successful operation of these and other welfare powers to be devolved. It welcomed the establishment of the [Joint \[UK and Scottish\]](#)

²⁵ The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), November 2014, para 55

²⁶ Ibid., para 57.

[Ministerial Working Group on Welfare](#), but recommended that the general principles underpinning the operation of inter-governmental relations on welfare, structures for dispute resolution, and parliamentary scrutiny of this process, be set out in statute.

Some important – and potentially problematic and controversial – elements of the Smith Commission’s welfare proposals are not covered in the Bill. These include “additionality” – the principle that any new benefits or discretionary payments introduced must provide additional income and not result in an automatic offsetting reduction in entitlements – and the “no detriment principle”, which states that where a decision by one government affects the tax/spending of the other, it is for the decision-making government to meet the cost (or retain the saving). “No detriment” applies to policies across the board, but could be particularly important in the area of welfare.

Detailed rules on how adjustments would be made to the Scottish block grant to reflect the new devolved welfare responsibilities – not just in year one but for all subsequent years – would also have to be drawn up. Such rules would not take the form of legislation.

5. Crown Estate²⁷

The Crown Estate is the Crown property, rights and interests that are managed, but not owned, by the Crown Estate Commissioners in England, Wales, Northern Ireland and Scotland. The Crown Estate is owned by the Sovereign in right of the Crown as an institution, though the Sovereign has no powers of management or control. "The Crown Estate" as a brand, is a term often used to describe the Commissioners together with the Crown property, rights and interests. The Crown Estate Commissioners is a statutory corporation constituted by the Crown Estate Act 1956. Under the Crown Estate Act 1961, Commissioners must follow directions from the Chancellor of the Exchequer and the Secretary of State for Scotland.

In Scotland, the Crown Estate Commissioners manage four rural estates, mineral rights and salmon fishing rights, about half of the coastal foreshore and almost all seabed to 12 nautical miles. These rights allow the Commissioners to require leases for moorings, aquaculture, some cables and pipelines, and for renewable energy projects. The latter are primarily in the far more extensive Exclusive Economic Zone which extends to 200 nautical miles at its furthest point.

Crown Estate profits flow direct to HM Treasury. In 2013/14 Crown Estate profits from activities in Scotland were £13.6 million, 3.9% of the UK total. The total property value of the Crown Estate in Scotland was £267 million.

The Smith Commission recommended that the management of Crown Estate assets in Scotland be transferred to the Scottish Parliament. The Bill would permit the Treasury to make a scheme transferring the 'Scottish functions' of the Crown Estate Commissioners to the Scottish Ministers. Such a scheme would have to respect the employment rights of Crown Estate staff and the UK interest in reserved matters. It would also have to include provision to secure constituency in the management of property or interests that might affect electricity distribution.

²⁷ Library specialist: Paul Bowers.

6. Equal opportunities²⁸

Summary

The Bill would extend the Scottish Government's ability to introduce specific equality requirements for Scottish public bodies or cross-border public bodies. This would include a power to require public authorities, when making strategic decisions, to have regard to the desirability of reducing inequality resulting from socio-economic disadvantage.

The *Equality Act 2010* consolidates equality law in Great Britain. It prohibits discrimination, harassment and victimisation on the grounds of a person's possession of a "protected characteristic", e.g. sex, race or disability. In addition to this, it imposes on public authorities a Public Sector Equality Duty, which requires authorities, in the exercise of their functions, to have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons with different protected characteristics. For further information on the Duty, see the Library's [briefing paper](#) on the subject (SN06591).²⁹

Certain public bodies are subject to specific equality duties. These are imposed through a devolved regulation-making power. The Scottish regulations impose more stringent duties than their English counterparts.³⁰ The Bill would allow the Scottish Government greater freedom to introduce these requirements for Scottish public bodies or cross-border public bodies. Previously, when a Scottish Minister wished to impose specific duties s/he required consent from a Minister of the Crown; this requirement would be replaced with a duty to inform the Minister. The Bill would permit imposition of these requirements, insofar as they are additional to provisions of UK equality law and do not conflict with it.

The Bill would also enable the Scottish Government to impose socio-economic duties on public authorities in Scotland exercising devolved or mainly devolved functions, subject to the approval of the Scottish Parliament. Section 1 of the *Equality Act 2010* contains a provision which would require a public authority "when making decisions of a strategic nature about how to exercise its functions" to:

have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.³¹

This section has not been commenced. The Bill would enable Scottish Ministers to introduce the requirement in Scotland.

²⁸ Library specialist: Doug Pyper.

²⁹ *The Public Sector Equality Duty and Equality Impact Assessments*, Commons Library briefing paper SN6591, May 2014

³⁰ See the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012 \(SI 2012/162\)](#)

³¹ [Equality Act 2010](#), section 1

7. Tribunals³²

The Smith Commission proposed that all powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) should be devolved to the Scottish Parliament, other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission. Meanwhile, the laws providing for the underlying reserved substantive rights and duties would continue to remain reserved (although they may be applied by the newly devolved tribunals).

