



The Commission on Scottish Devolution – the Calman Commission

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This note provides background on the Commission on Scottish Devolution, chaired by Professor Sir Kenneth Calman. The Commission was an independent review of the experience of Scottish devolution since 1998 which had the support of both the UK Government and the Scottish Parliament. It was set up in March 2008 and had the following terms of reference:

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

It published its first report, *The future of Scottish devolution within the Union: a first report*, in December 2008 and its final report, *Serving Scotland better: Scotland and the United Kingdom in the 21st century: final report*, in June 2009.

This note looks at the origins, work and recommendations of the Commission and responses to its reports. It also covers the United Kingdom Government’s formal response to the Commission’s recommendations, *Scotland’s future in the United Kingdom: Building on ten years of Scottish devolution*, published on 25 November 2009 and the proposal by the new Coalition Government in the *Queen’s Speech* on 25 May 2010 for legislation to implement recommendations from the Final Report of the Commission on Scottish Devolution.

For detail on the recommendations of the Commission on financial accountability see Library standard note SN/EP/4750, *The Barnett formula: recent developments*.

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1 Background¹

Devolution to Scotland was a manifesto commitment of the incoming Labour Government in 1997. A referendum held in Scotland on 11 September 1997 produced a clear majority in favour of the creation of a Scottish Parliament with tax varying powers and the Government introduced the *Scotland Bill* later in its first parliamentary session.²

The *Scotland Act*, which was passed by the United Kingdom Parliament in 1998, established the first Parliament in Scotland since 1707.³ Under the terms of this Act the Scottish Parliament can pass laws affecting Scotland on a range of domestic issues and can raise or lower the basic rate of income tax by up to three pence in the pound. The first elections to the Scottish Parliament took place on 6 May 1999 and the first meeting of the Parliament was held on 12 May 1999. The Parliament was officially opened by the Queen on 1 July 1999 and took up its full powers on that date. Subsequently there have been elections to the Scottish Parliament in 2003 and 2007. At the elections on 3 May 2007 the Scottish National Party (SNP) won a single seat victory over Labour and, after discussions with the other parties, formed Scotland's first minority government with Alex Salmond as First Minister. The Executive now terms itself the Scottish Government.⁴

2 Powers of the Scottish Parliament⁵

Under the *Scotland Act 1998*, the Scottish Parliament can make primary and secondary legislation in areas not reserved to Westminster (reserved matters are specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). The list of reserved matters is lengthy and complex. In some areas legislative competence differs slightly from the executive powers devolved to the new administration, as the Executive can be granted additional powers under s63 of the *Scotland Act 1998* where the Parliament has no legislative competence.

Below is a summary of the **reserved subjects**:

- the constitution
- defence and national security
- fiscal, economic and monetary system

¹ For a review of the experience of Scottish devolution 1998-2008 see the paper prepared by Akash Paun, The Constitution Unit, University College London, for the Commission on Scottish Devolution, [Towards a new settlement? A review of experience from the first decade of Scottish devolution](#), July 2008

² *Scotland Bill*, Bill 104 of 1997-98. The Library produced a series of research papers on the bill in January 1998 (98/1, 98/2, 98/3, 98/4, 98/5) which are available at: http://www.parliament.uk/parliamentary_publications_and_archives/research_papers/library_research_papers_1998.cfm

³ [Scotland Act 1998 \(chapter 46\) as passed \(OPSI website\)](#)
[Scotland Act 1998 \(chapter 46\) as amended \(UK Statute Law Database\)](#)
For a guide to the *Scotland Act 1998* see CMG Himsworth, *The Scotland Act 1998*, 2nd ed, 2000, and a paper prepared for the Commission on Scottish Devolution, [Paper on the Scotland Act: powers and functions](#), May 2008

⁴ For detail on the formation of the new Scottish Executive see Library standard note SN/PC/04372 [The Scottish Parliamentary elections May 2007: the formation of the Scottish Executive and the election of a Presiding Officer](#) and on subsequent developments Library standard note SN/PC/04593 [The new Scottish Government](#) :

⁵ For details of the powers and work of the Scottish Parliament see Library standard note SN/PC/04505 [The UK devolved legislatures: some comparisons between their powers and work](#) and the Scottish Parliament website: <http://www.scottish.parliament.uk/home.htm>

