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Scotland Bill 2015-16: Committee stage report

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Summary

The Committee stage of the Scotland Bill was taken on the floor of the House, and it lasted for four days.

Government amendments were made, almost all of them technical. No other amendments were made. It is expected that further, substantive, Government amendments will be tabled for Report stage.

The constitutional provisions, Clauses 1 – 11, were debated on the first day of the Committee stage. One Government amendment was made, removing a prohibition in the Bill as drafted on an ordinary Scottish Parliament election being held in the two months before a UK general election or a European Parliament election.

The taxation provisions in the Bill, Clauses 12 – 18, were debated on the second day of the Committee stage. All of these provisions were agreed, without amendment, and without a division. A Library briefing paper discusses the wider debates over the devolution of financial powers ([*Devolution of financial powers to the Scottish Parliament: recent developments, SN07077*](#)).

The welfare and employment support provisions, Clauses 19 – 30, were taken on the third day. A large number amendments was tabled by Labour and by the SNP, many of which were supported by both parties, and there were seven divisions. No amendments were made to this part of the Bill, and no new clauses were agreed.

The final day in Committee covered a range of subjects, from energy to the Crown Estate to broadcasting, but again substantive changes were not made.

The Smith Commission Report on further devolution to the Scottish Parliament described the reservation of abortion law as an anomaly and recommended that a process should be established to give the matter further consideration. There was no reference to abortion within the Bill as introduced, but two new clauses were tabled at Committee stage to bring this issue under the competence of the Scottish Parliament. The Secretary of State resisted these at that point, stating that discussions on the matter between the Scotland Office and the Scottish Government were ongoing. On 14 October 2015 it was announced that the Government would table amendments to the Bill to devolve this area of law to the Scottish Parliament. The Scottish First Minister, Nicola Sturgeon, has expressed support for this move, and said that the Scottish Government has no intention of changing the law on abortion.

1. Background

The Scotland Bill 2015-16 had its second reading on 8 June 2015, starting at [HC Deb c916](#).

Commons Briefing Paper 7205, [Scotland Bill 2015-16](#), 4 June 2015, gives an account of the Bill as introduced. The Bill followed the [Smith Commission report for further devolution of powers to the Scottish Parliament](#).

Draft clauses to give effect to the Smith Commission's recommendations were published in January 2015 in the Command paper [Scotland in the United Kingdom: an enduring settlement](#) (Cm 8990).

Other relevant publications include:

Scottish Parliament Devolution (Further Powers) Committee, [New Powers for Scotland: an interim report on the Smith Commission and the UK Government's Proposals](#), SP Paper 720, 14 May 2015

[Scottish Government response to the interim report from the Devolution \(Further Powers\) Committee](#), 7 June 2015 (includes Scottish Government's proposed alternative clauses)

The Political and Constitutional Reform Committee, [Constitutional Implications of the Government's Draft Scotland Clauses](#), HC1022 2014-15, 22 March 2015

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

The Committee stage lasted for four days, a day each on Parts 1 - 3, and a day on the remainder. As a constitutional bill, this stage was taken on the floor of the House, in a Committee of the Whole House.

The Government tabled various technical amendments; these were all made, and no other amendments were made.

The Government did not accept any opposition amendments, although it did acknowledge that discussions were ongoing with the Scottish Government, and that opposition amendments would be reflected upon. The SNP called for assurances that any changes would be subject to debate in the House of Commons, and that the Bill would not be amended substantively in the House of Lords.

5 Scotland Bill 2015-16: Committee stage report

The Secretary of State, David Mundell, stated his intention "to make substantive amendments in the House of Commons when the Bill comes back on Report." ¹

The fate of the various amendments and new clauses can be seen in the Proceedings of the Committee of the Whole House published for each day:

- [First day \(Part 1, Constitutional arrangements\)](#)
- [Second day \(Part 2, Tax\)](#)
- [Third day \(Part 3, Welfare benefits and employment support\)](#)
- [Fourth day \(all remaining Parts\)](#)

A version of the Bill showing the changes made in Committee is available [here](#).

¹ HC Deb 15 July 2015, c877

2. Constitutional provisions (Part 1)

The first day in committee took place on 15 June 2015, starting at [HC Deb c24](#). It covered the constitutional matters in Part 1 of the Bill, such as the permanency of the Scottish Parliament and Government, elections to the Scottish Parliament, and the use of a "super-majority" for changes to the franchise, electoral system or composition of the Parliament.

Several Government amendments were made, most of them clearly technical, and no other amendments were made.

2.1 Entrenching the Scottish Parliament and Sewel Convention

The first two clauses of the Bill, which seek to entrench respectively the Scottish Parliament and Government, and the Sewel Convention, continued to excite comment. There is a difficulty in creating an arrangement that is technically permanent on the basis of a statute, when Parliament has the ability to repeal or amend that statute. Nevertheless, it is arguable that provisions can be shaped so as to increase the political cost of repeal. There is a separate argument as to whether the permanency of a political institution rests on the wording of a statute, or on its popular legitimacy.

Scottish Parliament

Clause 1 as drafted includes the statement that,

a Scottish Parliament is recognised as a permanent part of the United Kingdom's constitutional arrangements.

The SNP tabled **Amendment 58** to replace this with a statement that,

the Scottish Parliament is a permanent part of the United Kingdom's constitution.

The amendment also sought to make repeal of this provision subject to consent by the Scottish Parliament and majority support in a referendum in Scotland. It was negated on division by 302 votes to 271.²

The SNP's argument was put forward by Angus Robertson, starting at HC Deb c39. He argued a number of points:

- The wording of the amendment stayed closer to the text of the Smith Commission, which stated "UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions."
- The Scottish Parliament's Devolution (Further Powers) Committee had argued in its interim report on the draft clauses published by

² HC Deb 15 June 2015, c92

the previous Government in January 2015 that the phrase “is recognised” had the potential to weaken the effect of the clause.³

- The Scottish tradition emphasises popular rather than parliamentary sovereignty, hence the introduction of a referendum. This was regarded both as appropriate to the Scottish tradition, and as additional protection against the simple use of parliamentary sovereignty to repeal the provision in the Bill.

It would be feasible for Parliament to repeal even a clause that included provision for a referendum, but Mr Robertson argued that “it would be very difficult for people to go back on legislation with the express wording proposed in the amendment.”⁴ By creating a role for public opinion, the stakes are raised for a Parliament seeking to repeal the provision.

Alistair Carmichael, Liberal Democrat, who supported the amendment, linked it to the tradition of popular sovereignty, and broadened the debate about the real value of Clause 1:

The permanence of the Scottish Parliament is to be found not in any amendment or statutory enactment, but in the will of the Scottish people. It is a permanent institution because, frankly, it is unthinkable that it would be repealed at this point.⁵

An argument could be made that the unamended clause does not seek to base permanency on a repealable provision in an Act, but instead, by simply recognising the permanency of the Scottish Parliament, implies that such permanency rests on some other footing. The House of Lords Constitution Committee hinted at this prospect when commenting on the draft clauses that preceded the Bill:

Lord Hope of Craighead, at the time Deputy President of the Supreme Court, described the Scottish Parliament in a key constitutional case as “self-standing”. This appears to be a markedly different understanding from that which considers the Scottish Parliament simply to be a creation of Westminster legislation.

[...]

If there are different interpretations as to the status of the Scottish Parliament in its present constitutional configuration then it is not implausible that Clause 1 could be interpreted by certain judges to be a form of entrenchment that could not then be repealed by Westminster legislation without the consent either of the Scottish Parliament or the Scottish people voting in a referendum.⁶

A separate difficulty was raised by Kevan Jones, who argued that the amendment’s reference to “the United Kingdom’s constitution” was imprecise in the absence of a codified constitution, and that it would

³ [New Powers for Scotland: an interim report on the Smith Commission and the UK Government’s Proposals](#), Devolution (Further Powers) Committee, SP Paper 720, 14 May 2015, para 47

⁴ HC Deb 15 June 2015, c41

⁵ HC Deb 15 June 2015, c27

⁶ [Proposals for the devolution of further powers to Scotland](#), House of Lords Select Committee on the Constitution, 10th report 2014-15, HL 145, 24 March 2015. The court case mentioned was AXA General Insurance v Lord Advocate [2011] UKSC 46, para 46.

therefore invite the involvement of the courts in creating an interpretation.⁷

The Secretary of State, David Mundell, made similar points when speaking against Amendment 58. He argued that a Scottish Parliament was “a prerequisite of a United Kingdom,” and that, while he would listen to the debate about wording, “it is not sustainable to argue about lots of preconditions.” In addition, the amendment used the term “constitution” when the UK does not have a written constitution:

that is a well-established constitutional arrangement of which a Scottish Parliament is a crucial and enduring part.⁸

Sewel Convention

As drafted, **Clause 2** of the Bill provides that the UK Parliament “will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

Labour tabled **Amendments 4, 39 and 41** on the Sewel Convention, and the SNP tabled **New Clause 10** on the same matter. The New Clause was defeated on division by 309 votes to 63;⁹ the amendments did not come to a vote.

In different ways, Labour and the SNP aimed to remove from the Bill the “normally” condition. This could on the one hand be seen as a difficult term to apply with legal certainty, and on the other as a constraint on the devolution arrangements.

Wayne David, speaking for Labour, made the point that the Smith Commission had recommended that the Sewel Convention be put on a statutory footing, while the provision in Clause 2 introduces to the Bill only one part of the Sewel Convention. The clause applies to legislation on devolved matters, whereas the Convention also covers legislation affecting the extent of those matters, or in other words concerning devolved competence.¹⁰

He also drew attention to the imprecision of the term “normally”:

When the word “normally” is used, I ask, “How long is a piece of string?” It is legally imprecise, which is a cause for concern.¹¹

Angus Robertson, speaking to New Clause 10, echoed the argument on the absence from Clause 2 of any reference to devolved competence. He also argued that the Bill,

puts the Sewel convention into legislation as a convention, rather than putting the convention on a statutory footing.¹²

He pointed to the need for consultation between the two Governments if the Sewel Convention is to work, and argued that the Bill needed to make provision on this. New Clause 10 gave greater detail on the

⁷ HC Deb 15 June 2015, cc67-8

⁸ HC Deb 15 June 2015, c90

⁹ HC Deb 15 June 2015, c150-2

¹⁰ HC Deb 15 June 2015, c98

¹¹ HC Deb 15 June 2015, c99

¹² HC Deb 15 June 2015, c102

circumstances in which the UK Parliament would not legislate without consent, and provided a framework for consultation.