This was provided for in the relevant draft clause. Orders in Council would give effect to the transfer of functions from a specified tribunal to a specified Scottish tribunal. A draft of each Order would be laid before and approved by both the UK and Scottish Parliaments before a competence would be transferred.

Clause 33 of the Bill features some differences from the draft clause in terms of the bodies covered (with specific reference to national regulatory bodies and the Comptroller General of Patents, Designs and Trade Marks). The clause sets out the tribunal functions which may be transferred. Restrictions on the transfer of certain functions relating to reserved matters are set out in the new paragraph 2A to Part 3 of Schedule 5 that would be inserted into the [Scotland Act 1998](#).

³² Library specialist: Alexander Horne.

8. Transport³³

Summary

There are no substantial differences between the transport powers that the Smith Commission proposed devolving and those contained in this Bill. For full details, see the Library briefing paper [Transport in Scotland](#) (SN 03192).

The Bill would devolve full powers over the making of road signs and speed limits to the Scottish Parliament. It would also devolve legislative and executive competence over railway policing. This would be achieved through amending paragraph E2 of Schedule 5 Part II to the [Scotland Act 1998](#), which reserves the provision and regulation of rail services and rail transport security, by including an exception for the policing of the railways and railway property.

The changes are relatively uncontroversial, though there has been some concern about devolution of powers over the British Transport Police (BTP) after the SNP Government in Scotland indicated that, were the changes to be enacted, it would aim to absorb railways policing within the wider remit of Police Scotland. What this would involve and how it would work is as yet unclear. One particular issue would be the fact that the BTP is funded by the railways rather than the taxpayer and it is uncertain how that would be made to work in any new structure. For example, BTP funds might be hypothecated to ensure that they went towards paying for railways policing and were not lost within any wider budget.³⁴

Currently, public sector operators are precluded from bidding and operating rail franchises in Great Britain (GB). **Clause 37** of the Bill would lift this existing prohibition with regard to passenger rail services that both start and end in Scotland and certain cross-border services where Scottish Ministers are the 'appropriate franchising authority'.

In practical terms, the Scottish Government has just let new franchises for ScotRail and the Caledonian Sleeper to 2025 and 2030 respectively. Thus this power would in all likelihood remain unused for the next decade (possibly sooner were a franchise to be terminated early for some reason).

Before the 2015 General Election the SNP voiced support for the devolution of rail franchising powers.³⁵ It remains to be seen whether this will continue to satisfy the party or whether it might push for a

³³ Library specialist: Louise Butcher.

³⁴ For detail see, e.g. Transport Scotland, British Transport Police [accessed 1 June 2015]; BTP, Options for the devolution of transport policing in Scotland, April 2015, Appendix A (option 3); "Police Scotland transport takeover 'a betrayal'", The Courier, 11 March 2015; and "Rail unions oppose Scottish transport police takeover", BBC News Online, 16 March 2015

³⁵ See, e.g. "Jim Murphy: We'll nationalise Scots rail services", The Scotsman, 25 January 2015

more radical settlement that would allow the Scottish Government to bring Scotland's rail franchise – if not the whole system – back into public ownership without having to go through the complex and expensive process of franchising.³⁶

Were this measure to be enacted it would allow a public sector body to bid for Scottish rail franchises, but not for those in England and/or Wales. Before the election the Labour Party indicated it would like to see the law changed in England and Wales to permit public sector bidders for all franchises across Great Britain.³⁷

³⁶ This is discussed further in section 5 of HC Library briefing paper CBP7117

³⁷ Mary Creagh, Speech to Labour Party Conference 2014, 23 September 2014

9. Consumer advocacy and advice³⁸

Summary

Clause 43 of the Bill amends several provisions in Part 2 of Schedule 5 to the *Scotland Act 1998* so that responsibility for consumer advocacy and advice is devolved to the Scottish Parliament.

There are no substantive differences between the powers that the Smith Commission proposed devolving and those contained in the Bill.

The consumer advice landscape in Scotland has undergone significant reform over the past few years as part of a UK-wide review. Between 2013 and 2014 [Citizens Advice Scotland](#) assumed responsibility for the delivery of consumer advocacy and advice in relation to general consumer matters, electricity, gas, water and postal services. These transfers were effected by an Order under the [Public Bodies Act 2011](#). The Smith Commission Agreement proposed devolving consumer advocacy and advice services to the Scottish Parliament.

According to the Explanatory Notes that accompanied the draft clauses, the Scottish Parliament would have competence to make provision for Scotland in relation to consumer advocacy and advice but not consumer protection, which would remain reserved. It would have powers to investigate complaints of general relevance and to pursue complaints for vulnerable consumers. In effect, the Scottish Parliament would have the capacity to implement their own model of consumer advocacy and advice, tailored to the needs and expectations of a Scottish consumer market.