- trade and industry, including competition and customer protection
- transport (not particular to Scotland) including railways, transport safety and regulation
- social security
- medical ethics: abortion; human fertilisation and embryology; genetics; xenotransplantation and vivisection.
- broadcasting
- foreign affairs
- the civil service
- immigration and nationality
- energy: electricity, coal, oil, gas, nuclear energy
- employment
- equal opportunities

Devolved subjects are those which do not fall under the reserved categories, or are otherwise outside the legislative competence of the Scottish Parliament. They include:

- health
- education and training
- local government
- social work
- housing
- planning
- tourism, economic development and financial assistance to industry
- some aspects of transport, including the Scottish road network, bus policy and ports and harbours
- law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts
- the police and fire services
- the environment
- natural and built heritage
- agriculture, forestry and fishing
- sport and the arts

- statistics, public registers and records

3 The Scottish Government's National Conversation⁶

On 14 August 2007, the Scottish Government published *Choosing Scotland's future: a national conversation: independence and responsibility in the modern world*. The paper was intended as the first step in promoting a "conversation" on Scotland's constitutional future. In addition to the consultation document, the Scottish Government launched a webpage containing a 'Ministers' blog' which provided an opportunity for members of the public to comment on articles submitted by Cabinet secretaries and ministers. The National Conversation document contains options for constitutional change in Scotland including further powers for the Scottish Parliament.

The publication of the National Conversation document united the three main opposition parties at Holyrood. On 13 August 2007 the BBC reported that the leaders of Labour, the Conservatives and the Liberal Democrats in the Scottish Parliament, Jack McConnell, Annabel Goldie and Nicol Stephen, had "issued a joint statement setting out their opposition to government plans for a white paper on an independence referendum".⁷ Discussions between the pro-Union parties on how to take forward their opposition to the National Conversation continued through the autumn of 2007 and on 6 December they instigated a debate in the Scottish Parliament on "a new agenda for Scotland".

4 Scottish Parliament debate on a new agenda for Scotland, 6 December 2007

The debate on 6 December 2007 was on [motion S3M-976](#), in the name of the Labour leader in the Scottish Parliament, Wendy Alexander. It stated:

That the Parliament, recognising mainstream public opinion in Scotland, supports the establishment of an independently chaired commission to review devolution in Scotland; encourages UK Parliamentarians and parties to support this commission also and proposes that the remit of this commission should be:

To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to better serve the people of Scotland, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom, and further instructs the Scottish Parliamentary Corporate Body to allocate appropriate resources and funding for this review.

The instigators of [the debate](#) sought to engender support for a review of the devolution settlement, a decade after the Scotland Act came into force.⁸ During the debate Wendy Alexander said:

It is clear that Scotland wants to walk taller within the United Kingdom, not to walk out. How do we move forward? How do we align power and responsibility more closely within this place? Let us address the case for greater financial accountability. The review of Scotland's future should be about more than party politics, which is why the leaders of the three main Opposition parties in Scotland—I pay generous tribute to

⁶ this and the next section are based on Library standard note SN/PC/04593 [The new Scottish Government](#)

⁷ BBC News [Independence statement in full](#) 13 August 2007

⁸ Scottish Parliament Official Report 6 December 2007 col 4133-85

Annabel Goldie and Nicol Stephen—have worked together not only in this place but with our UK counterparts to agree this approach.

Today, the Parliament has the chance to offer its support for an independently chaired commission

"to review the provisions of the Scotland Act 1998".

We are actively encouraging Westminster colleagues to support the commission. However, it begins today with this Parliament backing the initiative.

[...]

One aspect of the original Scottish Constitutional Convention was the way in which it harnessed the expertise of civic Scotland to the cause of home rule. To succeed, the new commission must take the debate beyond the Parliament. It must build on what we have learned over the past decade. It should draw upon business leaders, the public sector, trade unions, voluntary groups and academia. Moreover, Scots of all walks of life should have the chance to contribute to the debate. If the new commission is set up early in the new year, it can deliberate for a period of months, and consider the detail of how Scotland should move forward.⁹

In her speech the Conservative leader, Annabel Goldie, said:

This tripartite agreement is significant. Strengthening devolution while continuing to secure the position of Scotland within the United Kingdom is not just an honourable but a highly important commitment. It is bigger than any one political party, because it dwarfs party politics. We are talking about shaping the constitutional direction of travel of our nation for the future, not just because it is sensible and pragmatic to do that eight years on, but because it overwhelmingly reflects what Scotland wants to happen.

