



Library Note

Scotland Bill (HL Bill 73 of 2015–16)

The [Scotland Bill](#) was introduced in the House of Commons on 28 May 2015 by the Secretary of State for Scotland, David Mundell, and completed its Commons stages on 9 November 2015. During its passage through the Commons, the Bill was subject to four days of committee proceedings on the floor of the House and received a number of substantive amendments by the Government at report stage. The amended Bill was introduced in the House of Lords on 10 November 2015, and is due to receive its second reading on 24 November 2015. The [Explanatory Notes to the Bill](#) state:

The Scotland Bill will deliver the Smith Commission Agreement, which was published in November 2014 having been agreed by all the political parties in Scotland.

The Bill is intended to be an enabling Bill and the majority of the provisions in the Bill set out the powers that are being transferred to the Scottish Parliament and or the Scottish Ministers. In particular the Scotland Bill amends the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. The Bill also includes provisions which set out the constitutional relationship of the Scottish Parliament and Scottish Government within the United Kingdom's constitutional arrangements. It does not amend this relationship.

On [13 November 2015](#), Lord Smith of Kelvin, who chaired the Commission, stated that the Bill, as amended, honoured the agreement that was reached. This was echoed by the Prime Minister, David Cameron, [who stated](#) that “Lord Smith himself has confirmed that the Smith Commission has been delivered in full. A vow was made, a vow was kept. Scotland will have that powerhouse Parliament. Now the debate can shift to how those powers should be used, that’s the debate that now needs to start”.

This Library Note provides an overview of the key provisions currently contained in the Bill following its amendment at report stage. More detail is then provided through a brief timeline of events leading up to report stage in the House of Commons, and through coverage of the report stage and third reading debates.

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I. Bill's Key Provisions and Impact on Devolved Powers

Following the amendments made to the Bill during its House of Commons stages, the Scotland Bill is currently made up of 70 clauses and 2 schedules. These relate to many aspects of Scottish devolution, including the country's constitutional arrangements, ability to retain money raised through taxation and Scotland's devolved powers. Most of these changes seek to implement the recommendations of the Smith Commission, published on 27 November 2014¹, and cross-party commitments made in advance of the Scottish independence referendum.² This section of the Library Note briefly outlines some of the key changes currently proposed in the Bill.

I.1 Constitutional Changes

The devolved administration in Scotland is made up of the Scottish Parliament and the Scottish Government (formerly known as the Scottish Executive).³ These bodies were established in their present form by the Scotland Act 1998. As stated on the Scottish Government website, "the Scottish Parliament has full legislative competence (in other words, it can pass both primary and secondary legislation) across a wide range of devolved subjects. The Scottish Government is the devolved administration led by a First Minister, elected by the Scottish Parliament, who appoints a Cabinet of Scottish Ministers. The Scotland Act 1998 does not set out devolved subjects, but instead lists 'reserved matters' for which the UK Parliament retains responsibility. By definition, devolved matters on which the Parliament can legislate are all those which are not specifically reserved (with certain provisos set out in the Act)".⁴

Devolved matters and reserved powers⁵

Devolved matters include:

- agriculture, forestry and fisheries
- education and training
- environment
- health and social services
- housing
- law and order (including the licensing of air weapons)
- local government
- sport and the arts
- tourism and economic development
- many aspects of transport

Reserved matters include:

- benefits and social security
- immigration
- defence
- foreign policy
- employment
- broadcasting
- trade and industry
- nuclear energy, oil, coal, gas and electricity
- consumer rights
- data protection
- the Constitution

As amended at report stage, the Scotland Bill would legislate for the Scottish Parliament and the Scottish Government to form a "permanent part of the United Kingdom's constitutional

¹ Smith Commission, [Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament](#), 27 November 2014.

² *Daily Record*, '[David Cameron, Ed Miliband and Nick Clegg Sign Joint Historic Promise Which Guarantees More Devolved Powers for Scotland and Protection of NHS If We Vote No](#)', 16 September 2014.

³ Scottish Government, '[History of Devolution](#)', accessed 13 November 2015.

⁴ Scottish Government, '[Scottish Responsibilities](#)', accessed 13 November 2015.

⁵ Scottish Parliament, '[Devolved and Reserved Matters Explained](#)', accessed 13 November 2015.

arrangements” (clause 1 of the Bill). The Scottish Parliament and the Scottish Government would only be able to be abolished following a referendum of the people of Scotland.

The Bill also provides that the Scotland Act 1998 would be amended so that the Sewel convention is enshrined in statute (clause 2), as recommended by the Smith Commission. The Sewel convention was set out in the Memorandum of Understanding between the UK Government and the devolved administration as follows:

The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.⁶

Such consent is usually sought from Scottish Ministers in the form of a Legislative Consent Motion.⁷ The legislative supremacy of the UK Government is set out in section 28 (7) of the Scotland Act 1998, which states (regarding the Scottish Parliament’s power to make Acts): “This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland”. As currently proposed, the Bill would insert a new subsection to follow this wording, reading: “But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament”. However, the choice of wording has been criticised by the SNP (see pp 13–13 of this Note).

In addition, the Bill would devolve a number of powers to the Scottish Parliament and Scottish Ministers in relation to the organisation, operation and timing of Scottish Parliament elections and local government elections in Scotland. The Bill makes clear that a Scottish Parliamentary election could not be held on the same date as a UK parliamentary general election or a European parliamentary general election (clause 5).

1.2 Changes Connected to Taxation

As set out in the House of Commons Library briefing, *Devolution of Tax Powers to the Scottish Parliament: the Scotland Act 2012*:

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

The Scotland Act 2012 devolved three further powers: the power to set a Scottish rate of income tax (SRIT) from April 2016, and to introduce taxes on land transactions and on waste disposal from landfill, replacing the existing UK-wide taxes Stamp Duty Land Tax and Landfill Tax from April 2015. The Act also provides powers for new taxes to be created in Scotland and for additional taxes to be devolved, subject to certain criteria.⁸

⁶ Cabinet Office, [Memorandum of Understanding and Supplementary Agreements](#), October 2013, p 8.