Clause 43 of the Bill amends several reservations of powers to the UK Parliament in Part 2 of Schedule 5 to the *Scotland Act 1998* so that responsibility for consumer advocacy and advice is devolved to the Scottish Parliament. Part 2 of Schedule 5 to the [Scotland Act 1998](#) is separated into sections with each section setting out the reserved matter. The provision of consumer advocacy and advice is not a discrete reservation under a single section; it falls within the scope of a number of reservations in different sections. This explains why **Clause 43** amends several reservations in Part 2 of Schedule 5.

Specifically, subsections **43(2)** to **(4)** would insert exceptions for consumer advocacy and advice from the reservations in Sections C7 (consumer protection), C8 (product standards, safety and liability) and C9 (weights and measures). This would have the effect of devolving the provision of consumer advocacy or advice by, or by agreement with, a public body or holder of a public office, in relation to the reserved matter.

³⁸ Library specialist: Lorraine Conway.

Similarly, subsections **43(5)** to **(7)** insert exceptions for consumer advocacy and advice from the reservations in section Sections C11 (post), D1 (electricity) and D2 (oil and gas). This would devolve the provision of consumer advocacy and advice by, or by agreement with, a public body or holder of a public office, in relation to the reserved matter. However, this exception does not include conferring or removing functions from the [Office of Communications](#) (Ofcom) or the [Gas and Electricity Markets Authority](#) (Ofgem).

To support the change in funding arrangements that the devolution of consumer advocacy and advice requires, subsections **43(9)** to **(15)** make consequential amendments.

Finally, it should be noted that pursuant to new **Clause 44** of the Bill, devolution to the Scottish Parliament of power over consumer advocacy and advice is to be effected by updating the operation of Section 53 of the *Scotland Act 1998*.

10. Gaming machines³⁹

The *Gambling Act 2005* regulates gambling in Great Britain. Under the Act, up to four B2 gaming machines - also referred to as fixed odds betting terminals - can be sited on betting premises. The maximum stake on a single bet is £100, the maximum prize is £500.

B2 machines have proved controversial since they first appeared. Critics point out that it is possible to lose large amounts of money playing on the machines. They also claim that the machines have a causal role in problem gambling.

Clause 45 of the Bill would devolve legislative competence in relation to gaming machines authorised by a betting premises licence where the maximum charge for a single play is more than £10. At present, such a charge would only apply to B2 machines. The 2005 Act would be amended so that Scottish Ministers would be able to make an Order (subject to the affirmative procedure) to vary the number of these gaming machines allowed on betting premises.

The power would only apply to applications for new licences. It would also not apply to betting premises licences issued in respect of a track (i.e. a premises where horse, dog or other racing takes place).

Further detail on the current position and controversy over B2 machines is available in the Library Briefing Paper [Fixed odds betting terminals](#) (SN06946).

³⁹ Library specialist: John Woodhouse.

11. Broadcasting⁴⁰

The BBC's current Royal Charter expires at the end of 2016. Negotiations are expected to begin shortly for its renewal.⁴¹ The Smith Commission recommended a formal consultative role for the Scottish Government and Scottish Parliament in the Charter review process. The BBC currently lays its annual report before the UK Parliament. There was a recommendation in Smith that the BBC should also lay a copy before the Scottish Parliament, and appear before committees of the Parliament on matters relating to Scotland. Traditionally, the BBC's integrity and independence have been secured by keeping the Corporation's governance and constitutional arrangements off the statute book.⁴² For this reason the BBC-related measures are to be achieved by way of a Memorandum of Understanding, *not* by clauses in the Bill.

The Smith Commission recommended that there be a formal consultative role for the Scottish Government and Scottish Parliament in setting Ofcom's priorities for its activities in Scotland. A Memorandum of Understanding will be drawn up to implement this.

The other recommendations of the Smith Commission on broadcasting appeared in the draft clauses and now appear (unchanged) as Bill clauses:

- The power to approve appointments by Ofcom, the UK-wide media regulator, to the board of MG Alba, the Gaelic Media Service, is to rest solely with Scottish Ministers (**clause 46**)
- Scottish Ministers would acquire the power to appoint a Scottish member to the Ofcom board (**clause 57**);
- Ofcom is to be required to lay its annual report and accounts and any other reports before the Scottish Parliament (**clause 57**);
- There would be a new obligation on Ofcom to appear before committees of the Scottish Parliament on matters relating to Scotland (**clause 58**).

⁴⁰ Library specialist: Philip Ward.

⁴¹ See Library Briefing Paper 03416 [BBC Charter renewal](#)

⁴² See Library Briefing paper 05332 [BBC governance and financial accountability](#)

12. Energy⁴³

Summary

The Bill would devolve to the Scottish Government management of licences to exploit onshore oil and gas resources in Scotland and powers over supplier obligations regarding energy efficiency. There would also be a consultative role for the Scottish Government and Parliament regarding renewables incentives. Ofgem would be required to lay its annual report and accounts before the Scottish Parliament, and appear before its committees.