Today's debate gives Scottish parliamentary breath to that overwhelming public aspiration. I thank Jack McConnell for his initial support of the process and I thank my counterparts, Wendy Alexander and Nicol Stephen, for the constructive discussions that have brought us to the stage of agreeing the need for an independently chaired commission to review devolution in Scotland. I also thank them for agreeing that the remit of the commission should be to review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, that would improve the financial accountability of the Scottish Parliament or that would continue to secure the position of Scotland within the United Kingdom. This debate and tonight's vote represent significant political progress for Scotland.¹⁰

For the Liberal Democrats, Nicol Stephen welcomed the review which would be instigated by a commission:

It is right to call this an historic day. Liberal Democrats favour the conferral of more powers and a better, more effective Parliament. We think that that would lead to a stronger Scotland in a stronger United Kingdom.

⁹ Ibid col 4135

¹⁰ Ibid col 4143

Over the past few years, we have been the only party campaigning for more powers for the Parliament but rejecting independence. It is 10 years since the passage of the Scotland Act 1998, and now is the right time to consider gaining those new powers.¹¹

The motion before the Parliament was carried by 76 votes to 46 votes with 3 abstentions. It was supported by the Labour, Liberal Democrat and Conservative parties and opposed by the Scottish National Party. The two Green Party MSPs and one independent MSP abstained.

The Deputy First Minister, Nicola Sturgeon, speaking at the [European and External Relations Committee](#) meeting the following week, on 11 December 2007, raised the subject of the constitutional commission:

Before I conclude, it is worth my contrasting the inclusive, open and wide-ranging nature of the national conversation with the constitutional commission that is proposed by the main Opposition parties. Although we welcome any contribution to the national conversation, we regret that the Parliament has agreed to establish a commission that deliberately excludes independence—not just the favoured option of the largest party in the Parliament, but the favoured option of a substantial proportion of the Scottish people. The national conversation lets all people across Scotland have their say, whereas the commission would restrict debate to an elite few and seek to dictate what could and could not be discussed. The national conversation purposely invites views on all the options for change, not just on the Government's preferred option, and does not limit those options, as the commission tries to do.

Although I welcome the commission, to an extent, and agree that its report will make a contribution to the conversation, its limited nature means that its work cannot replace the national conversation, which will continue to engage directly with the Scottish people over the months ahead, with the overall purpose of letting the people of Scotland decide their own future in a referendum.¹²

5 Announcement of the Commission on Scottish Devolution, March 2008

The United Kingdom Government announced its support for the commission in January 2008¹³ and on 25 March 2008 the Commission on Scottish Devolution was formally announced by the then Secretary of State for Scotland, Des Browne, in a [written ministerial statement](#) to the House of Commons:

Strengthening Devolution in Scotland

The Secretary of State for Defence (Des Browne): I am pleased to announce today that Professor Sir Kenneth Calman has agreed to serve as Chair of a Commission to review the Scotland Act. Such a Commission was proposed in and approved by the Scottish Parliament. The Government welcome that Parliament's support for the aim of strengthening devolution, and securing Scotland's place in the Union. We are therefore giving our full support to this cross-border, cross-party review.

The terms of reference for the Commission, which have also been approved by the Scottish Parliament, are:

¹¹ Ibid col 4144

¹² See cols 217

¹³ <http://www.commissiononscottishdevolution.org.uk/about/index.php>

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

The Government and the Scottish Parliament will work together to provide support for the Commission, which will be asked to make an interim report by the end of this year. Its report will be submitted to both the Government and to the Scottish Parliament.

I hope that there will be full engagement by people in Scotland and elsewhere in the UK with this review, which will provide an opportunity to assess the successes of devolution to Scotland, and identify ways in which the devolution settlement can be developed to work better for the people of Scotland within the United Kingdom.

The other members involved in the Commission will be announced in due course.¹⁴

The terms of reference therefore mirrored the motion approved by the Scottish Parliament in December 2007.