⁷ Scottish Government, [‘Key Facts on the Sewel Convention’](#), May 2008.

⁸ House of Commons Library Note, [Devolution of Tax Powers to the Scottish Parliament: the Scotland Act 2012](#), 23 January 2015, SN05984, p 1.

Since the passing of the Scotland Act 2012, the Scottish Parliament has passed the Revenue Scotland Tax Powers (Scotland) Act 2014, The Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 in relation to these new powers, and “Revenue Scotland started to collect the first Scottish taxes in 300 years on 1 April 2015”.⁹ Further details on the operation of the [Scottish Landfill Tax](#) and the [Land and Buildings Transaction Tax](#) can be found on the Scottish Government website.

In addition to these powers, the Scotland Bill would:

- Provide the Scottish Parliament with the power to legislate to set the rates of Income Tax and the thresholds at which these are paid for the non-savings and non-dividend of Scottish taxpayers (clauses 13–15).
- Fully devolve powers in relation to the management and collection of the Air Passenger Duty and the Aggregates Levy in Scotland to the Scottish Parliament (clauses 17–19).
- Provide that the receipts from the first 10 percentage points of the standard rate of VAT raised in Scotland would be assigned to the Scottish Government, and that the revenue from the first 2.5 percentage points of the reduced rate of VAT would also be assigned to the Scottish Government (clause 16).

According to the House of Commons Library, the provisions in the Bill would affect the funding of the Scottish Government as follows:

[The Bill] would result in the Scottish Government raising around 50 percent of its budget from its own tax revenues. The vast majority of the rest of the Scottish Government’s public spending would continue to be funded by a block grant from the UK Treasury. Currently around £30 billion is provided to Scotland from this source. Changes in the block grant are determined by the Barnett formula.¹⁰

The possible effects of the changes have also been estimated by the BBC in Table 1, who have estimated Scottish tax revenues based on a number of Scottish and UK Government sources:¹¹

Table 1: What Might Holyrood Tax Revenues Be?

Tax Type	Revenue (billions)
Income Tax	£10.2
VAT	£4
Council Tax	£2.4
Non-domestic Rates	£2.2
Stamp Duty Land Tax	£0.3
Landfill Tax	£0.1
Aggregate Levy	£0.1
Total	£19.3

⁹ Scottish Government, ‘[Devolved Taxes](#)’, accessed 13 November 2015.

¹⁰ House of Commons Library, [Scotland Bill 2015–16 \(Bill 3\)](#), 4 June 2015, 07205, p 12.

¹¹ BBC News, ‘[Scotland Bill: Scottish Powers Bill Backed by Commons](#)’, 9 November 2015.

In light of the changes, the Smith Commission also recommended a new fiscal framework for Scotland to be negotiated and published:

The devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.

Scotland's fiscal framework encompasses a number of elements including the funding of the Scottish budget, planning, management and scrutiny of public revenues and spending, the manner in which the block grant is adjusted to accommodate further devolution, the operation of borrowing powers and cash reserve, fiscal rules, and independent fiscal institutions. The parties agree that the Scottish and UK Governments should incorporate the following aspects into Scotland's fiscal and funding framework.¹²

At the time of writing, this has not yet been published. Indeed, in a written statement on 2 November 2015, the Secretary of State for Scotland, David Mundell, stated that:

[T]he Joint Exchequer Committee has met four times since June 2015 to take forward negotiations on Scotland's fiscal framework. The meetings have focused on key elements of the framework—block grant adjustment and subsequent indexation mechanisms, administration and implementation costs, the no detriment principle, capital and resource borrowing, VAT assignment, fiscal scrutiny and governance. Discussions have been constructive and are focused on securing a fair and workable fiscal framework which delivers the recommendations made by the Smith Commission in its report of November 2014.

Work is continuing and both Governments aim to complete this work as soon as possible in order to give respective Parliaments time for due consideration of both the fiscal framework and the Scotland Bill. This is likely to be after both the UK spending review and the draft Scottish Budget.¹³

1.3 Welfare Provisions

As amended, the Bill would make a number of changes in relation to welfare and benefits in Scotland. In summary, these include:

- The Scottish Parliament being given legislative competence in relation to disability, industrial injuries and carer's benefits, including the opportunity to vary their structure of value (clause 20).
- The Scottish Parliament would also be given legislative competence over provision of financial or other assistance for the purposes of meeting or reducing maternity expenses, funeral expenses and expenses for heating incurred due to cold weather (clause 21).

¹² Smith Commission, [Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament](#), 27 November 2014, p 25.

¹³ HC *Hansard*, 2 November 2015, [col 16WS](#).

- Powers for the Scottish Parliament to introduce discretionary payments in relation to housing costs, topping-up reserved benefits and to “help alleviate a short-term need for people whose well-being is at risk”¹⁴ (clauses 22–24).
- The devolution of powers to the Scottish Parliament concerning welfare foods, such as the nursery milk scheme and health start scheme (clause 25).
- The power for the Scottish Parliament to create its own benefits in any area of devolved responsibility (clause 26).
- Powers for the Scottish Parliament to make regulations, to be utilised in consultation with the UK Government, to amend the way in which the housing costs for Universal Credit are calculated for claimants who rent accommodation, and to vary the frequency of Universal Credits payments or to whom they are made (clauses 27–28).
- The Scottish Parliament being given “legislative competence in relation to creating employment schemes to assist those at risk of becoming long-term unemployed, and to help disabled people into work, including schemes which seek to help employers find suitable employees. For example, under current arrangements in Great Britain much of this support is provided through the Work Programme in respect of the long-term unemployed, and through Work Choice in respect of disabled people” (clause 29).¹⁵

Some of these provisions were introduced or amended by the Government at report stage of the Bill (see page 15 of this Note).