Mr Mundell argued that Clause 2 embodied the Sewel Convention as it has operated, and that to remove the term “usually” would change the Convention. This would undermine the parliamentary sovereignty recognised in the *Scotland Act 1998*. By implication it could be seen as not fulfilling the Smith Commission recommendation, since it would not be the Sewel Convention precisely that was being put on a statutory footing:

The Government’s starting point is that the Smith commission’s intention was not that the current constitutional position should be changed. Instead, the commission’s intention was that legislation should accurately reflect the political understanding of the convention, and that is exactly what I see the clause as doing.

Currently, the Government do not normally legislate in devolved areas without the consent of the Scottish Parliament. Clause 2 sets out that practice. In doing so, it puts on a statutory footing a convention that has been consistently adhered to by successive United Kingdom Governments. I understand the desire to put beyond doubt that we will seek the consent of the Scottish Parliament when legislating on devolved matters. However, in effect, amendment 56 seeks to limit the sovereignty of this Parliament by removing the word “normally” to state that the Parliament of the United Kingdom cannot legislate with regard to devolved matters without the consent of the Scottish Parliament.

In reality, the amendment would directly contradict section 28(7) of the *Scotland Act 1998*, which states that the section, which relates to Acts of the Scottish Parliament,

“does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.”

The amendment would radically alter the way in which the practice was intended to operate as envisaged by Lord Sewel.¹³

He went on:

The Smith commission recommended that the Sewel convention be put on a statutory footing—no more, no less. That is what the Bill seeks to achieve. Accepting amendment 56 would be to go further than was recommended, radically alter how the convention was intended to operate, and attempt to limit the authority of the UK Parliament.¹⁴

2.2 Elections

Clauses 3 – 10 concern the electoral powers that will be transferred to the Scottish Parliament and the Scottish Government, and were also considered on the Committee’s first day on 15 June 2015.¹⁵

Clause 3 splits Section B3 of Schedule 5 to the *Scotland Act 1998* into two parts; Section B3 (A) reserves all matters concerning elections to the House of Commons and to the European Parliament. Electoral matters

¹³ HC Deb 15 June 2015, cc105-6

¹⁴ HC Deb 15 June 2015, c107

¹⁵ [HC Deb 15 June 2015 c108](#)

relating to Scottish Parliament elections and the franchise for local government elections are no longer reserved but there are some exceptions, given in the new Section B3 (B). Clause 3 was agreed to after a number of minor and technical Government amendments had been made.¹⁶

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. Clause 4 was agreed to with minor Government technical amendments.¹⁷

Clause 5 amends s2 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 had provided that an ordinary Scottish Parliament election could not 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. Government **Amendment 101** to Clause 5 removing the two month provision was agreed without a vote. The Parliamentary Secretary, Cabinet Office, John Penrose, explained the amendment:

It will ensure that general elections for the Scottish Parliament cannot be held on the same day as general elections to the UK Parliament or to the European Parliament or a local government election in Scotland. That is in line with the Smith Commission agreement...

[...]

... the purpose of amendment 101 is to remove the provision from the clause that says that a general election to the Scottish Parliament cannot be held in the two months preceding a general election to the UK Parliament or a general election to the European Parliament.¹⁸

Labour **Amendment 43** would have prevented a Scottish Parliament general election from being held on the same day as a referendum called under reserved powers. It was aimed at preventing the combination of a planned EU referendum with elections to the Scottish Parliament, part of a wider aim of ensuring the EU referendum was not combined with any other polls. The amendment was negated on division by 305 votes to 269.¹⁹

Technical Government amendments were made to **Clause 6** which makes further provision for certain functions of the Secretary of State concerning the Individual Electoral Registration Digital Service relating to Scotland to be exercised concurrently with Scottish Ministers.²⁰

Clause 7 transfers the powers of the Secretary of State over matters such as campaign expenditure limits for Scottish Parliament elections to

¹⁶ [HC Deb 15 June 2015 c115](#)

¹⁷ [HC Deb 15 June 2015 c120](#)

¹⁸ [HC Deb 15 June 2015 c115](#)

¹⁹ [HC Deb 15 June 2015 c120](#)

²⁰ [HC Deb 15 June 2015 c125](#)

Scottish Ministers, and **Clause 8** transfers the Boundary Commission for Scotland's functions in relation to Scottish Parliament boundaries to the Local Government Boundary Commission for Scotland. These two clauses were agreed to.²¹

Clause 9 makes minor and consequential amendments to existing legislation, mainly the *Scotland Act 1998*, and **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. Clause 9 was agreed to after Government technical amendments were made.²² Clause 10 (super-majority requirement for certain legislation) was agreed.²³

2.3 Human rights and other constitutional matters

There were attempts to amend the Bill so as to offset the possibility of changes to UK human rights law.

New Clause 5, tabled by Graham Allen, provided that the application of the *Human Rights Act 1998* to Scotland could not be repealed in respect of Scotland without the consent of the Scottish Parliament. It was negatived on division by 309 votes to 274. SNP **Amendment 67**, not called, would have removed the Human Rights Act from the list of "protected enactments" in Schedule 4 to the *Scotland Act 1998*. It would have allowed the Scottish Parliament to legislate to amend the Human Rights Act, and thereby to create its own human rights regime to offset potential repeal of that Act in favour of a British Bill of Rights. It would also have made it clearer that a repeal of the Human Rights Act would trigger the Sewel Convention, leading the UK Government to await consent from the Scottish Parliament before seeking UK legislation.

Joanna Cherry, speaking to Amendment 67 and related amendments, argued that human rights are not solely reserved, since there are provisions in the *Scotland Act 1998* that rest on the European Convention on Human Rights, for instance using it to delimit devolved competence. As a result, she argued, those provisions could not be changed simply by repealing the Human Rights Act. Since they relate to devolved competence, the Sewel Convention would apply and the consent of the Scottish Parliament would be needed.²⁴

For the Government, the Deputy Leader of the House of Commons, Therese Coffey, said that the Secretary of State was "engaging with the devolved Administration as we develop the proposals."²⁵

In addition, Mr Allen tabled **New Clause 2** providing for a Constitutional Convention to consider a range of matters concerning

²¹ [HC Deb 15 June 2015 c125](#)

²² [HC Deb 15 June 2015 c125](#)

²³ [HC Deb 15 June 2015 c126](#)

²⁴ HC Deb 15 June 2015, c128

²⁵ HC Deb 15 June 2015, c133

governance of the UK. This was negated on division by 306 votes to 218.²⁶

Sir Edward Leigh's **New Clause 3** would have devolved everything other than the constitution, foreign affairs, public service, defence and treason. Treasury consent would have been needed for certain changes in pensions. It was negated on division by 298 votes to 68.

²⁶ HC Deb 15 June 2015, c137

3. Tax provisions (Part 2)

3.1 Second Reading

When the Bill received a Second Reading, the Secretary of State, David Mundell, summarised its tax provisions as follows:

Central to the Bill is the devolution of income tax. Although the definition of income tax will remain reserved, the Scottish Parliament will have full control over rates and bands. That builds on the tax devolution set out in the Scotland Act 2012, which provided for significant powers over income tax that will come into effect next April.

One notable change to the Bill, compared with the draft clauses published in January, is the confirmation that the Scottish Parliament will be able to set a zero rate of income tax on earnings if it so chooses. That effectively gives it the opportunity to reduce the individual's tax burden significantly if it can afford to do so and makes appropriate spending cuts or tax rises elsewhere. Of course, the reverse is true—if the Scottish Government want to spend more, they will be able to do so by taxing more, and they will be accountable to the Scottish taxpayer for it.

Alongside the devolution of income tax sits the assignment of half of Scotland's VAT revenues. Members will recall that it is against EU law to have differential VAT rates within a member state, so the devolution of VAT would not be legal ... Instead of the devolution of VAT, the Smith commission recommended that half the VAT revenues raised in Scotland should be assigned to the Scottish Parliament, thereby further linking Holyrood's funding to the performance of the Scottish economy. The more the Scottish economy grows, the greater the revenue from VAT that Holyrood will be able to keep. That is an incentive to achieve growth ...

The devolution of income tax on earnings and the assignment of VAT revenues, when taken together with the devolution of air passenger duty and the powers under the 2012 Act, mean that the Scottish Parliament will have important decisions to make. The Scottish Parliament is now responsible for raising about only 10% of what it spends, but under the Bill Holyrood will be responsible for raising more than 50% of what it spends. It will truly be one of the most powerful devolved legislatures in the world.²⁷

At a later stage in his speech, Mr Mundell underlined the Government's opposition to full fiscal autonomy for Scotland: "my party and the Government have made it clear that we will strongly oppose full fiscal autonomy for Scotland. As the analysis by the independent and respected Institute for Fiscal Studies told us, full fiscal autonomy would leave Scotland with a £7.6 billion black hole in its finances this year and almost £10 billion by the final year of this Parliament."²⁸

Speaking for the Labour Party, Ian Murray suggested that, while a number of changes should be made the Bill to "ensure that Smith is

²⁷ HC Deb 8 June 2015 c926

²⁸ *op.cit.* c931. For more details see, [Full fiscal autonomy delayed? The SNP's plans for further devolution to Scotland](#), IFS Observation, 21 April 2015.

delivered in full, to the letter, in both substance and clauses," none of these related to tax. Mr Murray opposed strongly any changes to deliver fiscal autonomy: "we must be vigilant as the Bill makes progress through the House, as the worst case scenario for Scotland would be an SNP asking for its top manifesto priority of full fiscal autonomy and a majority Conservative Government delivering it for them."²⁹

Speaking for the SNP, Angus Robertson argued that the Bill did not reflect the conclusions of the Smith Commission, and went on to suggest the party would table amendments for the devolution of both corporation tax and NICs:

As we know, the vow was a direct response to the growing momentum of the yes campaign, in which the Better Together parties—Labour and Tory, which had worked closely for two years—descended into breathless panic and promised the earth. More accurately, they promised "home rule" and as close to federalism as possible ... There is no doubt whatever that the Bill does not match the pledges of the campaign or the spirit and letter of the Smith deal ...

The Bill is a response to the referendum, but we now need an adequate response to the general election and the clear mandate for more powers that was delivered ... The manifesto on which I and my colleagues were elected was one that secured the support of more votes in Scotland than the Conservatives, the Labour party and the Liberal Democrats combined. We have been clear on our priorities for more powers, stating that "we will prioritise devolution of powers over employment policy, including the minimum wage, welfare, business taxes, national insurance and equality policy—the powers we need to create jobs, grow revenues and lift people out of poverty."³⁰

Concluding the debate the Financial Secretary, David Gauke, gave some details of the ongoing work on the 'fiscal framework':

I am pleased to say that earlier today the Chancellor and the Chief Secretary to the Treasury met the Deputy First Minister. They had a productive meeting and agreed to immediately start work on the fiscal framework, which works alongside the Scotland Bill, ensuring that the Scottish Parliament has the tools it needs to manage its significant new tax and spending powers. We have agreed to aim to finalise the fiscal framework by the autumn, alongside the passage of the Scotland Bill through Parliament.³¹

As Mr Robertson said in his speech on second reading, the SNP's election manifesto stated that the party would "seek agreement that the Scottish Parliament should move to full financial responsibility", but that as "the transition to full fiscal responsibility - and agreement of the detailed fiscal framework that would underpin it - would take a number of years", the party would "prioritise devolution of powers over

²⁹ *op.cit.* c938

³⁰ *op.cit.* cc945-6, c951. For some commentary on these proposals see, [Scotland would gain significant new powers under SNP plans for further devolution](#), IFS Observation, 22 April 2015.