12.1 Onshore Oil and Gas

All fossil fuels are owned by the UK and licences to extract these resources are managed by the Department of Energy and Climate Change (DECC). **Clauses 40-42** would devolve the process of managing licences to exploit oil and gas resources onshore, in Scotland, to the Scottish Government.⁴⁴ This would include powers to license fracking operations to extract shale gas, or coal bed methane operations. It would not include licensing for underground coal gasification, which is covered by powers reserved to the UK Coal Authority. While the administration of licences would be matters for the Scottish Parliament, the taxation of oil and gas would remain reserved. Managing licences would raise a small amount of revenue for the Scottish Government, but revenue from the oil and gas industries is chiefly raised from taxation.

The Smith Commission Agreement proposed that access powers for onshore oil and gas should be devolved to Scotland. The clause also provides the Scottish Government with competence to legislate for such ancillary rights as required when extracting oil and gas. These rights include the access required when drilling beneath another person's property when fracking for shale gas. The previous UK Government had, in the meantime, amended the [Infrastructure Act 2015](#) so that the new underground access rights it provided - so that operators could drill beneath property without permission - did not apply in Scotland.

Clauses 41-42 include a number of consequential amendments and also provide the Secretary of State with a power to amend existing licences to take account of the devolution of powers.

12.2 Energy Efficiency and Fuel Poverty Schemes

The Warm Home Discount and Energy Company Obligation are examples of Government schemes that provide financial support and funding to install energy efficiency measures for vulnerable customers. They are funded by energy companies who are obliged to participate in

⁴³ Library specialists: Ed White / Elena Ares.

⁴⁴ The onshore area is defined by the baseline established by any Order under section 201(1)(b) of the *Territorial Sea Act 1987*.

the schemes. **Clauses 50 and 51** amend the *Gas Act 1986*, *Electricity Act 1989* and *Energy Act 2010* in a similar way to the draft clauses. They provide the Scottish Government with powers to design how such 'supplier obligation' schemes are implemented in Scotland, to better target funding and support.

Clause 52 additionally amends the *Utilities Act 2000* so that targets for certain obligations can be apportioned between Scotland and the rest of the Great Britain.

Setting the way the money is raised by these schemes (the scale, costs and apportionment of the obligations as well as the obligated parties) would remain reserved to Westminster.

12.3 Ofgem

Clause 56 requires the Gas and Electricity Markets Authority (Ofgem) to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

12.4 Renewables

The Smith Commission set out that there would be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives.

This was set out in draft clause 40, which placed a duty on the Secretary of State to consult Scottish Ministers when establishing or amending any statutory or non-statutory renewables incentive scheme that would apply in Scotland. It would also apply to three schemes (except for fossil fuel or nuclear generation): contracts for difference, feed-in tariffs and the renewables obligation.

These provisions, now found in **clause 53** of the Bill, have changed. They still include a duty to consult Scottish Ministers on renewables incentive schemes, but they now specifically exclude the need to consult the Scottish Ministers on any levy in connection with a renewable electricity incentive scheme. Levies on particular companies or persons are sometimes created to sit alongside renewable energy incentive schemes as a way of funding them. An example of this would be the Supplier Obligation and Operational Costs Levy, which is levied on UK-based licensed electricity suppliers to fund Contracts for Difference. The new subsection makes clear that such levies are not part of the requirement to consult on the incentive schemes to which they relate. A new clause, **Clause 54**, would give Scottish Ministers the powers to declare safety zones around offshore renewable energy developments wholly in Scottish waters or in a Scottish part of a Renewable Energy Zone. It also transfers powers over the decommissioning of these developments to Scottish Ministers.

13. Comparison between the Bill, the Smith Commission, and draft clauses

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
			<i>Part 1</i>
Constitutional arrangements			
Scottish Parliament and Government	UK legislation to state that the Scottish Parliament and Scottish Government are permanent institutions	Scottish Parliament and Government are recognised as permanent parts of the UK's constitutional arrangements <i>Draft clause 1</i>	Same as draft clause. <i>Clause 1</i>
Sewel Convention	Sewel Convention to be put on a statutory footing	It is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament <i>Draft clause 2</i>	Same as draft clause. <i>Clause 2</i>
Elections	The Scottish Parliament to have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland (but not in relation to Westminster or European Parliament elections). The Electoral Commission to continue to operate on a UK-wide	Same. Full legislative and executive competence in relation to the conduct of Scottish Parliament elections to be devolved to the Scottish Government and Parliament. Legislative competence over the functions of the Electoral Commission with respect to elections to the	Same, but also including the exceptions relating to combination and timing of polls and campaign expenditure. <i>Clauses 3 and 4</i>