1.4 Other Provisions in the Bill

1.4.1 Legislative Competence for Abortion

The Smith Commission stated that:

The parties are strongly of the view to recommend the devolution of abortion and regard it as an anomalous health reservation. They agree that further serious consideration should be given to its devolution and a process should be established immediately to consider the matter further.¹⁶

Abortion law in England, Scotland and Wales is set out in the Abortion Act 1967. Section 1 of the Act makes abortion legal, as long as it is performed in line with the following legislative requirements:

[A] person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—

- (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy

¹⁴ [Explanatory Notes to the Bill](#), p 25.

¹⁵ *ibid*, p 27.

¹⁶ Smith Commission, [Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament](#), 27 November 2014, p 25.

were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or

- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.¹⁷

However, abortion has remained illegal in Northern Ireland, subject to “very restricted circumstances”.¹⁸

The proposed devolution of abortion was not included in the Bill as introduced in the House of Commons, but was later successfully introduced as a new clause by the Government at report stage. As drafted, the Bill would make abortion legislation a fully devolved matter for the Scottish Parliament (clause 50). The introduction of the new clause relating to abortion was met with some criticism by Labour MPs during report stage, but was welcomed by the SNP (see pp 16–17 of this Note).

Further information relating to abortion can be found in the House of Commons Library briefing, [Statistics on Abortion](#), 6 October 2014, SN/SG/4418.

1.4.2 Other Miscellaneous Provisions

In addition, the Bill, as amended, contains provisions relating to matters including:

- The devolution of the management of Crown Estate assets in Scotland under a transfer scheme to be set out by the Treasury (clause 34).
- An extension of Scottish powers in relation to equal opportunities requirements for Scottish public bodies or cross-border public bodies (clauses 35–36).
- Further powers in relation to energy company obligations and fuel poverty, licensing of onshore oil and gas resources in Scotland, tribunals, transport matters, consumer advocacy, gaming machines and broadcasting.

1.5 Further Reading on the Provisions in the Bill

Further reading in relation to the Bill, and how it may compare to the recommendations of the Smith Commission, can be found in the following sources (however, as each of these were published before the amendments made at report stage, they will not reflect the most up-to-date version of the Bill):

- House of Commons Library, [Scotland Bill 2015–16 \(Bill 3\)](#), 4 June 2015, CBP-7205.

¹⁷ Abortion Act 1967, [s 1 \(1\)](#).

¹⁸ BBC News, [‘Northern Ireland Women Lose Abortion Ruling Appeal’](#), 22 July 2015.

- Scottish Government, [Further Devolution Beyond the Smith Commission](#), June 2015.
- Scottish Parliament Devolution (Further Powers) Committee, [New Powers for Scotland: an Interim Report on the Smith Commission and the UK Government's Proposals](#), 14 May 2015, SP Paper 720; and the [Scottish Government's response](#), 7 June 2015.
- House of Lords Constitution Committee, [Proposals for the Devolution of Further Powers to Scotland](#), 24 March 2015, HL Paper 145 of session 2014–15.
- House of Commons Political and Constitutional Reform Committee, [Constitutional Implications of the Government's Draft Scotland Clauses](#), 22 March 2015, HC 1022 of session 2014–15.
- House of Commons Scottish Affairs Committee, [The Implementation of the Smith Agreement](#), 10 March 2015, HC 835 of session 2014–15.

In addition, the House of Lords Economic Affairs Committee is currently running an inquiry on the [devolution of public finances in the UK](#). The Committee's final report is expected to be published shortly, and will include specific recommendations in relation to the Scotland Bill.

2. Brief Timeline of Developments Leading to Report Stage

2.1 Smith Commission

A cross-party 'vow' to devolve further powers to Scotland was made in advance of the Scottish independence referendum held on 18 September 2014. The 'vow' spoke of the permanence of the Scottish Parliament, and committed to the devolution of "extensive new powers" to the country.¹⁹ The parties also committed to a timetable to deliver the new powers, which would see a draft Scotland Bill being published in January 2015 and the second reading in the House of Commons of the final Scotland Bill to be scheduled immediately following the May 2015 general election.²⁰

On 19 September 2014, it was announced, by the Prime Minister David Cameron, that a Commission, led by Lord Smith of Kelvin, a Crossbench Peer, would oversee the process of taking forward the devolution commitments.²¹ The Smith Commission's terms of reference were set out as follows:

To convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce, by 30 November 2014, Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. This process will be informed by a Command Paper, to be published by 31 October and will result in the publication of draft clauses by 25 January. The recommendations will deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.²²

¹⁹ *Daily Record*, [David Cameron, Ed Miliband and Nick Clegg Sign Joint Historic Promise Which Guarantees More Devolved Powers for Scotland and Protection of NHS If We Vote No](#), 16 September 2014.

²⁰ House of Commons Library Note, [Scotland: Devolution Proposals 2014–2015](#), 22 January 2015, SN/PC/06987, pp 6–8.

²¹ Smith Commission, [Home](#), accessed 13 November 2015.

²² Smith Commission, [About Us](#), accessed 13 November 2015.

On Thursday 27 November 2014, the Smith Commission published its report, stating:

This report sets out the agreement reached between all five of Scotland's main political parties: Conservative, Green, Labour, Liberal Democrat and the SNP. This agreement is, in itself, an unprecedented achievement. It demanded compromise from all of the parties. In some cases that meant moving to devolve greater powers than they had previously committed to, while for other parties it meant accepting the outcome would fall short of their ultimate ambitions. It shows that, however difficult, our political leaders can come together, work together, and reach agreement with one another.²³

The report then went on to state that:

The five political parties have agreed that new powers will be devolved to the Scottish Parliament and to Scottish Ministers. They have agreed to refer to this package of powers as 'the Smith Commission Agreement.' These powers are arranged within these heads of agreement according to three 'pillars'. These pillars are:

- Pillar 1: providing a durable but responsive constitutional settlement for the governance of Scotland.
- Pillar 2: delivering prosperity, a healthy economy, jobs, and social justice.
- Pillar 3: strengthening the financial responsibility of the Scottish Parliament.²⁴

The powers outlined in the report related to many aspects of policy, including welfare, taxation, transport, employment programmes and energy. It was reported that the three UK party leaders had welcomed the proposals in the report, but that the SNP First Minister of Scotland, Nicola Sturgeon, did not believe they went far enough.²⁵