The Commission was also referred to by the Secretary of State for Justice, Jack Straw, in his [oral statement](#) to the House of Commons on constitutional renewal on 25 March 2008:¹⁵

As my right hon. Friend the Secretary of State for Scotland announced today, Professor Sir Kenneth Calman has agreed to serve as chair of a commission to review the Scotland Act 1998. Such a commission was proposed in, and approved by a majority of, the Scottish Parliament. The Government welcome their support for the aim of strengthening devolution and securing Scotland’s place in the Union, and we are giving our full backing to the cross-border, cross-party review.¹⁶

A [Westminster Hall debate](#) on the Scotland Act 1998 was initiated by the SNP Member Pete Wishart on 2 April 2008.¹⁷ Mr Wishart said:

Is it not great that we are where we are now? Who would have believed that in one short year we would be where we are? Everyone agreed that devolution is a process, not an event. Everyone in this Chamber agreed that more powers are required for the Scottish Parliament. Who would have believed that the Conservative, Liberal, Scottish National and Labour parties would now demand more powers for the Scottish Parliament? It is remarkable, and we should take a moment to appreciate its full significance and importance. Of course, it was all started by the Scottish Government’s national conversation. Now everyone is talking. We cannot shut them up any more.¹⁸

Winding up the debate, the Minister of State, Scotland Office, David Cairns, said:

I congratulate the hon. Member for Perth and North Perthshire (Pete Wishart) on securing the debate, and congratulate all hon. Members who have taken part either by giving a speech or by way of intervention. However, there is a profound irony at the heart of the debate. The hon. Gentleman broke the land speed record to get a debate in the House on the work of the Calman commission before it has even started work. The commission so far consists of one member—the chairman, Sir Kenneth Calman—as the other members have not been appointed yet. The commission has not drawn up

¹⁴ HC Deb 25 March 2008 cc7-8WS
¹⁵ HC Deb 25 March 2008 cc21-38
¹⁶ Ibid c24
¹⁷ HC Deb 2 April 2008 cc270-96WH
¹⁸ Ibid c270WH

a work schedule or taken evidence from anyone yet, but the hon. Gentleman has rushed here to have a debate about it.¹⁹

Sir Kenneth Calman wrote to the First Minister, Alex Salmond, on 7 May 2008 setting out the remit and membership of the commission and asking for the “assistance and co-operation of the Scottish Government”. Alex Salmond’s response of 22 May stated the position of the Scottish Government and included the following statements:

You will be aware that the Scottish Government opposed the motion of the Scottish Parliament setting up your Commission. By then the Government had already started its national conversation: an open, broad based exercise on the constitutional future of our country, allowing the people and civic institutions of Scotland to explore the benefits that changes to the current situation might bring. The aim of the conversation has always been to work towards a referendum on independence, and possibly other options, in 2010.

As you say in your letter, your group of experienced and distinguished individuals will be recommending changes to continue to secure the position of Scotland within the United Kingdom. In approach and objective, the Commission and the national conversation are therefore different creatures: one inclusive of all the people of Scotland, considering all the possible options; the other based on experience and distinction, excluding independence - the future favoured by the largest single party elected by the people of Scotland to their Parliament last year.

That said, your Commission might make a contribution to the national conversation. In particular, your work might inform a third option, on extending devolution, in the referendum. In this respect, I note your position as outlined in the Politics Show of 4 May.

Choosing Scotland’s Future sets out the position of the Scottish Government on constitutional issues. As far as Ministers are concerned, you will find our views on many of the issues you wish to consider in that paper. You may wish to note that *Choosing Scotland’s Future* is the Government’s White Paper which the SNP’s manifesto sought a mandate to publish rather than (as your letter said) itself a party position. As you say, my party’s position on these matters is well known.

I am happy to agree that Scottish Government officials give you assistance with factual matters. However, resources within the Scottish Government are limited, and the priorities for officials are to work in support of the overall purpose of the Scottish Government and in response to democratic scrutiny of the Scottish Parliament.

6 Membership and Secretariat

Professor Sir Kenneth Calman was named as the Chair of the Commission on 25 March 2008 (see above) and the rest of the members were announced on 28 April.