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
	basis. Scottish Parliament to have competence over the functions of the Electoral Commission in relation to Scottish Parliament elections and local government elections in Scotland.	<p>Scottish Parliament is devolved to the Scottish Parliament.</p> <p>Legislative competence in relation to the franchise for elections to the Scottish Parliament and local government elections in Scotland to be devolved. The registration of electors for UK and European elections remains a reserved matter; registration for elections to the Scottish Parliament and local government is devolved.</p> <p><i>Draft clauses 5 to 8</i></p>	
Timing of elections	UK legislation will prevent the Scottish Parliament deciding that its general elections should be held on the same day as general elections to the UK Parliament, European Parliament or local government elections in Scotland.	<p>Same, but with additional provisions about timing. The <i>Scotland Act 1998</i> to be amended to ensure that elections to the Scottish Parliament cannot be held on the same day as general elections to the UK Parliament, European Parliament or local government elections in Scotland. To ensure that preparations for these elections do not overlap, provision to be made for the polls to be two to six months apart.</p> <p><i>Draft clause 5(2)</i></p>	<p>A Scottish Parliamentary election cannot take place on the same day as, or within two months before, either a UK Parliamentary general election or a European Parliamentary general election.</p> <p><i>Clause 5</i></p>
Registration		The Scottish Government would be	Different. Bill includes a regulation-

Smith Commission	Draft Clauses	Scotland Bill 2015-16	
	<p>able to make provision in regulations in relation to the national registration digital service with the agreement of a UK Minister.</p> <p><i>Draft clause 6 (5)</i></p>	<p>making power (to be exercised concurrently with UK Ministers and with their agreement) for the Scottish Ministers in relation to who may use the Individual Electoral Registration Digital Service; a default class of valid applicants (subject to any regulations made) is defined.</p> <p><i>Clause 6</i></p>	
Campaign expenditure	<p>Powers in respect of campaign expenditure and controlled expenditure in relation to elections to the Scottish Parliament will be devolved.</p>	<p>Same, except in relation to certain combinations of elections.</p> <p><i>Draft clause 7(3)</i></p>	<p>Different. New powers for Scottish Ministers are introduced relating to the control of donations to recognised third parties. The amendments to section 155 PPERA are included but with changes.</p> <p><i>Clause 7</i></p>
Review of electoral boundaries	<p>Boundary Commission for Scotland to continue to operate as a UK public body. It would report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament. UK Government powers in relation to Scottish Parliament boundaries to transfer to the Scottish Government.</p>	<p>Same. Boundary Commission for Scotland to continue to have functions in relation to UK Parliament constituency boundaries irrespective of its role in relation to Scottish parliament boundaries.</p> <p><i>Draft clause 9</i></p>	<p>Different. The Bill transfers the Boundary Commission for Scotland's functions in relation to Scottish Parliament boundaries to the Local Government Boundary Commission for Scotland. The LGBCS to report to Scottish Ministers, instead of the Secretary of State for Scotland, on Scottish Parliament boundaries.</p>

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
			<i>Clause 8</i>
Scottish Parliament franchise and electoral system	To provide an adequate check on the Scottish Parliament changing the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament, such legislation would have to be passed by a two-thirds majority of the Scottish Parliament.	Certain types of electoral legislation would have to be passed by a two-thirds majority of the Scottish Parliament. This applies to legislation amending the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament. <i>Draft clause 4</i>	Same as draft clause. <i>Clause 10</i>
Legislation by Scottish Parliament	n/a	n/a	Powers to modify aspects of the <i>Scotland Act 1998</i> as regards certain aspects of the administration of the Scottish Parliament and the Scottish Government, including MSPs' interests, remuneration, terms of disqualification, audit and laying of accounts, and electoral matters (see above). <i>Clause 11</i>
Tax			
Income tax	Devolve the power to set the rates and thresholds of income tax on non-savings and non-dividend income. Income tax should remain a	Scottish Parliament to have power to introduce new rates and bands of income tax above the UK personal allowance – to apply to non-savings	A number of drafting changes, including explicit provision that the Scottish Parliament can set a zero rate of tax, but cannot set different

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
	'shared tax' and continue to be collected by HMRC.	and non-dividend income. Liability to pay based on statutory test for Scottish taxpayers as established by <i>Scotland Act 2012</i> . The rate of Capital Gains Tax paid by Scottish taxpayers to continue to be calculated by reference to UK income tax limits. Consequential amendments made to statute. <i>Draft clauses 10-12</i>	rates of income tax on different types of income. <i>Clauses 12-14</i>
VAT	Assign the first 10 percentage points of VAT receipts in Scotland to the Parliament	Assign first 10 percentage points of receipts from the standard rate of VAT (currently 20%), and the first 2.5 percentage points of the reduced rate of VAT (currently 5%) <i>Draft clause 13</i>	Same as draft clause <i>Clause 15</i>
Devolved taxes	Fully devolve Air Passenger Duty (APD) and Aggregates Levy	Empowers Scottish Parliament to charge a tax on air passengers from airports in Scotland, and a tax on aggregate when subjected to commercial exploitation in Scotland. HM Treasury may 'switch off' both UK taxes from a date to be set by Order. <i>Draft clauses 14-15</i>	A number of drafting changes, transferring certain provisions into a new clause (e.g. to enable regulations to make further provision in relation to disapplication of APD and Aggregates Levy to Scotland). Explicitly precludes a Scottish aggregates levy being charged where aggregate used as a fuel, or processed in order to extract or