³¹ *op.cit.* c1012. To date the Committee has now met 4 times: on [7 July](#), [4 September](#), [23 September](#) and [9 October](#).

employment policy, including the minimum wage, welfare, business taxes, national insurance and equality policy.”³²

3.2 Scottish Government’s June paper

On 15 June 2015 the Scottish Government gave more details of the case for devolving ‘business taxes’, in a document setting out which further powers, in its view, should be devolved. An extract from this is reproduced below:

Employers’ National Insurance

A more integrated set of powers over business taxation alongside business rates, corporation tax and capital gains tax could be used to reduce the cost of employment in key sectors. For example, changes could be made to specific elements of the NIC system such as:

- Increase the Lower Earnings Rate. The lower earnings rate is the point at which employers need to start paying NICs³³ ... Increasing the rate would reduce contributions for all businesses who are paying NICs, but would have a proportionately greater impact on employers of workers on low wages or/and low hours and may eliminate NICs completely for some employers.
- Employment Allowance. In 2014, the UK Government introduced an employment allowance which allows companies to reduce their NICs bill by a flat rate of up to £2,000 a year. This allowance could be made more generous or linked to companies paying the living wage.
- Exempting Certain Groups. From April 2015, employers will no longer have to pay NICs for employees under 21. From 2016, they will no longer need to pay NICs for most modern apprentices under 25. From 2010 to 2013, start-ups outside London, the South East and east of England were exempt from NICs for the first ten recruits they hired during in their first year of trading. Such measures allow reforms to be targeted at specific groups and can therefore be more cost effective than across the board changes to headline rates and thresholds.

Corporation tax

Full responsibility for corporation tax, including rates, reliefs, thresholds and the tax base, would allow the Scottish Government to tailor the tax system to reflect the specific competitive strengths and challenges in the Scottish economy ...

Capital Gains Tax

Full responsibility for capital gains tax could be used to create targeted tax incentives to boost entrepreneurship to redress Scotland’s lower rates of entrepreneurship and business start-up. For example, we could review the effectiveness of existing entrepreneur’s relief (lower tax charge on first £10 million gain

³² [The SNP 2015 General Election manifesto - Stronger for Scotland](#), April 2015 p11

³³ Strictly speaking, this is termed the ‘secondary threshold’ for Class 1 National Insurance contributions.

arising from sale of business) or seed investment relief (incentivises investment in small, start-up companies).³⁴

3.3 Debate in Committee

On the first day in Committee, SNP **Amendment 89** had sought to remove the protection from amendment by the Scottish Parliament of some parts of Schedule 5 to the *Scotland Act 1998*. The effect would have been to allow the Scottish Parliament to remove the reservation on taxation, borrowing and public expenditure in Scotland. It would have paved the way for full fiscal autonomy. This amendment was negated on division by 309 votes to 60.³⁵

The Committee considered all of the clauses directly relating to taxation, clauses 12-18, on the second day of the Committee stage, 29 June 2015. They were all agreed, without amendment or without a division.³⁶

Clauses 12-14 provide for the Scottish Parliament to have the power to introduce new rates and bands of income tax above the UK personal allowance. Only one amendment was tabled, by Sir Edward Leigh; as he explained, this was “a probing amendment” to determine why the Government had elected to devolve the power to set the bands and rates of income tax, but not the personal allowance. Sir Edward asked, “is not setting the threshold at which people start to pay tax ... vital to the decision-making process”:

Setting a band or rate but not a threshold is like being willing and able to leap the bar in high jump without having any control over where the height is calculated from. It does not make any sense. What we are giving the Scottish Parliament is only half a power. Are not thresholds much the most interesting part of the equation?³⁷

On this occasion Mr Mundell observed, “the clauses on income tax ... are often overlooked, meriting only a few lines in the comments received on the Bill ... because, as has been said, they command widespread support as delivering the central aspect of the Smith agreement in full.”³⁸ Mr Mundell underlined that the power to set rates and bands would not be restricted: “if the Scottish Parliament wants an income tax system with a dozen different rate bands, these powers allow it to do that. Similarly, if it wants to set a zero rate of income tax, it can.” He went on to explain why, in his view, it would not be right to devolve the power to set the personal allowance:

Devolution of income tax is a significant step, but it is important to remember that in the independence referendum only last September, the Scottish people decisively opted for the security of being part of the UK family of nations, and part of that is a single, cohesive income tax system. That is why HMRC will administer

³⁴ [Beyond Smith – Scottish Government proposals for more powers for the Scottish Parliament](#), June 2015 para 45-52

³⁵ HC Deb 15 June 2015, c134

³⁶ [HC Deb 29 June 2015 cc1231-1305](#)

³⁷ HC Deb 29 June 2015, c1232

³⁸ HC Deb 29 June 2015, c1247

Scottish income tax for the Scottish Parliament as part of its UK-wide management of income tax, thus minimising the burdens on employers and individuals. It is also why the Smith commission—which it is important to remember all parties present in the Scottish Parliament signed up to—specifically decided after careful consideration not to devolve the personal allowance.³⁹

In the event, Sir Edward withdrew his amendment.

On this occasion, two new clauses were discussed: the first, **New Clause 54**, tabled by the SNP, provided for fully devolving income tax. Speaking for the SNP, Stewart Hosie argued that “the nature of the tax powers” to be devolved by the Bill “are very limited”:

Even if we include the VAT assignation, the Scottish Parliament would raise the equivalent of around 50% of devolved expenditure. However, excluding the VAT assignation, the figure falls to barely a third. That is important because many of the submissions to the [Scottish Parliament’s] devolution committee called for more ... It is also worth noting the evidence to the devolution committee of Professor Andrew Hughes-Hallett, who warned of the risks associated with reliance on one single tax. He said a great deal about the possible compositions of the tax base, but in essence his point was that Scotland needs a diverse tax base. We believe that adding responsibility for savings and investment income along with every other aspect of income tax would at least offer a partial solution to that problem.⁴⁰

Speaking for the Labour Party, Ian Murray argued that either devolving the power to set the personal allowance, or fully devolving income tax, would undermine the basic principle of “the pooling and sharing of resources across the United Kingdom” and should be opposed. Mr Murray went on to argue that what was needed was “a full analysis of how all the proposals would work,” the subject of **New Clause 32**, tabled by the Labour Party.⁴¹

The Secretary of State also opposed the proposal that income tax should be fully devolved, but went on to suggest that the Labour Party’s new clause was unnecessary, given the existing statutory requirements that existed for charting the impact of these devolved powers:

To go further than the powers set out in the Bill would break the concept of shared tax and be complicated for individuals and employers with activity on both sides of the border, as they would have to understand and comply with two potentially entirely different tax systems ... That would not be in keeping with a stronger Scotland within the United Kingdom. It is not what the people of Scotland voted for last September, and I cannot accept the new clause.

New clause 32 ... is intended to provide the House with a report on the implementation of the Scottish rate of income tax and the further income tax powers in the Bill. That is a laudable aim, but I can reassure hon. Members that current legislation already provides for annual reports on the implementation of devolved tax powers to Scotland.

³⁹ HC Deb 29 June 2015, c1248, c1249

⁴⁰ HC Deb 29 June 2015, cc1236-7

⁴¹ HC Deb 29 June 2015, cc1239-40

Section 33 of the Scotland Act 2012 requires the Secretary of State and Scottish Ministers to lay before both Houses of Parliament and the Scottish Parliament annual reports that broadly cover the areas suggested in the new clause. Three reports have already been produced, the most recent in March, and HMRC's accounting officer for the Scottish rate and the Comptroller and Auditor General have both given evidence to the Scottish Parliament on the progress of tax devolution to Scotland. Of course, Westminster Committees have the opportunity to call for evidence, too. Alongside that existing requirement and to ensure that Parliament can have confidence in the implementation and operation of the Scottish rate, the Comptroller and Auditor General is required to report annually on HMRC's administration of the Scottish rate.⁴²

Only the first of these new clauses was put to the vote at the end of the day's Committee proceedings. In the event, New Clause 54 was negated by 311 votes to 57.

Clause 15 provides for the partial assignment of Scottish VAT revenues to the Scottish Government, though much of the debate in Committee focused on a separate issue, the consequences of the Scottish Government's amalgamation of eight local police and fire authorities into the Scottish Fire and Rescue Service for that organisation's VAT liability. In brief, as the new body is funded by the Scottish Government, it is not eligible for a refund of the VAT costs it incurs, under the statutory scheme for refunding local authorities.

Speaking for the Labour Party, Wayne David asked that the Government should formally review how this VAT scheme worked, the subject of

New Clause 20:

The Smith commission's report was very clear about VAT, particularly in paragraph 84. The Government have spelt out in the Bill how this arrangement will work in practice. The Opposition support the Government in implementing this part of the Smith agreement, but we have a real concern about the position of Police Scotland and the fire and rescue service in Scotland ... None of the 43 police forces in England and Wales, or the Police Service of Northern Ireland, pays VAT—not even the National Crime Agency has to pay VAT—but both Police Scotland and the Scottish Fire and Rescue Service do. There is widespread indignation at this unfairness in Scotland.⁴³

Speaking for the SNP, Stewart Hosie asked why only a share of VAT revenues were to be assigned:

Given [the Scottish Government would have] no control over VAT, why assign only half of it? Why not assign it all? The Scottish Government could then quite rightly benefit, if there was a benefit, from the entire rise in VAT in Scotland rather than just half of it and could take responsibility if there was a shortfall, not just for half the shortfall.⁴⁴

Mr Hosie also spoke in support of the Labour Party's new clause.

⁴² HC Deb 29 June 2015, cc1250-1

⁴³ HC Deb 29 June 2015, cc1252-3

⁴⁴ HC Deb 29 June 2015, c1256

In his response the Financial Secretary David Gauke gave some details of how VAT is refunded to both Government departments and local authorities, and underlined that the Scottish Government had decided that the benefits to reorganising the force far outweighed the loss of this VAT refund:

It is correct to say that there is a refund scheme for Government Departments and the NHS. This scheme refunds the VAT incurred on certain outsourced services. It was introduced to ensure that irrecoverable VAT does not dissuade Government Departments from contracting out services where this results in greater efficiencies of scale. There is also ... a refund scheme in respect of matters that can draw funding directly from local taxation. The Scottish Fire and Rescue Service is funded by the Scottish Government, rather than through any legal call on local taxes, so it does not meet this criterion.