The membership is listed on the Commission’s website:

Sir Kenneth Calman, Chancellor of the University of Glasgow (Chair)

Colin Boyd, former Lord Advocate, member of the House of Lords (Labour) [Rt Hon Lord Boyd of Duncansby QC]

Rani Dhir MBE, Executive Director Drumchapel Housing Co-operative

¹⁹ Ibid c293WH

Professor Sir David Edward, retired judge of the European Court

Murray Elder, member of the House of Lords (Labour) [Lord Elder]

Audrey Findlay, former Leader of Aberdeenshire Council, Convenor of the Scottish Liberal Democrat Party

Jamie Lindsay, former Scottish Office Minister, member of the House of Lords (Conservative) [Earl of Lindsay], Chairman of the Scottish Agricultural College

John Loughton, Chairman of the Scottish Youth Parliament

Murdoch MacLennan, Chief Executive, Telegraph Media Group

Shonaig Macpherson, Chair of the National Trust for Scotland and of the Scottish Council for Development and Industry

Iain McMillan, Director, CBI Scotland

James Selkirk, former Scottish Office Minister, member of the House of Lords (Conservative) [Rt Hon Lord Selkirk of Douglas QC]

Mona Siddiqui, Professor of Islamic Studies, University of Glasgow

Matt Smith, Scottish Secretary, UNISON

Jim Wallace, former Deputy First Minister, member of the House of Lords (Liberal Democrat) [Rt Hon Lord Wallace of Tankerness]

Full biographies are available on the website.²⁰

The website also notes that “although some Commission members are described in terms of offices they hold with named organisations, they serve on the Commission in a personal capacity and not on behalf of those organisations.”²¹

There were 15 members of the Commission, of whom:

- two (James Selkirk and Jim Wallace) are former Members of the Scottish Parliament and the House of Commons
- five (Colin Boyd, Murray Elder, Jamie Lindsay, James Selkirk, Jim Wallace) are members of the House of Lords
- three (Colin Boyd, Jamie Lindsay and James Selkirk) are former UK Ministers
- two (Colin Boyd and Jim Wallace) are former Scottish Executive Ministers

The Commission was supported by a secretariat consisting of officials seconded from the UK Government and the Scottish Parliament. The role of the Secretariat was to advise the Commission on all aspects of its work and act as a general contact point for enquiries and public engagement. The Secretary was Jim Gallagher and the Head of Secretariat Paul Kett. Further details are available on the website.²²

²⁰ <http://www.commissiononscottishdevolution.org.uk/index.php>

²¹ <http://www.commissiononscottishdevolution.org.uk/about/members.php>

²² <http://www.commissiononscottishdevolution.org.uk/contact.php>

7 Work of the Commission

7.1 Commission meetings

First meeting 28 April 2008

The Commission held its first meeting at the Scottish Parliament on 28 April 2008. Four 'task groups' were established – on principles, functions, engagement and financial accountability.

Second meeting 30 May 2008

Further details of the task groups and a fifth, on inter-governmental relations, were announced after the Commission's second meeting on 30 May 2008. In addition, an independent expert group, established to advise the Commission on financial accountability, was announced. It was to be chaired by Professor Anton Muscatelli, then Principal and Vice Chancellor of Heriot-Watt University. It was announced that the Commission's remit excluded the options both of independence and of returning to the pre-devolution arrangements.

Further meetings

After that the Commission met on a roughly monthly basis, with the task groups actively pursuing matters within their remits in between Commission meetings. Minutes of Commission meetings are available on the [papers](#) pages of the Commission's website.

7.2 Task groups

Five task groups were established, each chaired by a member of the commission as follows:

- Principles: Sir Kenneth Calman
- Functions: Professor Sir David Edward
- Engagement: Murdoch MacLennan
- Financial Accountability: Shonaig Macpherson
- Inter-Governmental Relations: Jim Wallace

Minutes of task group meetings are available on the [papers](#) pages of the Commission's website.