Smith Commission	Draft Clauses	Scotland Bill 2015-16
		produce fuel. <i>Clauses 16-18</i>
Welfare & Employment Support		
Disability, industrial injuries and carers' benefits	Powers over certain benefits for carers, disabled people and those who are ill to be devolved to the Scottish Parliament. Covers Attendance Allowance, Carer's Allowance, DLA, PIP, "Industrial Injuries Disablement Allowance" and Severe Disablement Allowance. Scottish Parliament to have complete autonomy over these benefits, or over any benefits or services that might replace them. Transfer of funding from UK equal to the existing level of spend on the benefits in Scotland.	Scottish Parliament given legislative competence for "disability benefits", "severe disablement benefit", "industrial injuries benefits", and "carer's benefits". No devolution of means-tested benefits, contributory National Insurance benefits, or certain lump-sum payments for asbestos-related conditions. <i>Draft clause 16</i>
No substantive differences from draft clauses. Definition of "relevant employment" for industrial injuries benefit expanded to include persons whose employment contract was found to be void or unlawful as a result of a failure by their employer to comply with employment legislation. <i>Clause 19</i>	Benefits for maternity, funeral and heating expenses	Powers over benefits which currently comprise the Regulated Social Fund to be devolved to the Scottish Parliament. Covers Cold Weather Payments, Funeral Payment, Sure Start Maternity Grant and the Winter Fuel Payment. Scottish Parliament to
Scottish Parliament given legislative competence for financial assistance provided for maternity expenses, funeral expenses, and "expenses for heating in cold weather." Payments out of the National Insurance Fund, payments out of the Social Fund, and	No substantive differences from draft clauses, but clarification that both the National Insurance Fund and the Social Fund themselves remain reserved. <i>Clause 20</i>	

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
	have complete autonomy over these benefits, or over any benefits or services that might replace them. Transfer of funding from UK equal to the existing level of spend on the benefits in Scotland.	payments to help with intermittent expenses (i.e. Budgeting Loans) to remain reserved. <i>Draft clause 17</i>	
Discretionary Housing Payments (DHPs)	Powers over DHPs would be devolved to the Scottish Parliament.	Legislative competence to develop a scheme of DHPs to be devolved subject to certain restrictions. <i>Draft clause 19</i>	Drafting change to allow for DHPs to be paid in exceptional circumstances where applicants would normally not be eligible. <i>Clause 22</i>
Top-up and discretionary payments	Scottish Parliament to have powers to top up reserved benefits and to make discretionary payments in any area of welfare, at its expense. Any such payments must provide additional income, with no offsetting reduction in their entitlement to other benefits or post-tax earnings.	Power to make discretionary payments to alleviate short-term need where well-being is at risk. No power to create permanent, ongoing entitlements. No payments where the person has been sanctioned, unless they have immediate, short-term needs due to other exceptional circumstances. Separate power to provide occasional payments or assistance to vulnerable people needing to establish or maintain a settled home. <i>Draft clause 18</i>	As regards discretionary payments, no substantive differences from draft clause 18. <i>Clause 23</i> New clause giving power to make discretionary top-up payments to reserved benefits. May be on case-by-case basis, or provide an ongoing entitlement to specific or all claimants of a benefit. No power under this clause to provide help with housing costs. No payment where the person has been sanctioned, unless their requirement is immediate and due

Smith Commission	Draft Clauses	Scotland Bill 2015-16
UC: costs of claimants who rent accommodation	Scottish Parliament to have the power to vary the housing cost elements of UC.	to other exceptional circumstances. <i>Clause 21</i>
UC: persons to whom, and time when, paid	Scottish Parliament to have the power to change the frequency of payments, vary existing plans for single household payments, and pay landlords direct for housing costs.	Same as draft clause, with addition of subsection (6) to provide for regulations made by Scottish Ministers to be subject to the negative resolution procedure. <i>Clause 24</i>
Employment Support	Scottish Parliament to have all powers over support for unemployed people through the employment programmes currently contracted by	Same as draft clause, with addition of subsection (5) to provide for regulations made by Scottish Ministers to be subject to the negative resolution procedure. <i>Clause 25</i>
	Scottish Parliament may pass laws to design and implement employment schemes for unemployed people and to help disabled people into work.	Same as draft clause. <i>Clause 26</i>

Smith Commission	Draft Clauses	Scotland Bill 2015-16
the DWP on expiry of the commercial contracts. The Scottish Parliament would have the power to decide how it operates these employment schemes.	The powers would be transferred on the expiration of the current DWP commercial contracts in 2017. Separate Scottish schemes would have to be coordinated with the UK-wide system of employment support (which will remain reserved).	
	<i>Draft Clause 22</i>	
Welfare benefits and employment support: general provisions		New clauses to support the transfer of welfare powers to Scotland, covering functions exercisable by Scottish Ministers, information-sharing between the Secretary of State and Scottish Ministers, and penalties for unauthorised disclosure of information.
		<i>Clauses 27-30</i>
Other legislative competence		
Crown Estate	Management of Crown Estate's economic assets in Scotland, and its revenue, transferred to Scottish Parliament and devolved to local authorities on request	The Treasury may devolve to the Scottish Ministers or their nominee all the functions of the Crown Estate Commissioners in Scotland, the revenues from Scottish assets, and power to legislate in future. The
		No substantive difference from draft clause.
		<i>Clause 31</i>