That was not the case prior to the reforms brought in by the Scottish Government. I stress that this was a choice of the Scottish Government, with their eyes wide open to the fact that the VAT refund scheme would not be available in the event of that reform. They decided, as they were perfectly entitled to do, to proceed with those reforms, notwithstanding that loss ...

Many arguments are made in respect of the VAT refund schemes, and requests are made that they be broadened and applied to additional organisations ... There may well be a case for reconsidering the position, but we should not look at it in isolation because of a particular decision that was made in one case.⁴⁵

The Minister went on to explain why the Bill was providing for only a share of VAT receipts to be assigned:

The hon. Member for Dundee East (Stewart Hosie) asked why we are simply assigning half of the VAT revenue, rather than all of it. That reflects the agreement reached by the five main political parties under the auspices of Lord Smith. It represents a balance between providing a sufficient incentive for Scotland to grow its economy, relative to the rest of the United Kingdom, in order to increase its revenue from VAT and exposing the Scottish Government's budget to potential fluctuations in VAT receipts.⁴⁶

Clauses 16-18 provide for the devolution of air passenger duty (APD) and the aggregates levy. Debate on these clauses focused on the possible impact of lower rates of APD in Scotland, both for Scotland and for the rest of the UK. Speaking for the Labour Party, Graham Stringer observed, "every other country in the European Union has moved either to very low rates of APD or ... to zero. It is therefore a sensible policy, but the Government do not seem to have a clear position on what they will do about the very unfair competition between regional airports."⁴⁷ Mr Hosie underlined the SNP's support for devolving the tax, as "we fully intend to abolish it when public finances allow. We believe that taking that action will encourage greater tourism and investment in

⁴⁵ HC Deb 29 June 2015, cc1259-60. See also, [PO225404, 4 March 2015](#). In the event New Clause 20 was not put to the vote.

⁴⁶ HC Deb 29 June 2015, c1261

⁴⁷ HC Deb 29 June 2015, c1264

Scotland, boosting our economy and creating new jobs.”⁴⁸ In response Mr Gauke acknowledged the concerns that regional airports had, and said that a discussion paper on options to support regional airports would be published later in the year.⁴⁹

The Committee proceeded to debate, and vote on, three new clauses, tabled by Labour and by the SNP:

- **New Clause 1 (Labour)** - would have established an independent commission, appointed by the Secretary of State, to analyse the potential impact of the Scottish Parliament having 'full fiscal autonomy'.
- **New Clause 21 (Labour)** - would have established a Scottish Office for Budget Responsibility.
- **New Clause 33 (SNP)** - would have required the UK & Scottish Government to agree a plan to establish 'full fiscal autonomy'.

Speaking for the Labour Party, Ian Murray argued that New Clauses 1 and 21 would “would provide for the creation of a Scottish office for budget responsibility to exercise independent and impartial fiscal and budget oversight over Scottish Government devolved competencies.”

The Smith commission recommended that: “the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland’s public finances in recognition of the additional variability and uncertainty that further tax and spending devolution will introduce into the budgeting process.”

The new clauses would do just that and take away the politicisation of one of the fundamental underpinnings of the Scottish economy, the financing of Scottish public services and, crucially, though it tends to be forgotten in this debate, the livelihoods of everyone living and working in Scotland.⁵⁰

Speaking for the SNP, Stewart Hosie argued that it was inappropriate for the scrutiny of the Scottish Government’s fiscal body to be carried out by a body appointed by the Secretary of State. He then went on to make the case for New Clause 33:

As for new clause 21 on a Scottish OBR, we already have one—it is called the [Scottish Fiscal Commission](#). The consultation on its expanded power closed on Friday ...

New clause 33 would have the Scottish and UK Governments enter into an economic agreement that set up a plan for the implementation of full fiscal autonomy and establish a framework within which the two Governments would co-ordinate their economic and fiscal policies in the context of full fiscal autonomy. That would mean the Scottish Parliament and the Scottish Government having competence for determining revenues raised in Scotland through taxation and borrowing, and for all of the

⁴⁸ HC Deb 29 June 2015, c1267

⁴⁹ As it transpired, the paper was [published in July](#); for more details see, [Air passenger duty and regional airports, Commons Briefing Paper 7333](#), 14 October 2015.

⁵⁰ HC Deb 29 June 2015, c1285

spending, paying compensation to the UK for shared services. This is the right approach to take.⁵¹

In turn the Secretary of State opposed all three new clauses:

I do not need a commission to tell me what a disaster full fiscal autonomy would be for Scotland ... I do not accept the new clause on a Scottish OBR, because one thing that the hon. Gentleman said is correct—it is for the Scottish Government to determine for the people of Scotland how they will ensure independent oversight of fiscal policy. The UK Government would like legislation brought forward by the Scottish Government to be consistent with OECD principles for best practice in independent fiscal institutions. We therefore look to have those discussions during the negotiation of the fiscal framework.

I therefore reject the new clauses and propose that we pass the clauses as stated.⁵²

All three new clauses were put to the vote, and negatived: **New Clause 1** by 376 votes to 192, **New Clause 21** by 376 votes to 194, and **New Clause 33** by 504 votes to 58.

⁵¹ HC Deb 29 June 2015, c1287

⁵² HC Deb 29 June 2015, cc1287-8

4. Welfare provisions (Part 3)

The welfare and employment support provisions were considered at the Committee's third sitting on 30 June 2015. A significant number of amendments was tabled by Labour and by the SNP. Many of the Labour amendments were supported by the SNP, and vice versa.

There were seven divisions. No amendments were made to Part 3 of the Bill, and no new clauses were agreed.

The Secretary of State for Scotland, David Mundell, told the Committee however that he was "reflecting on points that have been made during all our discussions," adding:

I have given that undertaking not just to Parliament but to the Devolution (Further Powers) Committee, and, indeed, to the Scottish Government. If Members want selective quotations from Mr Swinney's [the Deputy First Minister] letter, I will give them one that I think sums up the situation.

"When we met on 25 June we agreed on a programme of work to be undertaken before Report stage with a view to producing a Bill that reflected the Smith commission, the concerns of stakeholders and the views of the Scottish Parliament."

That is absolutely my position, and I am committed to working with the Deputy First Minister in that regard.⁵³

Asked whether the Government would accept any of the amendments tabled by the SNP and Labour Mr Mundell referred again to the joint work programme with the Scottish Government and added:

I will reflect on the amendments and the case that has been made for them.⁵⁴

The main issues raised by the amendments and new clauses considered in Committee are covered below.

4.1 Definition of "disability benefit"

For Labour, Ian Murray tabled **Amendment 128** to broaden the definition of "disability" in **Clause 19**, responding to concerns raised by, among others, Inclusion Scotland, that the definition of disability benefits in the Bill might restrict the autonomy of the Scottish Parliament in creating new disability benefits. Mr Murray said that the amendment provided "an alternative, broader and more flexible definition of disability" that would allow the Scottish Parliament to introduce, for example, "a benefit to assist people introduce a benefit to assist people with low-level disabilities or those for whom the effect of their disability is largely financial."⁵⁵

⁵³ HC Deb 30 June 2015 c1409

⁵⁴ HC Deb 30 June 2015 c1410

⁵⁵ HC Deb 30 June 2015 c1345

Eilidh Whiteford said that the SNP supported the wider scope that the amendment provided, adding that it was a “pragmatic and potentially far-reaching improvement.”⁵⁶

For the Government, the Minister for Employment, Priti Patel, said that the approach to devolving disability benefits “must reflect the benefits as they stand including, importantly, the fact that they contain exceptions both to allow entitlement and to restrict payment where necessary.” She added that the Bill would “provide ample flexibility and allow the Scottish Parliament to legislate for myriad outcomes for people who would not meet the more general requirements.”⁵⁷

The amendment was defeated on division by 312 votes to 252, Labour and SNP members voting in favour.⁵⁸

In a letter of 10 July 2015 to the Convenor of the Scottish Parliament’s Devolution (Further Powers) Committee, the Deputy First Minister, John Swinney, said that the Scottish Government had “carefully considered” all aspects of the social security-related clauses in the Bill, including whether the definitions of “disability” would restrict the ability of the Scottish Parliament to make meaningful changes. The letter continues:

Our view is that the clause defining ‘disability benefit’ met the requirements as set out in Smith and provided a reasonable scope to implement a replacement benefit. The current definition enables the Scottish Government to vary the level and criteria placed on the benefits and it would be for the Scottish Parliament to legislate on the definitions in relation to any future benefit.⁵⁹

4.2 Definition of “carer”

Clause 19 provides for the devolution of disability and carers’ benefits, but for the latter support may only be given to “relevant carers.”

Amendment 48, supported by both Labour and the SNP, would have removed the requirement for a “relevant carer” to be 16 or over, not in full-time education, and not gainfully employed. For Labour, Ian Murray said that the definition was overly prescriptive, noting the Scottish Parliament Devolution (Further Powers) Committee’s concerns that the definition could limit the policy discretion of future Scottish administrations.⁶⁰

For the SNP, Eilidh Whiteford said it was important to remove the restrictions on carers’ benefit eligibility conditions in the Bill, to enable more to be done for existing recipients of Carer’s Allowance in Scotland, “and potentially, depending on the will of Parliament, look at long-standing issues such as how many hours a person can study while

⁵⁶ HC Deb 30 June 2015 c1354

⁵⁷ HC Deb 30 June 2015 c1364

⁵⁸ HC Deb 30 June 2015 c1366

⁵⁹ [Letter from the Deputy First Minister to the Convenor of the Devolution \(Further Powers\) Committee](#), 10 July 2015

⁶⁰ HC Deb 30 June 2015 c1345

being a carer, or how much of someone's earnings is counted in determining their eligibility."⁶¹

Ms Patel said that, as with disability benefits, the Government's approach had been to describe the key features of the existing Carer's Allowance, but added that Clause 19

will not restrict the Scottish Parliament to following all the detailed features of that allowance. For example, it will not be restricted to making a benefit payment to only one carer in respect of each disabled person. Taken together with existing devolved powers in areas such as social care, the clause will ensure that the Scottish Parliament has powers to set out how support for carers is provided, including the rate at which it is paid and whether it is paid as a benefit or provided in some other way.⁶²

The Minister said that it was a long-standing principle that the social security system did not normally support young people under 16, that it was necessary to limit support to those not "gainfully employed" because carers' benefits were intended to recognise the impact of caring on opportunities to work, and that people in full-time education were not normally supported by the benefits system but instead by educational grants and loans. She added, "The parameters of the definition of 'relevant carer' are appropriate and reflect long-standing principles about the purpose of carers' benefits."⁶³