2.2 Draft Bill Published

A draft Bill was published by the UK Government on 22 January 2015, with the stated purpose of carrying through the recommendations of the Smith Commission.²⁶ Introducing the draft Bill, the then Secretary of State for Scotland, Alistair Carmichael, stated:

The Smith Commission Agreement provides a significant and cohesive package of new powers for the Scottish Parliament, which was welcomed by the UK Government. It is a blueprint for an already powerful Scottish Parliament to become further empowered and more accountable to those who elect it. The clauses published in this paper will make it possible to quickly translate the Agreement into law at the beginning of the next Parliament and transfer powers to Scotland.²⁷

However, Nicola Sturgeon described the draft Bill as a "significant watering down" of the Smith Commission proposals.²⁸ In particular, she expressed her concerns over the perceived UK

²³ Smith Commission, [Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament](#), 27 November 2014, p 4.

²⁴ *ibid*, p 12.

²⁵ *Guardian*, '[Nicola Sturgeon: Smith Commission Fails to Deliver 'Powerhouse Parliament'](#)', 27 November 2014.

²⁶ HM Government, [Scotland in the United Kingdom: An Enduring Settlement](#), 22 January 2015.

²⁷ *ibid*, p 7.

²⁸ *Guardian*, '[Nicola Sturgeon: Draft Bill 'Waters Down' Smith Commission Promises'](#)', 22 January 2015.

Government vetoes in relation to the welfare provisions contained in the Bill, and suggested the provisions made little progress on devolution.

2.3 Scotland Bill Introduced and Reaction at Second Reading

The Scotland Bill itself received its first reading in the House of Commons on 28 May 2015, following the 7 May 2015 general election in which the Conservatives were returned to government. Introducing the Bill at second reading on 8 June 2015, the Secretary of State for Scotland, David Mundell, stated:

The Bill represents the fulfilment of a promise to the people of Scotland that a no vote in the referendum was not a vote for no change. It delivers on the all-party Smith commission agreement [...] The Government and the Smith Commission engaged extensively on the agreement, and on the draft clauses since January, and the Bill before us today is all the stronger for that extensive engagement.²⁹

The Bill was welcomed by the Shadow Secretary of State for Scotland, Ian Murray, although he did set out a number of areas where he believed the Bill could be improved.³⁰ He added:

This is a real opportunity to provide a stable and durable devolution settlement to create a fairer, more prosperous Scotland. When this Bill is passed and these new powers make their way to the Scottish Parliament, we look forward to the debate moving on to how the powers will be used, rather than who will use them. That is the real debate and the one that the Scottish Labour party will relish in its historic fight for social justice, fairness and equality both in Scotland and across the United Kingdom.³¹

Speaking for the SNP, Angus Robertson, the SNP Leader in Westminster, praised the intent of the Bill, but expressed concerns in a number of areas regarding whether it fulfilled the commitments of the Smith Commission.³² Robertson set out a number of areas of particular concern, including on the welfare and employment provisions in the Bill and the extent of the constitutional changes. For example, regarding the latter, he stated:

[A]s the Bill stands, the Sewel convention will not be translated effectively into law. It is not given full statutory footing in the Bill, as the Smith commission proposed. It is not good enough, as the Bill currently stands, simply to recognise the existence of the Sewel convention. The Bill's clauses are vague and, as drafted, do not in fact require Scottish Parliament consent for UK Government legislation in devolved areas. That is not acceptable.³³

Despite this, Mr Robertson concluded:

SNP Members will work with the Scottish Parliament to deliver the improvements to the Bill that are required—improvements that will first deliver the Smith agreement in full, and then give us the new powers Scotland needs to enable us to create more jobs

²⁹ HC *Hansard*, 8 June 2015, [col 931](#).

³⁰ *ibid*, [cols 940–1](#).

³¹ *ibid*.

³² *ibid*, [cols 944–52](#).

³³ *ibid*, [col 950](#).

and boost economic growth, to increase wages and opportunities across society and to deliver higher living standards for hard-pressed households [...]

The UK Government have promised that this Bill will deliver the Smith commission in full, and that it will include proposals from the Scottish Government that were endorsed by the electorate in the general election. In the weeks ahead, the House of Commons will debate amendments that can strengthen the Bill. I hope that the Government will deliver on the vow, accept the verdict of the electorate and ensure that the Bill does deliver what the Scottish people require.³⁴

The Liberal Democrat MP for Orkney and Shetland, and former Secretary of State for Scotland, Alistair Carmichael, welcomed the Bill, and wished it “swift passage”.³⁵ He also stated that he hoped the Bill’s proceedings will take place in “good faith”, and “allow the widest possible range of opinions that reflect the issues discussed in the referendum and general election campaigns in Scotland”.³⁶ However, some other MPs, such as the Conservative MP for North West Leicestershire, Andrew Bridgen raised the issue of extending similar principles to England:

Does my right hon. Friend agree that, at a time when we are devolving more powers to Scotland and other parts of the United Kingdom, we also need a fair and equitable settlement for the people of England, starting with English votes for English laws?³⁷

David Mundell responded that such proposals were in the Conservative Party’s manifesto, and would be brought forward in this Parliament.³⁸

The Bill’s committee proceedings in the House of Commons took place on the floor of the House across four days during June and July 2015. Further details on the debate and the amendments at committee stage can be found in the House of Commons Library briefing, [Scotland Bill 2015–16: Committee Stage Report](#), 4 November 2015, CBP-7233.

3. Report Stage and Third Reading

Report stage and third reading in the House of Commons were taken together on 9 November 2015. In advance of report stage, the Government tabled a large number of new clauses and amendments in relation to the Bill. In a written statement accompanying the new amendments, the Secretary of State for Scotland, David Mundell, stated that the amendments were “designed to improve the effectiveness of the legislation and to ensure that the new powers for the Scottish Parliament work as the Smith Commission intended”.³⁹ He stated they were tabled in response to suggestions made in respect of the Bill, and would make “the Scottish Parliament one of the most powerful devolved parliaments in the world”.⁴⁰ In response to the announcement, the Deputy First Minister of Scotland, John Swinney stated:

Today’s amendments are a welcome admission that the Bill, as published, did not deliver Smith, despite UK government claims to the contrary. Unfortunately the set of

³⁴ *ibid.*, [col 952](#).