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
		transfer scheme must respect employment rights of Crown Estate staff, and the UK interest in reserved matters such as national security, exploitation of oil and gas, and the interests of consumers in consistent management of the Crown Estate across Britain where it relates to electricity transmission. <i>Draft clause 23</i>	
Equal opportunities	The Smith Commission recommended that the Equality Act 2010 should remain reserved, but that the Scottish Parliament could legislate to require gender quotas in public bodies, and on the subject of socio-economic equality.	Scottish Parliament to be able to legislate on the subject of socio-economic equality, and permitted to impose additional equal opportunities requirements on Scottish and cross-border public bodies, except to the extent that their functions were already subject to provision by either the <i>Equality Act 2006</i> or <i>2010</i> . <i>Draft clause 24</i>	Broadly similar to the draft clause, although it allows the Scottish Parliament greater freedom to introduce equality requirements for Scottish public bodies or cross-border public bodies. The Bill would enable the Scottish Government to impose socio-economic duties on public authorities in Scotland exercising devolved or mainly devolved functions. <i>Clause 32</i>
Tribunals	All powers over the management and operation of all reserved tribunals (which includes	Power to transfer functions from reserved tribunals to Scottish tribunals (subject to specific constraints as	Some differences from the draft clause in terms of the bodies covered (with specific reference to

Smith Commission	Draft Clauses	Scotland Bill 2015-16	
<p>administrative, judicial and legislative powers) to be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.</p> <p>The laws providing for the underlying reserved substantive rights and duties would remain reserved (although they may be applied by the newly devolved tribunals).</p>	<p>described in paragraph 64 of the Smith Commission Agreement). Orders in Council would give effect to the transfer of functions from a specified tribunal to a specified Scottish tribunal. A draft of each Order would be laid before and approved by both the UK and Scottish Parliaments before a competence would be transferred.</p> <p><i>Draft Clause 25</i></p>	<p>national regulatory bodies and the Comptroller General of Patents, Designs and Trade Marks). The clause sets out the tribunal functions which may be transferred. Restrictions on the transfer of certain functions relating to reserved matters are set out in the new paragraph 2A to Part 3 of Schedule 5 that would be inserted into the Scotland Act 1998.</p> <p><i>Clause 33</i></p>	
Roads	<p>The Smith Commission proposed the full devolution of speed limits and the making of road signs to the Scottish Government; this is further to the limited devolution in these areas provided for in the 2012 Act.</p>	<p>Devolution of legislative and executive powers in respect of traffic signs and speed limits in Scotland, except the ability to exempt from speed limits vehicles that are used for reserved purposes and the training requirements for drivers of exempt vehicles.</p> <p><i>Draft clauses 26-29</i></p>	<p>No substantive difference from draft clauses. Minor drafting changes and new clause/Schedule.</p> <p><i>Clauses 34-37 and Schedule 2</i></p>
British Transport Police and railway policing	<p>Functions of the British Transport Police (BTP) in Scotland to be devolved.</p>	<p>Devolution of legislative competence in relation to railway policing in Scotland.</p> <p><i>Draft clause 30</i></p>	<p>New clause (39) facilitates the devolution of executive competence in relation to the policing of railways in Scotland by specifying as cross-border public</p>

Smith Commission	Draft Clauses	Scotland Bill 2015-16
Onshore petroleum	The licensing of onshore oil and gas extraction underlying Scotland and responsibility for associated mineral access rights to be devolved to the Scottish Parliament.	<p>authorities the British Transport Police Authority, the Chief Constable of the British Transport Police, the deputy Chief Constable of the British Transport Police and the assistant Chief Constables of the British Transport Police ("the BTP Bodies").</p> <p><i>Clauses 38-39</i></p>
		<p>No substantive difference from draft clauses. Clause 40 would devolve licencing of onshore oil and gas resources. Clauses 41-42 provide a range of consequential amendments and deal with existing licences.</p> <p><i>Clauses 40-42</i></p>
Consumer advocacy and advice	Consumer advocacy and advice services to be devolved to the Scottish Parliament (but not consumer protection which would remain reserved).	<p>No substantive difference from draft clauses.</p> <p><i>Clause 43</i></p>
		<p>The draft clause would devolve to the Scottish Parliament legislative competence for consumer advocacy and advice in relation to general consumer matters (i.e. consumer protection; product standards, safety and liability; and weights and measures) and postal services, electricity, oil and gas. This does not include conferring or removing</p>