On division, the amendment was defeated by 314 votes to 258.⁶⁴

In his letter of 10 July 2015 to the Convenor of the Scottish Parliament's Devolution (Further Powers) Committee, the Deputy First Minister said that while the Scottish Government was now satisfied that the definition of "disability" in the Bill (see above) gave sufficient scope to vary the level and criteria for disability benefits,

This was not the case in relation to the clause on benefits for carers which imports DWP's very specific barriers to defining who is eligible for a benefit. Having reflected on this distinction, on this basis it appeared that greater benefit could be realised from focusing on broadening the definition of carers to avoid these clauses being unnecessarily restrictive and ensuring the scope of the powers that the Scottish Parliament can exercise is in line with the recommendations of the Smith Commission.⁶⁵

4.3 Assistance with maternity, funeral and heating expenses

Amendment 115, tabled by the SNP⁶⁶ and supported by Labour⁶⁷, would have enabled assistance in relation to maternity, funeral and

⁶¹ HC Deb 30 June 2015 c1354

⁶² HC Deb 30 June 2015 cc1362-3

⁶³ HC Deb 30 June 2015 cc1362. See also the [letter dated 26 August from the Secretary of State for Scotland to the Convenor of the Devolution \(Further Powers\) Committee](#), which reiterates this position

⁶⁴ HC Deb 30 June 2015 c1370

⁶⁵ [Letter from the Deputy First Minister to the Convenor of the Devolution \(Further Powers\) Committee](#), 10 July 2015

⁶⁶ HC Deb 30 June 2015 c1356

heating expenses to be in a form other than cash. The Scottish Government had noted that Clause 20 of the Bill referred to financial assistance only, adding that it believed “this places limitations on the Scottish Parliament’s proposed ‘complete autonomy,’ which are significant and unwelcome.”⁶⁸

The amendment was not called.

4.4 Discretionary Housing Payments (DHPs)

Several amendments were tabled to **Clause 22**.

Graham Allen tabled **Amendments 129 and 132**. Amendment 129 would have removed the requirement in the proposed Exception 6 for a claimant to be entitled to Housing Benefit in order to be able to receive a Discretionary Housing Payment (DHP).⁶⁹ He explained Amendment 132 as follows:

Amendment 132 states, that, if someone suffers financial hardship from having a benefit reduced or suspended, they can receive the discretionary housing payment again – that is in exception 6 in clause 22... This potentially excludes people who have been sanctioned or had their benefits suspended due to perceived non-compliance with conditions attached to a reserved benefit and to accessing discretionary housing payments.⁷⁰

The [notes on amendments to the Bill](#) elaborated:

The exception in the Bill could be problematic where claimants have had their housing benefit wrongly suspended. The amendment would allow the Scottish Parliament to provide discretionary housing payments in cases which might be regarded as arising from non-payability of a reserved benefit.⁷¹

Dr Whiteford, speaking in support of **Amendment 116**, said that the proposed powers over DHPs in Clause 22 “fail to deliver the Smith Commission recommendations for autonomy because they are subject to various restrictions.”⁷² The SNP amendment would have removed some of the restrictions, including those relating to sanctions, in relation to DHPs.

Labour’s **Amendment 13** sought to “allow the provision of discretionary financial assistance in a reserved benefit.”⁷³

Priti Patel, for the Government, responded:

The Government have made significant changes to the clauses on discretionary payments since they were first published in draft in January, having listened to the views of the Scottish Government, the Scottish Parliament and key stakeholders. The Bill now includes new top-up provisions in clause 21 and we have removed

⁶⁷ HC Deb 30 June 2015 c1347

⁶⁸ [Scottish Government Response to the Interim Report from the Devolution \(Further Powers\) Committee on the Smith Commission and the UK Government’s Proposals](#), 7 June 2015, p9

⁶⁹ HC Deb 30 June 2015 c1349

⁷⁰ HC Deb 30 June 2015 c1350

⁷¹ [Amendments tabled to the Scotland Bill, 30 June 2015](#)

⁷² HC Deb 30 June 2015 c1356

⁷³ HC Deb 30 June 2015 c1347

some provisions on discretionary housing payments that people felt would unnecessarily constrain the powers being devolved. Together clauses 21 to 23 will give the Scottish Parliament significant powers to legislate for discretionary payments to people in Scotland, whether by topping up a reserved benefit or by providing assistance to meet short-term needs. The Scottish Government will be able to provide people with money additional to that provided by the UK Government.⁷⁴

None of these amendments was pressed to a vote.

4.5 Discretionary payments and assistance

A number of amendments were tabled to **Clause 23**:

- **Amendment 8** (Labour and SNP) to leave out the requirement that discretionary payments/assistance can only be for short-term needs.
- **Amendment 117** (SNP) to enable discretionary payments to be made to people subject to a benefit sanction.⁷⁵
- **Amendment 111** (Labour and SNP) removing the requirement that provision of help to vulnerable groups to establish or maintain a settled home must be “occasional.”⁷⁶
- **Amendment 131** (SNP with Labour support) creating an additional category eligible to receive discretionary payments – “families facing exceptional pressure.”⁷⁷

Ms Patel said:

I assure the Committee that the clause will not limit the Scottish Parliament’s existing competence and will not prevent the making of discretionary payments to people in families under exceptional pressure.⁷⁸

The four amendments were not called.

4.6 Powers to create new benefits

New Clause 31, tabled by Labour and also signed by SNP Members, would have broadened the circumstances under which the Scottish Parliament could create new benefits. The same new clause was included in the [Scottish Government’s Alternative Clauses](#).

Speaking to the new clause, Ian Murray said that it was “arguably the most important amendment to this part of the Bill” which brought it more into line with what he believed the Smith agreement intended. He continued:

New clause 31 creates a new exception 9 in section F1 in part 2 of schedule 5 to the Scotland Act 1998—I know all Members will have read that and will know exactly what I am referring to—which allows for the creation of any benefit not currently in existence, payable by or on behalf of a UK Minister of the Crown, or otherwise a reserved benefit. In essence, this would allow the

⁷⁴ HC Deb 30 June 2015 c1364

⁷⁵ HC Deb 30 June 2015 c1356

⁷⁶ HC Deb 30 June 2015 c1347

⁷⁷ HC Deb 30 June 2015 cc1356-7

⁷⁸ HC Deb 30 June 2015 c1365

Scottish Parliament to create any new benefit which is not in existence on the date on which this Act is passed. This, I believe, goes significantly further than what is currently in the Bill.

I will be grateful if the Minister responds specifically on why this, in his view, would not be desirable or practicable, because it ensures that the power to create new benefits in Scotland rests with the Scottish Parliament and therefore the Scottish people, and that it has the flexibility and autonomy to exercise this power free from unnecessary restraint, in keeping with the spirit and substance of the Smith agreement. Of course, there will have to be joint working between the Governments to ensure that it is deliverable, and that brings me to an important common theme that has run through these Committee debates so far: the need for both Governments to work much closer together in partnership for the benefit of Scotland. We cannot emphasise that enough. We must have a much more solid partnership working and relationship to make these provisions work.

Let me be absolutely clear on this point so that there is no ambiguity: I believe in the fundamental principle that the final say on the creation of new benefits, the type of benefit created, whom it is paid to, and how long and how often it is paid, should reside with the Scottish Parliament. That is my view, and that is the view of the Labour party across the UK.⁷⁹

The Minister for Employment, Priti Patel, said that the new clause would devolve further areas of responsibility to the Scottish Parliament beyond those agreed in the Smith Commission, and limit the ability of the UK Parliament to introduce new benefits or make changes to existing reserved benefits. She explained:

We believe that the Scottish Parliament can already create new benefits under either existing powers or those devolved by the Bill. The Smith commission was clear about which welfare powers were to be devolved to the Scottish Parliament, and the Bill delivers those powers in a way that allows that Parliament to replace the benefits and payments for which powers are being devolved.

On areas of devolved responsibility outside welfare, we believe that the Scottish Parliament has the powers to provide financial assistance to people in devolved areas—it currently does so in some areas already. We do not consider that the social security reservation prevents the Scottish Parliament from providing such financial assistance. The proposed new exception would give the Scottish Parliament competence to legislate to create new benefits in any area other than those where reserved powers existed on 28 May 2015—the date on which the Bill was introduced. That would flip the social security reservation on its head. As such, that would not provide a new power to create benefits in areas of devolved responsibility; rather, it would devolve further areas of responsibility to the Scottish Parliament, which is not what the Smith commission agreement called for.

Undermining the social security reservation in that way would simply limit the freedom of the UK Parliament when introducing

⁷⁹ HC Deb 30 July 2015 cc1347-8

new welfare benefits, or making changes to existing reserved benefits in the future.⁸⁰

On division, the new clause was defeated by 317 votes to 258.

In a letter of 26 August 2015 to the Convenor of the Scottish Parliament's Devolution (Further Powers) Committee, the Secretary of State for Scotland, David Mundell, elaborated on the Government's position:

There is no power in the Bill to create new benefits in areas of devolved responsibility because the UK Government believes the Scottish Parliament already has this power. By definition, if the area is one of devolved responsibility then the Scottish Parliament has full legislative competence to enact legislation in that area (as long as this does not also relate to a reserved matter) including the provision of new benefits should it wish to do so. However, as I indicated to the House of Commons at the Bill's Committee stage, my officials have continued to discuss this with officials from the Scottish Government.⁸¹

4.7 Universal Credit: Secretary of State's consent

Clause 24 gives Scottish Ministers powers in relation to the housing element of Universal Credit, while **Clause 25** devolves powers in relation to UC payment arrangements. In both cases, before exercising regulation-making powers, Scottish Ministers must consult the Secretary of State on the practicability of implementing the proposed changes, and obtain his agreement on when the changes are to be implemented. There was extensive discussion at Second Reading about whether this effectively gave UK Ministers a power of veto over future changes.⁸²

Both the SNP and Labour tabled amendments to each clause to address this issue. SNP **Amendments 118 to Clause 24 and 119 to Clause 25** were also signed by the Labour Shadow Secretary of State Ian Murray. The amendments removed the requirement in each clause for Scottish Ministers to obtain the consent of the Secretary of State before exercising their powers.