³⁵ *ibid.*, [col 964](#).

³⁶ *ibid.*

³⁷ *ibid.*, [col 919](#).

³⁸ *ibid.*

³⁹ HC *Hansard*, 2 November 2015, [col 16WS](#).

⁴⁰ *ibid.*, [col 18WS](#).

amendments the UK government have promised today still fail to deliver Smith, and still fail Scotland.⁴¹

By the time of report stage, there were [over 200 amendments and new clauses](#) tabled against the Bill by the Government and by opposition parties. Consideration of amendments at report stage was split into two parts; the first dealt with amendments connected to the tax and constitutional provisions in the Bill, and the second part dealt with many of the other provisions, including welfare and the devolution of abortion policy.

3.1 Report Stage: Constitutional and Tax Provisions

3.1.1 Government Amendments

The Government moved a number of amendments connected to the organisation and structure of the Scottish Parliament and Scottish Government, and their powers in relation to Scottish Parliament elections or local elections.⁴² In particular, the Government introduced a new clause (replacing the original clause 1 in the Bill) which would set out the “permanence” of the Scottish Government and the Scottish Parliament, and would require a referendum of the people of Scotland to abolish the institutions. All of the Government’s amendments were agreed by the House without division.⁴³

Introducing the Government’s amendments, David Mundell stated:

The Government’s amendments, which I would like to outline today, will strengthen the Bill’s provisions and clarify the delivery of the Smith commission agreement. [...] We have discussed the clauses with the Scottish Government and Committees of both the Scottish Parliament and this Parliament, and we have reflected on constructive suggestions of how to improve the drafting of the provisions. A number of technical amendments are proposed to ensure that the Bill devolves the powers intended effectively and efficiently, as well as a range of substantive amendments which prove beyond doubt that the Bill fully delivers the Smith commission agreement.

Building on discussions on the permanence of the Scottish Parliament in Committee, I am bringing forward new clause 12 and amendment 34. The new clause removes the words “recognised as” and makes it clear beyond question that the Scottish Parliament and the Scottish Government are permanent institutions, and that it would take a vote by the people of Scotland in a referendum to ever abolish them. The amendment puts it beyond doubt that, as the Prime Minister has said, “Scottish devolution is woven into the very fabric of our United Kingdom”.⁴⁴

The amendments were welcomed by the SNP MPs speaking in the debate, although there was a general consensus that they did not go far enough. For example, Angus Robertson, the SNP Leader in Westminster, stated that:

The sole purpose of the Scotland Bill is to implement the Smith commission in full. The UK Government’s amendments are a welcome admission that the Scotland Bill, as

⁴¹ BBC News, ‘[Scotland Bill Amendments Outlined by UK Government](#)’, 2 November 2015.

⁴² HC *Hansard*, 9 November 2015, [cols 50–6](#).

⁴³ *ibid*, cols [102–20](#).

⁴⁴ *ibid*, [col 57](#).

published, did not deliver Smith. However, the Government's amendments tabled on Report still fail to deliver Smith and still fail Scotland.⁴⁵

In addition, Tommy Sheppard, Shadow SNP Spokesperson (Cabinet Office), particularly welcomed new clause 12, suggesting it showed that the Government recognised that questions over Scotland's governance should lie with the people of Scotland.⁴⁶ The Government's amendments and new clauses were also largely welcomed by Labour MPs, with the Labour Shadow Minister for the Cabinet Office and Scotland, Wayne David, stating:

The acid test of this Bill is whether it delivers on the vow and the recommendations of the Smith commission. Objectively, assuming that all the Government amendments are agreed, we believe that the Bill goes a long way to delivering on the Smith commission. That is not to say that the Government have delivered on absolutely everything. They clearly have not, and I have to say that it is a sad reflection on this Government that they have come to this point kicking and screaming.⁴⁷

However, although Mr David singled out new clause 12 for praise, he did criticise the lack of amendments connected to the Sewel convention: "we argued in Committee, as did SNP Members, that we were concerned about the narrow interpretation of the Sewel convention, which concerned the more general devolved competence".⁴⁸

3.1.2 Opposition Amendments

Although a large number of opposition amendments and new clauses were tabled and discussed at report stage, only three were called to a division, and each of these was defeated.⁴⁹ These were:

- The appointment of an independent commission on full fiscal autonomy in Scotland (tabled by Labour MPs, and defeated by 341 votes to 191);
- A change to the Sewel convention, so that the UK Parliament could not legislate in devolved areas without the express consent of the Scottish Parliament (tabled by SNP MPs, and defeated by 287 votes to 245); and
- A new clause allowing the Scottish Parliament when and whether to hold another independence referendum (tabled by SNP MPs, and defeated by 289 votes to 56).

Full Fiscal Autonomy

The new clause relating to the formation of an independent commission on full fiscal autonomy (new clause 1) was tabled by the Labour MPs, Ian Murray and Wayne David. Setting out the operation of the proposed clause, Mr David stated:

[It] would establish an independent commission on full fiscal autonomy to scrutinise the potential impact on Scotland's economy and public finances. It would require the

⁴⁵ *ibid*, [col 71](#).

⁴⁶ *ibid*, [cols 80–1](#).

⁴⁷ *ibid*, [cols 90–1](#).

⁴⁸ *ibid*, [col 93](#).

⁴⁹ *ibid*, [cols 102–14](#).