Smith Commission	Draft Clauses	Scotland Bill 2015-16	
	functions from Ofcom or Ofgem. <i>Draft clause 32</i>		
Functions exercisable within devolved competence		Technical clause enabling the devolution of functions laid out in clause 43 to Scottish Ministers. <i>Clause 44</i>	
Gaming machines	Scottish Parliament to have powers to prevent the proliferation of fixed odds betting terminals	Devolution of legislative competence for the number of gaming machines authorised by a betting premises licence where it is possible to stake more than £10 for a single play of a machine. Scottish Ministers would be able to make an Order varying the number of these gaming machines allowed on a betting premises. <i>Draft clause 33</i>	Some redrafting. The devolved competence does not apply to betting premises licences issued in respect of a track; otherwise the effect is the same <i>Clause 45</i>
Other executive competence			
Gaelic Media Service	Scottish Ministers to approve Ofcom appointments to board of MG Alba. Formal consultative role for Scottish Government and Scottish Parliament in BBC Charter review. BBC to lay annual report before Scottish Parliament and appear before its	Power to approve appointments by Ofcom to board of MG Alba (the Gaelic Media Service) to rest solely with Scottish Ministers. <i>Draft clause 34</i>	Same as draft clause. <i>Clause 46</i>

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
	committees. (BBC-related measures to be achieved by Memorandum of Understanding, <i>not</i> via legislation.)		
Commissioners of Northern Lighthouses & Maritime and Coastguard Agency	Formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for the MCA and the Northern Lighthouse Board (NLB) with respect to their activities in Scotland. Scottish Ministers would have the power to appoint to both bodies and both the MCA and NLB would lay their annual reports and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.	Scottish Government and Scottish Parliament to have a greater role in setting strategic priorities for both bodies in respect of their activities in Scotland, and to permit representation of specific Scottish interests. <i>Draft clause 35-36</i>	Same as draft clauses. <i>Clauses 47 & 48</i>
Rail – franchising of passenger services	Scottish Government to have power to allow public sector operators to bid for rail franchises, and for the franchises to be funded and specified by Scottish Ministers.	Public sector operators to be permitted to bid and operate rail franchises for passenger services both starting and ending in Scotland. <i>Draft clause 37</i>	No substantive difference from draft clauses. <i>Clause 49</i>
Fuel Poverty and Energy Efficiency	Powers to determine how supplier obligations in relation to energy efficiency and fuel poverty are	Powers to design how such ‘supplier obligation’ schemes are implemented in Scotland so that they can better	No substantive changes to draft clauses. New clause 52 amends the Utilities Act 2000 so that

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
Schemes	designed and implemented in Scotland would be devolved. Responsibility for setting the way the money is raised would remain reserved.	target funding and support. <i>Draft clauses 38-39</i>	targets for certain obligations can be apportioned between Scotland and the rest of Great Britain. <i>Clauses 50-52</i>
Renewable Energy	Formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives.	Duty on the Secretary of State to consult Scottish Ministers when establishing or amending any statutory and non-statutory renewables incentive scheme that would apply in Scotland. It would also apply to three schemes (except for fossil fuel or nuclear generation): contracts for difference, feed-in tariffs and the renewables obligation. <i>Draft Clause 40</i>	Clarification. The Bill provides for a duty to consult Scottish Ministers on renewables incentive schemes but does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme. <i>Clause 53</i>
Offshore Renewables			New clause (54) amends the Energy Act 2004 to give Scottish Ministers the powers to declare safety zones around offshore renewable energy developments wholly in Scottish waters or in a Scottish part of a Renewable Energy Zone. It also transfers powers over the decommissioning of the developments. <i>Clause 54</i>

	Smith Commission	Draft Clauses	Scotland Bill 2015-16
References to Competition & Markets Authority	Scottish Ministers should have equivalent powers to UK Ministers to require Competition & Markets Authority (CMA) to carry out an investigation into a market for particular goods or services, in relation to particular competition issues arising in Scotland	Amend provision that allows Ministers, in exceptional circumstances, to refer specific markets to the CMA, in section 132 of <i>Enterprise Act 2002</i> , to extend power to Scottish Ministers, if acting jointly with the Secretary of State. <i>Draft clause 41</i>	Same as draft clause. <i>Clause 55</i>
Miscellaneous			
Gas and Electricity Markets Authority (Ofgem)	Ofgem to lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.	Same as Smith Commission. <i>Draft clause 42</i>	Same as draft clause <i>Clause 56</i>
Ofcom	Scottish Ministers to appoint Scottish member to Ofcom board and Ofcom to lay annual reports before Scottish Parliament and appear before its committees. Formal consultative role for Scottish Government and Scottish Parliament in setting Ofcom's priorities (to be implemented by Memorandum of Understanding);	Scottish Ministers to acquire power to appoint a Scottish member to Ofcom board. Ofcom required to lay its annual report and accounts and any other reports before Scottish Parliament. <i>Draft clause 43</i>	Same as draft clause <i>Clause 57</i>
Bodies required to appear before	Ofcom, the Commissioners of Northern Lighthouses, and the Gas	Same as Smith Commission	Same as draft clause.

Smith Commission

Draft Clauses

Scotland Bill 2015-16

Scottish
Parliament

and Electricity Markets Authority can
be required to appear before
Committees of Scottish Parliament

Draft clause 44

Clause 58

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