Speaking to amendment 118, the SNP Spokesperson on Social Justice and Welfare, Eilidh Whiteford, noted comments by the Scottish Deputy First Minister, John Swinney, that what might appear to be "pretty innocuous requirements" to consult the Secretary of State and secure his or her agreement could translate into what was effectively a blocking power. She continued:

All sorts of excuses could be used to prevent something from happening. As the Deputy First Minister put it, if the Secretary of State has a "reasonable explanation" for why he is acting in such a way, that passes the test as it currently exists in clause 24. In practice, the Bill gives the UK Government the ability to veto

⁸⁰ HC Deb 30 June 2015 cc1365-6

⁸¹ [Letter from the Secretary of State for Scotland to the Convenor of the Devolution \(Further Powers\) Committee](#), 26 August 2015

⁸² See HC Deb 8 June 2015 c921; cc925-6; c948; cc1011-2. See also section 4.3 of Commons Library briefing CBP 07207, [Scotland Bill: Welfare & Employment Support](#)

decisions made by the Scottish Government and Scottish Parliament. This is not a hypothetical scenario. The Deputy First Minister has pointed out how he spent two years trying to make progress on the block grant adjustment, and was stalled and delayed with more analysis at every turn by the UK Government.⁸³

Responding to comments by Ministers that disputes about whether the Secretary of State was “unreasonably withholding consent” would ultimately be for the courts to decide, Dr Whiteford said “I put it to the Committee that if the Scottish Parliament has to go to court to enforce the powers devolved in the Bill, it is not worth the paper it is written on.”⁸⁴

The SNP’s Tommy Sheppard commented:

I know he [the Secretary of State for Scotland] will deny that it is a veto, but everyone else who has looked at the provisions thinks it is a veto, including most third sector organisations in Scotland. It will allow the Secretary of State to object to regulations that the Scottish Parliament might introduce to improve the welfare system in Scotland. How can it be right that a power is devolved yet not devolved, and that the Secretary of State will retain authority to govern such decisions? In an earlier stage of the debates on the Bill, one Conservative Member said that we should all trust each other and that life would be an awful lot better. Could the Secretary of State not find it in his heart to trust the Scottish Government to make regulations? After all, there are fairly closely defined parameters for those regulations, so why on earth burden everyone with the requirement that the Scottish Government have to seek the Secretary of State’s consent? It is absolutely ridiculous.

If there is one way in which Secretary of State could indicate that he is listening to Scotland, it is by saying, “Fair enough—if the Scottish Government take a decision, we will let them get on with it, because we have transferred authority. We do not have to keep looking over their shoulder and checking their homework.” I hope that he will take that on board.⁸⁵

Mr Murray noted the Deputy First Minister’s comments that “pretty innocuous requirements” could potentially be used as a blocking power, and sought clarification from the Government about its intentions:

What does the UK Government seek to do with these provisions? I do not believe that the current provision is intended as a veto, but it could be more clearly worded to remove any ambiguity.

As I said on Second Reading, the Government have an opportunity to clear up any ambiguity, and if they are intent on saying that there is no effective veto in the Bill, they should remove that ambiguity once and for all. [Labour] Amendments 5, 6 and 7 seek to allay the concerns of the Deputy First Minister and the charitable organisations that have been mentioned, by clarifying that Scottish Ministers need only “consult” the Secretary of State about the timing and—crucially—the delivery mechanisms of any new regulations.⁸⁶

⁸³ HC Deb 30 June 2015 c1380

⁸⁴ HC Deb 30 June 2015 c1382

⁸⁵ HC Deb 30 June 2015 c1401

⁸⁶ HC Deb 30 June 2015 c1403

Asked by the SNP's Neil Gray whether he would accept any of the amendments tabled by his party and Labour on this matter, the Secretary of State replied:

David Mundell: I will repeat what I said earlier: I have agreed a programme of work to be undertaken before Report, with a view to producing a Bill that reflects the Smith commission, the concerns of stakeholders and the views of the Scottish Parliament. I will reflect on the amendments and the case that has been made for them.

I am listening to what has been said about clause 25(3)(b), which is a sensible consultation requirement about timing, not policy. Good governance in Scotland will require that decisions taken by the Scottish Government about new powers can be implemented in a timeous way. That is what it is about—respect in a shared space and working together on welfare.

Ian Murray: Could the Secretary of State give a practical example of a policy that the Scottish Government may introduce whose delivery mechanism comes through the Department for Work and Pensions, so that we can be clear and trust that what he is saying is correct and that there is no veto?

David Mundell: I do not yet know what proposals the Scottish Government will make. I have made it clear that I would like to know what they will be, because we have heard significant criticisms of UK Government policy. That is, of course, legitimate in this Parliament and, indeed, the Scottish Parliament, but we need to know the detail. The joint ministerial group on welfare wants to understand where the Scottish Government want to go with specific programmes, so that we can help and facilitate the transitional arrangements and deliver what they want to do.⁸⁷

Dr Whiteford was not convinced by Mr Mundell's assurances:

I listened very carefully to the Secretary of State's conclusion to the debate. I fully accept that there are constructive relationships through the joint ministerial working group and many other parts of the Scottish and UK Governments, but when there are genuine differences of opinion and of ideological direction as well as different policies and different circumstances, we need the mechanisms and the legislation that enables us to deal with them effectively. That is what we still do not see on the face of the Bill.⁸⁸

Amendment 118 was put to the vote. It was defeated by 313 votes to 261.

4.8 Employment support

Clause 26 gives Scottish Ministers the legislative competence to create their own employment schemes for:

- Disabled people
- People claiming reserved benefits who are at risk of long-term unemployment to enable them to choose, find and keep employment for at least a year.

⁸⁷ HC Deb 30 June 2015 cc1410-1

⁸⁸ HC Deb 30 June 2015 c1413

The clause only allows for the devolution of programmes for the long-term unemployed and schemes to help disabled people into work that would last for a minimum of a year. As it stands, both Scottish and UK Ministers would have powers to provide support to claimants, and it is not clear for all schemes, groups or categories who will provide this support.

Both the SNP and Labour tabled amendments to the clause. SNP **Amendments 120, 121 and 122** would make provision for the Scottish Parliament to have power to legislate on all arrangements for employment support programmes. These were also signed by Ian Murray. Labour tabled **Amendments 9, 10, 113 and 114**. The latter would provide for the devolution of the Access to Work scheme.

For the SNP, Hannah Bardell stated that the clause contains limitations which mean it does not deliver what was set out in the Smith Commission Report. She went on to say that it was “vital that the employment powers give Scotland the power to give Scottish solutions to Scottish challenges.” The SNP also argued that the Scottish Parliament should have all powers “over support for unemployed people through the employment programmes currently contracted by the Department for Work and Pensions.”⁸⁹

On Access to Work, she added that the spend on the scheme was “disproportionately” low in Scotland and it should be devolved to allow the Scottish Government to “promote a more equitable share of spend in Scotland and to get more disabled people into sustained employment.”⁹⁰

For Labour, Mr Murray said that Amendment 9 emphasised that employment support programmes in Scotland should be developed in conjunction with local authorities. He went on to say that Labour would support SNP Amendments 120, 121 and 122 provided new employment schemes are developed and run in conjunction with local authorities. Labour also supported the prospect of devolving Access to Work in Scotland.⁹¹

In closing the discussion on the amendments, the Minister, Priti Patel, said that they went beyond the remit set out by the Smith Commission. This, she said, proposed that the Government devolve all powers specifically related to contracted employment programmes. She went on to say there were key reasons why the amendments would not work:

there would be no clear demarcation of responsibilities between the Scottish and UK Governments around the provision of employment support. The UK Government would retain the Executive competence under existing legislation and could continue to operate employment programmes and Jobcentre Plus. This would create a confusing, disjointed and misaligned

⁸⁹ [HC Deb 30 June 2015 c1420-1421](#)

⁹⁰ [HC Deb 30 June 2015 c1423](#)

⁹¹ [HC Deb 30 June 2015 c1426-27](#)

landscape of support that could hinder employment support as much as it helps move people back to work.⁹²

The Minister added that Clause 26 manages this risk by creating clear lines of accountability “between those claimants for whom Scottish Ministers can create employment programmes and those who will continue to be supported through the Jobcentre Plus structure.”⁹³

On Access to Work, she added:⁹⁴

we have not sought unreasonably to limit the legislative competence of the Scottish Parliament. Non-repayable awards such as those provided through the Access to Work scheme are already covered in clause 26. As such, the Scottish Government can choose to introduce a similar form of support for disabled people additional to that provided by the Access to Work programme, should they wish to do so. Given that Access to Work is an integral element of the support we offer, let me be clear that this Government intend to continue the Access to Work provision in Scotland and will retain the associated funding.

Only Amendment 120 was called and on division, it was defeated by 316 votes to 260.

4.9 Full devolution of Housing Benefit

Labour’s **New Clause 28** proposed the full devolution of Housing Benefit to the Scottish Parliament. Ian Murray said the new clause had “attracted significant support from across the third sector” and referred to “compelling reasons” for devolving Housing Benefit:

Most aspects of housing policy, specifically those relating to social housing, are already devolved to Scotland, including—most recently—discretionary housing payments. Social housing and housing benefit are inextricably linked: it therefore does not make sense for a devolved legislature to have control over one and not the other. That view is shared by the Institute for Public Policy Research. Devolving housing benefit to Scotland would allow for a more holistic approach to housing policy in Scotland, affording the Scottish Parliament and, crucially, local authorities far greater autonomy to tailor delivery to suit local and regional needs and circumstances. It would also transfer to the Scottish Parliament significant new resources with which to deal with the ongoing crisis in social housing.

[...]

Devolving housing benefit to Scotland would afford the Scottish Parliament substantial additional funds to address the shortfall. It would unlock up to £1.8 billion of resources, the largest spend on a single benefit in Scotland after the old age state pension. That could, over time, be invested in the provision of new housing stock in Scotland. I appreciate that that cannot happen overnight, because there would have to be some mechanism to allow the fund to be accessed—potentially through prudential borrowing, which local authorities could use to reduce housing benefit and build more houses. That would not only serve to alleviate the

⁹² [HC Deb 30 June 2015 c1430](#)

⁹³ [HC Deb 30 June 2015 c1430](#)

⁹⁴ [HC Deb 30 June 2015 c1431-32](#)

pressure on social housing, but create jobs and help to depress housing costs across the private rented sector.⁹⁵

David Mundell, responding for the Government, said that the Scottish Government already had competence “to work with all housing sectors in Scotland to support and encourage new builds.” He went on:

As regards funding, hon. Members will no doubt realise that housing benefit is paid to claimants for the express purpose of meeting an individual’s housing costs when the eligibility rules are met. Because it covers rent at a specific point in time, there would be no margin from which to create a house building investment fund from housing benefit.

However, we have already heard how the powers in the Bill will give Scottish Ministers flexibility over housing costs within universal credit. That flexibility could be used to reduce housing costs for renters, and if Scottish Ministers wished to spend in other areas in order to generate funding, they could do so. There is no need for housing benefit to be devolved to allow for that. Establishing such a fund would also require appropriate powers to be put in place.⁹⁶

New Clause 28 was pressed to a vote; it was defeated by 317 votes to 259.⁹⁷

4.10 Devolution of National Insurance

The SNP tabled **New Clause 39**, to devolve National Insurance to the Scottish Parliament, and **New Clause 40**, to devolve employers’ National Insurance contributions.