Secretary of State for Scotland to establish an independent commission of external experts, appointed in consultation with the Treasury Committee and Scottish Affairs Committee, to publish a report by 31 March 2016 setting out an analysis, objectively and fairly, of the impact of the policy of full fiscal autonomy.⁵⁰

The proposal was not backed by the SNP, with Tommy Sheppard explaining that “we will object to the proposal to give a Conservative Secretary of State the power to set up a commission to look into whether full fiscal autonomy could happen, because he has already made his intentions in that regard clear”.⁵¹ This referred to the Government’s stated opposition to full fiscal autonomy, as was set out by David Mundell in his earlier speech.⁵² Instead, an amendment (amendment 224) had been tabled by a number of SNP MPs, which would have allowed the “Scottish Parliament to amend the Scotland Act 1998 to remove the reservation on taxation, borrowing and public expenditure in Scotland, with the effect that the Scottish Parliament could then legislate in these areas to provide for full fiscal autonomy in Scotland”.⁵³ However, the SNP’s amendment was not moved.

Responding for the Government, David Mundell, again expressed the Government’s opposition to fiscal autonomy in Scotland, and denounced the need for an independent commission to assess the possibility, stating:

We do not need a commission either, because the analysis has been done. The Institute for Fiscal Studies has estimated that full fiscal autonomy would mean Scotland having almost £10 billion less to spend by the last year of this Parliament. That is not a good deal for Scotland and this Government will not support it.⁵⁴

The amendment was defeated at division by 341 votes to 191.

Sewel Convention

The new clause making changes to how the Sewel convention would be enshrined in statute (new clause 35), was tabled by a number of SNP MPs. Speaking to the proposed changes, Gavin Newlands (SNP MP for Paisley and Renfrewshire North), expressed concerns about the drafting currently in the Bill, stating:

The Smith commission report also stated that the Sewel convention should be put on a statutory footing by the UK Government. Unfortunately, the UK Government’s proposals in this area fall far short of Smith, despite the Prime Minister’s pledge to implement the commission’s proposals in full. Clause 2 of the Bill states that “the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

The Government’s current position on the matter is ridiculous and risks weakening, not strengthening the Sewel convention, and it is at odds with the Smith commission report. The Government’s vow that they will “not normally legislate” in devolved areas will simply not suffice and raises serious concerns that it will set a dangerous precedent.⁵⁵

⁵⁰ *ibid*, [col 97](#).

⁵¹ *ibid*, [col 81](#).

⁵² *ibid*, [col 59](#).

⁵³ *ibid*, [col 56](#).

⁵⁴ *ibid*, [col 99](#).

⁵⁵ *ibid*, [col 88](#).

As such, Mr Newlands recommended new clause 35 in light of the Smith Commission's recommendations, explaining it would "require the UK Government, regardless of political hue, to seek a legislative consent motion in all instances of Westminster legislation affecting areas devolved to Scotland, and would require the UK Government to consult with the Scottish Government on legislation that would have such an impact on Scotland".⁵⁶ The proposed clause was backed by a number of Labour MPs, including Ian Murray, the Shadow Secretary of State for Scotland, who stated:

The hon. Gentleman is making an incredibly compelling argument about legalising and codifying the Sewel convention. If he wishes to push new clause 35 to the vote in a few minutes' time, we would be more than happy to support him and take this forward. Otherwise, I am afraid it will be down to the other place to deal with.⁵⁷

However, responding for the Government, David Mundell, rejected the calls to change how the Bill codified the Sewel convention, reasoning that it has been set out in the Bill as required by the Smith Commission.⁵⁸

The amendment was defeated at division by 287 votes to 245.

Referendum Powers

New clause 36, tabled by a number of SNP MPs, would have permitted the Scottish Parliament to decide whether and when to hold a referendum on Scottish independence. Speaking to the proposed clause, Angus Robertson, stated:

New clause 36 would permanently transfer to the Scottish Parliament the power to legislate for a referendum on Scottish independence. It is right that the Scottish Parliament should decide on that, and not this place. As the First Minister has made clear, the SNP manifesto for next year's Scottish election will set out our position on a second independence referendum and consider in what circumstances such a referendum might be appropriate at some point in the future. However, the final decision on whether there is another referendum and on whether Scotland ever becomes independent will always be for the people of Scotland.⁵⁹

The proposal was opposed by both the Government, and by Labour MPs. For example, the Labour MP, Wayne David, indicated that his party would not be supporting the clause, stating:

What the amendment seeks to do is take away caveats that are essential in defining the partnership and the harmonious discussions that must take place. It is not simply a question of the Scottish Parliament deciding by itself what it wants to do.⁶⁰

⁵⁶ *ibid*, [col 89](#).

⁵⁷ *ibid*, [cols 88–9](#).

⁵⁸ *ibid*, [col 100](#).

⁵⁹ *ibid*, [col 72](#).

⁶⁰ *ibid*, [col 94](#).

Further, responding for the Government, David Mundell referred to the September 2014 independence referendum, and reasoned that the ‘no’ result should be respected:

[The] votes should be respected and not set aside as an unfortunate setback on the road to independence. Most people in Scotland support our place in the United Kingdom and do not want a second referendum—that is a fact that the SNP cannot face up to. This new clause is a distraction from the real powers contained in this Bill. The Bill gives the Scottish Parliament significant new powers, with the strength of the United Kingdom. The SNP needs to tell us how it intends to use those powers for the benefit of the people of Scotland. I will therefore not be supporting new clause 36 [...]⁶¹

The amendment was defeated at division by 289 votes to 56.

3.2 Report Stage: Welfare, Abortion and Other Provisions

3.2.1 Government Amendments

The Government moved a wide range of amendments and new clauses during the second part of report stage, including:

- The devolution of powers to the Scottish Parliament concerning welfare foods (eg nursery milk scheme and health start scheme).
- Allowing the Scottish Parliament to legislate for the payment of carer’s benefit to those under-16, ‘gainfully’ employed or in full-time education.
- The power for the Scottish Parliament to create its own benefits in any area of devolved responsibility.
- Further powers for the Scottish Government and the Scottish Parliament in relation to fuel poverty schemes and the obligations of energy providers.
- A number of changes to how other welfare changes in the Bill will be devolved (such as removing the limit on the amount of discretionary financial assistance an individual can receive to assist with housing costs).
- The devolution of legislative competence for abortion to the Scottish Parliament.
- Changes to the equal opportunity provisions in the Bill (including those connected to the appointment to the board of public bodies that exercise devolved functions in Scotland, and—in for connected purposes—the power for Scottish Ministers to commence and implement Part I of the Equality Act 2010).
- Power for the UK Government to amend legislation so that fines, fixed penalties and forfeitures imposed by Scottish courts or tribunals could be retained by the Scottish Government.