7.3 Independent Expert Group to the Commission on Scottish Devolution

An independent expert group was established to advise the Commission on financial accountability. It was chaired by Professor Anton Muscatelli, then Principal and Vice Chancellor of Heriot-Watt University. The other members of the expert group were:

- John Aldridge, former Finance Director at the Scottish Executive
- Professor David Bell, Professor of Economics, Stirling University
- Professor Robin Boadway, Professor of Economics, Queen's University, Kingston, Ontario, Canada
- Professor Julia Darby, Professor of Economics, University of Strathclyde
- Dr Sandra Eden, senior lecturer in tax law, Edinburgh University

- Professor Clemens Fuest, Professor of Economics, University of Cologne, and Chairman of the Scientific Advisory Committee of the German Federal Ministry of Finance
- Professor Andrew Hughes Hallett, Professor of Economics and Public Policy, George Mason University, Virginia, USA, and Professor at St Andrews University.
- Professor Charlie Jeffery, Professor of Politics, Edinburgh University
- Professor Alex Kemp, Schlumberger Professor of Petroleum Economics, University of Aberdeen
- Iain McLean, Official Fellow in Politics, Nuffield College, Oxford, and Professor of Politics, University of Oxford
- Jeremy Peat, Director of the David Hume Institute, former Group Chief Economist at the Royal Bank of Scotland and a former economic adviser at HM Treasury and the Scottish Office
- David Ulph, Professor and Head of School of Economics and Finance, St Andrews University

For a discussion of the work and recommendations of the expert group and on the Barnett [funding] formula generally see Library Standard Note SN/EP/4750 [The Barnett formula: recent developments](#) For the reports of the expert group see the [papers](#) pages of the Commission website.

7.4 Evidence gathering

Questionnaire results

The Commission made a questionnaire available on its website from 10 September 2008, and in hard copy to people who attended a local engagement event, or who requested a copy through the Commission's [leaflet](#). By the time the questionnaire closed on 30 March 2009, over 900 people had completed it. The [results](#) are available on the Commission's website.

Local engagement events

During the autumn of 2008 and the spring of 2009 Commission members undertook a programme of local engagement events around Scotland (and one in Newcastle upon Tyne). Twelve events were held altogether. Participants were able to discuss, with Commission members, some general themes relating to the Commission's remit – the experience of devolution, the distribution of functions, financial accountability and intergovernmental relations – together with issues of particular relevance to their local area. Further details are available on the [local events](#) pages of the website.

Oral evidence

Over the same period the Commission held a number of public oral evidence sessions, mainly at the Scottish Parliament but also at other venues in Edinburgh and, on 5 and 18 November 2008, at the UK Houses of Parliament (from the Health Protection Agency, the Food Standards Agency, the Office of Communications (Ofcom), Unison and the Federation of Small Businesses). Further details are available on the [oral evidence](#) pages of the website. The Commission also took oral evidence in private from a number of organisations and individuals, including UK Members of Parliament (in London on 22 April and 13 May 2009), and notes of these occasions are available on the [papers](#) pages of the website.

Written submissions

The Commission received written evidence from a range of organisations and individuals based in Scotland and elsewhere in the UK between May 2008 and February 2009. Several UK Members of Parliament submitted evidence, as did the [House of Commons](#) and [House of Lords](#) on links between the UK Parliament and the Scottish Parliament. A lengthy [paper from the UK Government](#) sets out its relationship, and that of individual UK departments, with the Scottish Parliament/Government. Further details are available on the [written submissions](#) pages of the website.

8 Evidence to the Scottish Affairs Committee

Sir Kenneth Calman and officials from the Commission on Scottish Devolution gave evidence to the Scottish Affairs Committee on three occasions: [11 June 2008](#)²³ and [11 February 2009](#)²⁴ at Westminster and [6 July 2009](#)²⁵ in Glasgow City Chambers (the last occasion was after the publication of the Commission's final report).

9 First report: *The future of Scottish devolution within the Union*

The Commission's [first report](#)²⁶ was presented to the Presiding Officer of the Scottish Parliament and to the Secretary of State for Scotland on behalf of Her Majesty's Government on 2 December 2008. The report looked at the functions of the Scottish Parliament, how it was financed and was accountable to the Scottish people, and how the new Scottish political institutions related to the rest of the UK. The authors set down their current thinking and asked some general and some specific questions about possible developments. Sir Kenneth Calman introduced his report as follows:

In the Spring of this year I was asked to take the chair of the Commission on Scottish Devolution. The Commission is supported by the Scottish Parliament and the United Kingdom Government. This, the First Report of the Commission, sets out our thinking so far, and invites further discussion and evidence on the subjects in our remit.