Ian Murray said that his party disagreed with the fundamental principle underpinning the new clauses and that it was perhaps the only major difference between the parties on the welfare provisions in the Bill. He explained:

As the party of devolution, we believe in a strong Scottish Parliament within the UK. We passionately believe that it is in the best interests of all Scots and the rest of the United Kingdom that there should be a pooling and sharing of resources, redistributing wealth from the haves to the have-nots.⁹⁸

Mr Murray set out his party’s reasons for opposing National Insurance in greater detail later in the debate.⁹⁹

On division, New Clause 39 was defeated by 515 votes to 58.¹⁰⁰

4.11 New clauses devolving further areas of welfare

Employment support programmes

⁹⁵ HC Deb 30 June 2015 cc1404-5

⁹⁶ HC Deb 30 June 2015 cc1411-12

⁹⁷ HC Deb 30 June 2015 c1437

⁹⁸ HC Deb 30 June 2015 c1341

⁹⁹ HC Deb 30 June 2015 cc1407-8

¹⁰⁰ HC Deb 30 June 2015 c1446

The SNP tabled **New Clause 43** to devolve employment support programmes to the Scottish Parliament.

For the SNP, Hannah Bardell said that Scotland needs a “streamlined system that looks holistically at how we support people back to work and what kind of employment they are offered, rather than the random approach that seems to take place much of the time at present.”¹⁰¹

The new clause was not called.

Working-age benefits, further flexibilities Universal Credit, and benefits relating to children

The SNP tabled three New Clauses to devolve further areas of welfare, beyond those agreed by the Smith Commission:¹⁰²

- **New Clause 44** – to devolve working-age benefits
- **New Clause 45** – to give the Scottish Parliament further flexibility to make changes to Universal Credit¹⁰³
- **New Clause 46** – to devolve benefits relating to children (Child Benefit and Guardian’s Allowance)

These had been identified as “priority areas for further devolution of powers” in the Scottish Government’s paper [Beyond Smith – Scottish Government proposals for more powers for the Scottish Parliament](#), published on 15 June 2015.

The new clauses were not called.

Childcare element of Universal Credit

Labour tabled **New Clause 53** to devolve to the Scottish Government responsibility for the childcare element of Universal Credit. Speaking to the amendment, Ian Murray said that the childcare element was “closely linked to the provision of employment support programmes, and devolving it would increase the capacity of the Scottish Parliament and local authorities to help parents obtain and remain in employment by assisting them with the rapidly escalating cost of childcare.”¹⁰⁴

The new clause was not called.

Full devolution of social security

The Conservative Member Sir Edward Leigh tabled **New Clause 55** providing for the full devolution of social security to Scotland, as a “probing amendment” to elicit the thoughts of the Government Front Bench on complex matters concerning the devolution of welfare powers. Sir Edward explained:

I shall start by making a controversial statement. I believe that, by dribbling out powers—that is not my own phrase, but one given to me by one of my Scottish friends; I still have one or two left—we are giving the Scottish National party a crowbar with which to

¹⁰¹ [HC Deb 30 June 2015 c1420](#)

¹⁰² HC Deb 30 June 2015 c1377

¹⁰³ HC Deb 30 June 2015 c1396; 1399

¹⁰⁴ HC Deb 30 June 2015 c1406

blast the Union apart. This Parliament is giving the SNP just enough purchase on that crowbar by giving it just enough powers to feed a sense of grievance. If we were to give the Scottish Parliament full responsibility for social security, it would be difficult for it to feed on that grievance. It would have to be a responsible Parliament and take responsible decisions, and I am confident that it would do so.¹⁰⁵

Sir Edward argued that full devolution of social security, including pensions, combined with a need-based formula to replace the Barnett formula and full fiscal autonomy, would be a “better route to maintaining the Union” than the provisions in the Bill. He added:

Of course, I welcome the Government’s move to expand Scotland’s control over its own benefits, as we all do. The debate now is about how much we should do it. I want to ask Ministers why we are not devolving the job lot of it. How can anyone effectively half-run welfare? It comes as a package. Is that not the point of universal credit? In fact, universal credit cannot stand alone, so we cannot start dribbling out powers and keep universal credit. I think we are making a mistake, but the point is arguable so the Minister might be able to knock down my arguments. I make them with a sense of humility.¹⁰⁶

On the argument that maintaining uniformity of benefits supported a “common social citizenship,” Sir Edward it was not clear why it was so important to maintain a common social citizenship for welfare, when differences in other spheres already existed, eg on tuition fees and prescription charges. Responding to the claims that the complexity and interconnectedness of the social security system meant that devolving it would be virtually impossible or unachievable, He said that, if anything, this bolstered the case for devolving Universal Credit fully, adding “is it not possible that Scotland, in charge of social security for more than 5 million people, might innovate in its system—simplify it or even provide models for the rest of the United Kingdom?”¹⁰⁷

Sir Edward concluded:

I fear we are trying to counter nationalism with fear and fudge, and that never works; we will counter nationalism only with hope and aspiration. In the United Kingdom as a whole, 70% of people support benefit reform. Universal credit, which I support, will make a difference, but given the overwhelming importance of welfare in a modern parliamentary system, no self-respecting Parliament worth the name cannot take full accountability for welfare payments. I hope and expect that the Scottish Parliament will keep universal credit if given the chance, but that should be a matter for it to decide. It is in that spirit that I move my new clause.¹⁰⁸

The SNP Member Ian Blackford praised Sir Edward for his “thoughtful and intelligent remarks on the future of Scotland” on this and other occasions, and while recognising his motivation was the preservation of

¹⁰⁵ HC Deb 30 June 2015 c1389

¹⁰⁶ HC Deb 30 June 2015 c1392

¹⁰⁷ HC Deb 30 June 2015 c1392

¹⁰⁸ HC Deb 30 June 2015 c1393

the Union said that he respected the position he had taken “and the clear thought that has gone into the contributions he has made.”¹⁰⁹

Labour was however opposed to the full devolution of social security in New Clause 55 (and to the SNP’s proposals for devolution of National Insurance (New Clauses 39 and 40), working-age benefits (New Clause 44) and benefits relating to children (New Clause 46)). Mr Murray said that these proposals had one thing in common:

New clause 55 would end the UK-wide welfare state, and we do not wish to see an end to it—that will not come as a surprise to the House. We completely reject anything that would end the UK-wide welfare state. In the context of keeping the UK-wide welfare state together, it would not be desirable to devolve to the Scottish Parliament powers that the Smith agreement stipulated should remain reserved—for example, around Jobcentre Plus, national insurance contributions and child benefit.¹¹⁰

For the Government, Mr Mundell argued that New Clause 55 went further than the SNP proposals:

It is a fact that no Scottish MP has tabled an amendment to devolve UK pensions, and that speaks volumes. It tells us that even the supporters of independence accept that there are parts of welfare where it makes sense to share resources and risk with the rest of the UK. It is clear that pensions are safer and more affordable if we work with everyone else in the UK and that it would be wrong to devolve UK pensions.

MPs have to respect the referendum result, at which people in Scotland voted to remain part of a United Kingdom and hold on to the benefits of being part of it. Looking after the people of Scotland who are retired, unwell or out of work is now a shared space in which the UK Government and the Scottish Government need to work together. This is about getting the right balance and having the best of both worlds.¹¹¹

New Clause 55 was not called.

¹⁰⁹ HC Deb 30 June 2015 c1393

¹¹⁰ HC Deb 30 June 2015 c1407

¹¹¹ HC Deb 30 June 2015 c1411

5. Other provisions

The fourth day in Committee covered all other aspects of the Bill. It took place on 6 July 2015, starting at [HC Deb c62](#). It prompted a large number of amendments and new clauses on a range of subjects. Some subjects were not debated or mentioned only in passing.

5.1 Abortion law

There was no reference to abortion law within the present Bill as introduced, but two backbench New Clauses were tabled at Committee stage to bring this issue under the competence of the Scottish Parliament. In responding to the debate on the New Clauses, the Secretary of State said he did not believe it was an appropriate time and that discussions between the Scotland Office and the Scottish Government were ongoing.

On 14 October 2015 it was announced that the Government would table Report stage amendments to the Bill to devolve this area of law to the Scottish Parliament. The Scottish First Minister has expressed support for this move, and said that the Scottish Government has no intention of changing the law on abortion.

Background

Abortion is lawful in England, Scotland and Wales, but only under the grounds that are laid out in the *Abortion Act 1967*.

[The Abortion Act 1967](#) lays out certain situations where abortion may be lawfully performed. A pregnancy may be terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith, that one of four grounds specified in the Act are met. They are:

- The pregnancy has not exceeded its twenty-fourth week and the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman, or any existing children of her family; or
- that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- that there is substantial risk that if the child were born it would suffer such physical or mental abnormalities as to be seriously handicapped.¹¹²

¹¹² [Section 1, The Abortion Act 1967](#)

One registered medical practitioner may act alone when he is of the opinion that an abortion is immediately necessary to save the life of the woman, or to prevent grave permanent injury to her physical or mental health.

The Abortion Act extends to England, Scotland and Wales, but never extended to Northern Ireland, where abortion continues to be regulated by provisions in criminal law. Under the [Offences Against the Person Act 1861](#) all abortions are illegal in Northern Ireland, subject to very limited exceptions specified in the [Criminal Justice Act \(NI\) 1945](#) and application of case law (chiefly R v Bourne [1939] 1 KB 687).

The Smith Commission

The Smith Commission Report in November 2014 recommended the devolution of abortion law, describing its reservation as an anomaly.¹¹³ It stated that a process should be established to give the matter further consideration. Within the Government response to the Smith Commission Report, abortion was listed as one of the further issues for consideration that were either already subject to initial discussions, or were due to be discussed shortly.¹¹⁴

Committee stage

There was no reference to abortion law in the present Scotland Bill as introduced.

Two New Clauses were tabled at Committee stage that sought to devolve competence for abortion law to the Scottish Parliament. **New Clause 56**, tabled by John Pugh, Fiona Bruce and Robert Flello specifically dealt with abortion alone, whereas **New Clause 66** tabled by Sir Edward Leigh intended to remove a number of health and medicine issues including abortion, embryology and genetics from the list of matters reserved to the UK Parliament. Neither of these new clauses was put to a division, nor added to the Bill.