⁶¹ *ibid*, [col 101](#).

Abortion

Each of the Government's amendments and new clauses were successfully moved, and now form part of the Bill. However, the Government's new clauses devolving legislative competence for abortion did attract a lot of criticism from some Labour MPs, and only passed following a division, which was won by 350 votes to 183.⁶² For example, Yvette Cooper, the MP for Normanton, Pontefract and Castleford, expressed concerns that it could lead to different frameworks in England and Scotland, and may open the possibility for more targeted campaigning by anti-abortion groups:

Since 1967, a framework has allowed women to make personal decisions with their doctors. Those decisions are often very difficult, but they should rightly be made by women. I fear that new clause 15, which is being rushed through without proper consultation, will allow the existence of different frameworks in Scotland and in England and Wales. We know that when similar arrangements have operated in Ireland, and also in parts of the United States, many women who may be very vulnerable have often had to travel in order to gain access to the abortion services, advice or healthcare that they need [...]

The new clause also opens the door for deliberate campaigning against a fragmented system. In the United States, anti-abortion campaigners have deliberately targeted individual states and legislatures, and, having failed to change abortion law at federal level, have been able to do so at state level.⁶³

Further, Ian Murray, the Shadow Secretary of State for Scotland, explained that “nobody in this Chamber is saying that the Scottish Parliament does not have the capacity or indeed the responsibility to deal with abortion”, but that the concerns raised were in regards to the lack of proper consultation:

[David Mundell] said in this House in July that the Smith agreement did not allow for the devolution of abortion at this stage and it would not be in this Bill, but that a proper process would be put in place to ensure that it is done sensitively, properly and in consultation with women's organisations in Scotland. I do not think that his frantically calling round women's organisations in Scotland on the day he tables the amendment is satisfactory consultation or that it takes into account the issues that many women in Scotland have contacted me about.

This is not about the time limit for abortion; this relates to the entire complex matrix of the legislation that sits behind abortion. It is about the issues relating to the criminality of abortion, the authorisation of abortion and where abortions can be carried out. It is not just about 24 weeks; it is about much more than that. The Secretary of State should reflect on the fact that a proper consultation needs to be put in place, otherwise he is in danger of doing something incredibly dangerous to abortion in this country.⁶⁴

However, the change was backed by the SNP MPs, who voted with the Government on the issue, and argued that the Scottish Parliament was well placed to deal with the subject with

⁶² *ibid*, cols [157–61](#).

⁶³ *ibid*, cols [149–50](#).

⁶⁴ *ibid*, col [154](#).

sensitivity.⁶⁵ Speaking for the Government, the Secretary of State for Scotland, David Mundell, highlighted statements made by the First Minister of Scotland, Nicola Sturgeon, indicating that her government had no intention of changing the abortion laws.⁶⁶ He concluded by indicating a willingness to meet with any MPs who were concerned about the issue, and stated:

I strongly believe that the Scottish Parliament has the capacity to deal with this issue. There is no constitutional reason why this amendment should not be made, and the Smith commission did indeed recommend that it be done. It said that it should be done sensitively and that there should be a process. I am happy to talk about that process. I know that the Scottish Government are happy to talk about that process and to engage with interested parties.⁶⁷

Reaction to Other Government Amendments

Despite its concerns over the devolution of legislative competence for abortion, the Government's amendments and new clauses were broadly welcomed by Labour MPs. For example, although pinpointing areas where he felt the Bill could be improved or go further, Ian Murray stated:

We now have a welfare section in this Bill that is in line with the Smith agreement. Everyone in this Chamber should be incredibly proud of that achievement and now we must move on to the debate about how we use these powers.⁶⁸

The Shadow SNP Westminster Group Leader (Social Justice and Welfare), Eilidh Whiteford, also welcomed the Government's amendments. However, she also stated that, in some areas (such as employment rights and the measures connected to the Crown Estate), they did not go far enough in delivering the proposals of the Smith Commission.⁶⁹ As such, she recommended a number of amendments and new clauses, as tabled by the SNP, and stated:

We have heard a lot of grandiose language about the Scotland Bill today—that it represents an historic departure and creates a powerhouse Parliament. I welcome the changes that the Government are belatedly introducing, but all the flowery rhetoric in the world will not hide the fact that the Scotland Bill still falls some way short of the Smith commission proposals. More than that, it falls a long way short of the promises made to the people of Scotland. The SNP amendments would significantly strengthen the Bill and bring it closer to the expectations and aspirations of the people who voted in unprecedented numbers for real powers and meaningful change.⁷⁰

In addition, David Mundell highlighted the Government's amendments relating to the universal credit provisions and the perceived vetoes in the Bill. He stated:

There was much debate in Committee on the universal credit powers. There were many inaccurate accusations that the UK Government would have a power to veto decisions of the Scottish Government. To put this beyond reasonable doubt, I have tabled amendments to clauses 24 and 25 to make it clear that there is no UK veto over

⁶⁵ *ibid*, [col 150](#).

⁶⁶ BBC News, '[To Devolve, Or Not To Devolve Abortion Law](#)', 10 September 2015.

⁶⁷ HC *Hansard*, 9 November 2015, [col 156](#).

⁶⁸ *ibid*, [col 155](#).

⁶⁹ *ibid*, [cols 141–9](#).