Before the fourth day in Committee a group of women's and human rights organisations, including Amnesty International, the Scottish TUC and Engender, sent a joint statement expressing concerns about New Clause 56 to all MPs. This said that existing differences in legal frameworks on abortion have already had a discriminatory impact on women in Northern Ireland and the authors were concerned that this New Clause would have the same effect on women in Scotland.¹¹⁵

In introducing New Clause 56, John Pugh said this was a proposal that would align the Bill with the recommendations from the Smith Commission.¹¹⁶ He said the Scottish Parliament was capable of deciding difficult moral issues, and decisions on the regulation of abortion in

¹¹³ The Smith Commission, [The Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), November 2014 (p 20)

¹¹⁴ HM Government, [Scotland in the United Kingdom: An Enduring Settlement](#), January 2015

¹¹⁵ Engender, [Joint Statement on Scotland Bill, amendment NC56 "Abortion"](#)

¹¹⁶ HC Deb 6 July 2015 c109

Scotland should be made by the Scottish Parliament. Sir Edward Leigh, speaking to New Clause 66, said that he was putting it forward to ask the Government why the Scottish Parliament is not going to be allowed to decide these issues under the Bill.¹¹⁷

Ian Murray, the Shadow Secretary of State for Scotland, said that Labour Members would vote against New Clauses 56 and 66 because they believed that “a woman’s right to choose should be determined by robust medical evidence rather than where they live.”¹¹⁸ He said that there were arguments that changes to the system were needed, but this was best achieved in a UK framework.

A number of SNP Members expressed support for the amendments. Stewart McDonald acknowledged the concern expressed by a number of third sector and women’s organisations, but he said that he wanted the powers to come to Scotland in order to improve and protect a woman’s right to choose and to access healthcare.¹¹⁹

The Secretary of State for Scotland, David Mundell, said that the Government did not consider the new clauses appropriate at this time. He highlighted the Smith Commission’s recommendations, and said that a process had been established between the UK and Scottish Governments to consider the matter further. However, there was no reason why the Scottish Parliament should not decide matters of significance like this:

The Abortion Act 1967 sets a common legal framework for abortion to be performed in Great Britain. New clause 56 would give the Scottish Parliament the power to amend that legislation—as, indeed, would new clause 66, tabled by my hon. Friend the Member for Gainsborough (Sir Edward Leigh). Clearly a number of views have been expressed in this Committee and in communications to Members of this House about the devolution of the policy and about the current policy. The Government do not consider the amendment appropriate at this time.

Hon. Members will be aware that abortion was one of the issues identified in the Smith commission agreement for further consideration. However, the Smith commission did not state that devolution should happen now, through this Bill. It stated that a process should be put in place to consider the matter further. In keeping with that recommendation, a process was established between the UK Government and the Scottish Government to consider the issue. Discussions are at an early stage. Accepting the amendment would pre-empt those discussions. However, as has been said a number of times in this debate, there is no reason why the Scottish Parliament should not be able to decide an issue of this significance, because it has demonstrated its ability to do so on numerous other significant issues.¹²⁰

¹¹⁷ HC Deb 6 July 2015 c73

¹¹⁸ HC Deb 6 July 2015 c101

¹¹⁹ [HC Deb 6 July 2015 c109](#)

¹²⁰ [HC Deb 6 July 2015 c119](#)

Government amendment

In evidence to the Scottish Affairs Committee on 14 October 2015, Mr Mundell confirmed that the Government would be tabling an amendment to the Bill at Report stage to devolve abortion law to the Scottish Parliament.¹²¹

He said he could see no constitutional reason why abortion should not be devolved:

Holyrood already has responsibility for dealing with end of life issues. It has responsibility for the NHS and for criminal justice in Scotland. I do not see a convincing constitutional reason for why abortion law should not be devolved and that is what has led me to this decision. What will follow is proper engagement with interested parties as we take this matter forward.¹²²

At the time of writing, the amendment has not been tabled.

In response to a Scottish Parliamentary Question on this issue in September 2015, the Scottish First Minister, Nicola Sturgeon, stated that the Scottish Government's view is that abortion law should be devolved to the Scottish Parliament but that there were no plans to change the law on abortion:

Last year, the Smith commission report recommended that further serious consideration should be given to the devolution of abortion. A final decision has not yet been taken by the UK Government, but the Scottish Government's view is that abortion should be devolved to bring it into line with almost all other health matters. The Scottish Parliament is responsible for scrutinising how the national health service in Scotland operates. It should also be responsible for setting the laws that the NHS works to. However, let me be absolutely clear that the Scottish Government's position on abortion law remains unchanged. We have no plans to change the law on abortion. Indeed, the Cabinet Secretary for Health, Wellbeing and Sport is writing to a number of women's groups this week to confirm that and to offer to meet them if they would find that helpful.¹²³

5.2 Crown Estate

Clause 31 allows the functions of the Crown Estate Commissioners in Scotland to be devolved, subject to certain conditions. Alistair Carmichael spoke to **Amendment 57**, which sought to facilitate the further devolution of the powers of the Crown Estate Commissioners to the Western Isles, Orkney and Shetland. He said,

It is manifestly the case that the seabed as a resource could be better managed—and it would be if it were managed by the communities most directly affected. That would generate more income. There are tremendous opportunities for generating income from the seabed, many of which are thwarted because the Crown Estate commissioners over the years have taken an

¹²¹ Scotland Office, [Press Release: Abortion law to be devolved to Scottish Parliament](#), 14 October 2015

¹²² Scotland Office, [Press Release: Abortion law to be devolved to Scottish Parliament](#), 14 October 2015

¹²³ [SP OR 10 September 2015](#),

especially narrow construction of their duties under the Crown Estate legislation.¹²⁴

For Labour, Ian Murray supported this amendment.

Angus Brendan MacNeil opposed the amendment on the basis that it sought to bind the Scottish Government and went against the spirit of devolution, since it amounted to Westminster telling the Scottish Parliament what it should do with its devolved powers.¹²⁵ Alex Salmond made a similar point:

There is nothing in the actions or performance of the Scottish Government and the Scottish Parliament, and the massive support that they have received across island communities, that should put anyone in any doubt of the intent, once the Crown Estate revenue is devolved, to make sure that our coastal communities and our island communities benefit in full measure. It is the very antithesis of devolution to write prescriptively into legislation what will be done after the powers are devolved.¹²⁶

Jacob Rees-Mogg and Dominic Grieve raised concerns over how the devolution of management of the Crown Estate would sit with the conceptual unity of the Estate under the Crown.¹²⁷

Mr Mundell agreed with the SNP's point that Amendment 57 would bind the Scottish Parliament in an inappropriate way, and also argued that it went beyond the Smith Commission recommendations, and that it failed to protect Scottish Crown Estate employees.¹²⁸

5.3 Energy

A number of the Bill's clauses relate to energy policy. **Clauses 40 - 42** devolve to the Scottish Government management of licences to exploit onshore oil and gas resources in Scotland. **Clauses 50 - 52** deal with powers over supplier obligations regarding energy efficiency and fuel poverty schemes. **Clauses 53 - 54** cover renewable energy incentives schemes and **Clause 56** deals with Ofgem, the industry regulator.

None of these clauses was significantly amended in Committee, though small drafting changes were made.

In the [Committee's fourth day, on 6 July 2015](#), amendments were selected for debate on fuel poverty and energy efficiency schemes.

Amendments 150 - 153 would have removed the requirement for the Secretary of State to agree with any changes proposed by the Scottish Government to fuel poverty schemes. They would also have provided a requirement for Scottish Ministers to agree before the Secretary of State could vary or revoke instruments made by the Scottish Ministers. The amendments were not agreed to nor debated extensively.

Debate did take place on amendments to the clauses on renewables.

Amendment 154 to Clause 53 aimed to remove restrictions on the

¹²⁴ HC Deb 6 July 2015, c71

¹²⁵ HC Deb 6 July 2015, c76

¹²⁶ HC Deb 6 July 2015, c93

¹²⁷ See, eg, HC Deb 6 July 2015, c90

¹²⁸ HC Deb 6 July 2015, c117

consultation process with the Scottish Government and Scottish Parliament in relation to renewables incentive schemes.

Clause 53 currently provides that consultation would not apply in relation to any levy in connection with a renewable electricity incentive scheme or to anything that the Secretary of State deems minor, technical or administrative. The amendment would have removed this.

Callum McCaig, in speaking to the amendment, argued that restriction went against the Smith Commission recommendation and that:

Such levies are fundamental to designing renewable incentives. The spirit and letter of Smith demand formal consultation with the Scottish Government. Frankly, I do not understand what the consultation on renewable incentives will be about if it does not include the money required to enable them to happen.¹²⁹

In response the Minister, Andrea Leadsom, said:

that where there are minor, technical changes, the need to consult would be too time consuming and burdensome on both sets of Ministers. That is why we urge him not to press amendment 154.

The Committee divided on the amendment, which was defeated by 315 votes to 253.¹³⁰

5.4 Transport

The transport provisions in the Bill (**Clauses 34-39 and 47-49 and Schedule 2**) were not debated at Committee stage and remain in the Bill, unamended. Full details of the proposals can be found in Library briefing paper [Transport in Scotland](#), CBP 3192, 1 June 2015.

5.5 Consumer advocacy

In respect of the consumer advocacy provisions in the Bill (**Clauses 43 and 44**), there were two attempted SNP amendments, both to Clause 43.¹³¹ One of these was technical.¹³² The second amendment would have provided an exception to reservation C10 in Schedule 5 to the [Scotland Act 1998](#) which covers telecommunications and devolves responsibility for consumer enforcement and redress to the Scottish Parliament. It would also have removed references to a public body and to the holder of a public office.¹³³

Neither amendment was debated nor made. There was no amendment of Clause 44.

¹²⁹ [HC Deb, 6 July 2015, c141](#)

¹³⁰ HC Deb, 6 July 2015, c144

¹³¹ See HC Deb.

¹³² Amendment 30 to clause 43, HC Deb 6 July 2015 c.64

¹³³ Amendment 145 to clause 43, HC Deb 6 July 2015 c.64-65

5.6 Gaming machines

Clause 45 of the Bill devolves 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. This went through undebated.

Ian Murray and Wayne David (Labour) had tabled **Amendments 159 and 160** so that licensing standards officers in Scotland would be able to carry out inspection and enforcement functions under the *Gambling Act 2005*. The SNP had tabled **Amendments 146 and 147** to “give full effect” to the Smith Commission recommendation that “the Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals.”¹³⁴

Other amendments were tabled to replace £10 with £2.

5.7 Broadcasting

Clause 46 on the Gaelic Media Service went through unopposed.¹³⁵

Two New Clauses were tabled, but not called:¹³⁶

- **New Clause 59** on party political broadcasts. According to the sponsor’s explanatory statement, this was a response to a Smith Commission recommendation, in its paragraph 23, that devolution of all powers over Scottish Parliament and local government elections should include party political broadcasts.
- **New Clause 60** would have devolved responsibility for broadcasting to the Scottish Parliament.

¹³⁴ Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014, para 74

¹³⁵ HC Deb 6 July 2015, c128

¹³⁶ HC Deb 6 July 2015, c68

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