⁷⁰ *ibid*, [col 149](#).

decisions that the Scottish Government make in this space. Amendments 77 and 78 will strengthen the drafting of those provisions. The Secretary of State for Work and Pensions will remain legally responsible for the delivery of universal credit, but both Governments will need to work collaboratively to consider any such changes to the elements of universal credit.⁷¹

3.2.2 Opposition Amendments

During the second part of the report stage proceedings, SNP and Labour MPs spoke to a large number of amendments and new clauses. However, only three new clauses were moved to a vote, and all were defeated.⁷² These concerned:

- Devolving the power to make provisions for child or working tax credits to the Scottish Parliament (tabled by SNP MPs, and defeated by 477 votes to 56).
- Devolving powers connected to equal opportunities to the Scottish Parliament (tabled by SNP MPs, and defeated by 288 votes to 61).
- An explicit provision that power is being devolved to the Scottish Parliament to set gender quotas (tabled by the Labour MP, Ian Murray, and defeated by 287 votes to 242).

Speaking to the SNP amendment over tax credits (new clause 18), Eilidh Whiteford (SNP MP for Banff and Buchan), outlined the SNP's opposition to any Government's cuts to tax credits, and spoke of the party's concerns over the impact cuts could have on lower income families.⁷³ Although acknowledging the provisions in the Bill, and new clauses, giving the Scottish Government and the Scottish Parliament certain powers to mitigate for such cuts or create new benefits, she stated that the SNP's proposed clause:

[W]ould fully devolve control of our tax credits to the Scottish Parliament, including eligibility thresholds and tapers. [Powers to top up benefits are] fine as far as it goes, but it will be no help whatever to those people who have lost their tax credits entirely as a consequence of the changes. If someone is not in receipt of a benefit, it cannot be topped up [...] About 80,000 families in Scotland are going to lose entitlement altogether under the existing proposals. That is roughly the same number as were affected by the bedroom tax in Scotland. The Scottish Parliament may have the power to create a new benefit, but that seems an inordinately complex way to go about things.⁷⁴

Regarding the proposed clause tabled by the SNP on equal opportunities (new clause 27), Eilidh Whiteford explained:

Our new clause 27 would amend schedule 5 to the Scotland Act 1998 and give the Scottish Parliament competence for equal opportunities in their entirety [...] the new clause would give the Scottish Parliament the powers to improve equality provisions in Scotland, including through legislation and regulation.

⁷¹ *ibid*, [col 135](#).

⁷² *ibid*, [cols 163–77](#).

⁷³ *ibid*, [cols 141–4](#).

⁷⁴ *ibid*, [cols 143–4](#).

The Scottish Parliament has a good track record of advancing progressive equality measures, and our proposals would enable further progress in gender, disability, LGBTI and race equality—for instance, by improving protections from discrimination and by ensuring a more balanced representation of women in public life and on boards.⁷⁵

Speaking for Labour, the Shadow Secretary of State for Scotland, Ian Murray, did not indicate any specific backing for the SNP’s proposed clauses. Indeed, regarding the tax credit proposals, Mr Murray stated that, based on the Government’s proposed changes, there was now “no doubt” that the Bill would allow the Scottish Government to “fully compensate” any families negatively affected by cuts to tax credits.⁷⁶ However, Ian Murray did move an amendment that would make it “explicit that, among the exceptions to reserved matters on equal opportunities, the power to set gender quotas is being devolved to the Scottish Parliament”.⁷⁷

Responding for the Government, David Mundell, rejected the amendments and new clauses that had been tabled, stating:

They did not relate to areas that formed part of the agreement. As we have mentioned on other occasions during this debate, the SNP was of course part of the Smith commission process and it signed up to an agreement that at that point did not seek to devolve tax credits to the Scottish Parliament. What was devolved were extensive powers that allow: the topping up of tax credits and other benefits; the creation of new benefits in devolved areas; the topping up of child benefit; and changes to be made to income tax [...]

Once again, in relation to welfare, the focus has been solely on what cannot be done rather than on applying thought and rigour to exactly what can be achieved. Benefits in Scotland can be completely redesigned in areas such as disability and carers’ benefits. They are reserved benefits that the Scottish Parliament can top up.⁷⁸

3.3 Third Reading

Speaking for the Government at third reading, David Mundell thanked those who had been involved in the passage of the Bill through the Commons, and stressed his belief that the Bill had been strengthened by the scrutiny it had received and by the “constructive amendments” that had been agreed.⁷⁹ He also argued that the Bill delivered what Scottish people had voted for at the independence referendum, and fully represented what was agreed by the Smith Commission. He concluded:

[T]he debate now moves from constitutional arguments to the important decisions that will affect the lives of people in Scotland. Will the Scottish Government create new benefits, or top up existing ones? What kind of schemes to address fuel poverty best suit the particular circumstances of Scotland? Will local communities be given a greater say in the management of assets such as the Crown Estate? How can Scotland’s public sector boards show the way forward for gender equality? Each of those decisions will

⁷⁵ *ibid.*, [cols 146–7](#).

⁷⁶ *ibid.*, [col 152](#).

⁷⁷ *ibid.*, [col 155](#).

⁷⁸ *ibid.*, [cols 155–6](#).

⁷⁹ *ibid.*, [col 187](#).

now form a direct part of Scotland's vigorous public debate, and each of them will be made in Scotland for the first time.

The Scottish Parliament and the Scottish Government will be more responsible and more accountable to the people of Scotland. That is what the Bill means for Scotland: the vow delivered, and a powerhouse Parliament within a strong United Kingdom. Now is the time for us all to work together to make these new powers a success for Scotland.⁸⁰

These points were echoed by the Labour MP, Ian Murray, who stated that it carried through on the promises made since the vow, and also the timetable agreed to deliver them.⁸¹ Mr Murray indicated that the Labour party fully supported the Bill, and all it was looking to achieve, and went on to state that "it is absolutely clear that this Bill, as amended, will place at the Scottish Government's disposal the powers to make Scotland the fairer and more equal country that we all aspire for it to be".⁸²

However, responding for the SNP, Angus Robertson's reaction to the Bill was more restrained.⁸³ Although he did praise those who had helped with the Bill's progress, he criticised aspects of the proceedings, including the amount of amendments tabled and the time limit given to discuss them.⁸⁴

⁸⁰ *ibid.*

⁸¹ *ibid.*, [col 188](#).

⁸² *ibid.*, [col 188](#).

⁸³ *ibid.*, [col 189](#).

⁸⁴ *ibid.*