Devolution to Scotland in 1999 was a very significant constitutional development, and one conclusion which we can already draw from our work is that it has been a great success. But constitutions do not stand still. They develop in response to opportunities and pressures as they arise. 10 years after the Scotland Act, our task has been to explore what the scope for further development might be.

In thinking about change, we bear in mind two things that will recur throughout this report. Both are critical elements of our remit. First, how can we help the Scottish Parliament serve the people of Scotland better? The ultimate and only purpose of constitutional change is to help improve people's lives. Secondly, how is change consistent with Scotland's continued place in the United Kingdom, which we value?

Our task is not finished, but in this report we look at the functions of the Scottish Parliament, how it is financed and is accountable to the Scottish people, and how the new Scottish political institutions relate to the rest of the UK. In each of these areas, we set down our current thinking and ask some general and some quite specific questions about possible developments. We will very much welcome responses to these questions from across Scotland and beyond to help us to produce our final recommendations next year.

²³ HC 704-i, 2007-08

²⁴ HC 254-i, 2008-09

²⁵ HC 254-ii, 2008-09

²⁶ Published in two volumes (report and evidence) with a summary

The members of the Commission come from different walks of life and from across Scotland. All have made significant contributions to public life in Scotland and beyond. I would like to thank them, and the Commission's Secretariat, for their unstinting commitment to this fascinating and important project.

We have been very grateful to those who gave us evidence, and engaged with us as we considered the issues. We will very much welcome responses from across Scotland and beyond to the issues we raise and the questions we set out in this report, to help us produce our final recommendations next year.

Kenneth Calman

10 *The future of Scottish devolution within the Union: a consultation*

The Commission published a [consultation paper](#) on 19 December 2008. This summarised the broad conclusions of the first report, identified some important principles and set out a series of 49 questions requiring further consideration in the second phase of the Commission's work. These covered areas such as principles, powers and functions, financial accountability, relationships between parliaments and governments, other features of the *Scotland Act* and the operation of the Scottish Parliament. Responses were requested by 27 February 2009.

11 *Final report, Serving Scotland better: Scotland and the United Kingdom in the 21st century, June 2009*

The Commission's final report, [Serving Scotland better: Scotland and the United Kingdom in the 21st century](#), was published on 15 June 2009, together with a [summary of evidence](#), [executive summary](#) and [overview booklet](#), explaining the report's conclusions and recommendations.

The Commission made 63 specific recommendations altogether. There appears to be no single listing of them in the report; they appear in (and are numbered according to) the part to which they relate. The recommendations are brought together and reproduced for convenience in Appendix 1 to this standard note.

A summary of the recommendations can be found in the overview booklet which groups them under broad headings:

Strengthening devolution

We make 24 specific recommendations, which are explained in much greater detail in the section of our Report on Strengthening Devolution, covering a wide range of areas. Examples include: devolving powers for the administration of Scottish elections to the Scottish Government;

- simplifying the law relating to the regulation of charities, to make life easier for those who work in that vital sector;
- devolving the regulation of airguns;
- devolving power to set drink-driving limits and the level of the national speed limit;
- devolving responsibility for nature conservation at sea to the Scottish Parliament at an appropriate opportunity;

- creating scope for the two Governments to agree changes to Housing Benefit and Council Tax Benefit in Scotland where these might be needed because of changes in devolved policy

[...]

Strengthening cooperation

Our recommendations to develop mutual respect between Parliaments and Governments – which should be the guiding principle in all their relations – are set out in the section of our Report on Strengthening Cooperation and include:

- introducing a regular “state of Scotland” debate in the House of Commons;
- strengthening the existing mechanisms for both Parliaments to work together, and proposing new ones including a way for the Scottish Parliament to work with the UK Parliament on reserved matters;
- re-invigorating the Joint Ministerial Committees, and making them subject to greater Parliamentary scrutiny and transparency.

[...]

Strengthening the Scottish Parliament

We believe there is scope for some improvements to the Parliament’s committee system, to its scrutiny of legislation, and to various other procedural matters. In the section of our Report dealing with Strengthening the Scottish Parliament, we set out our detailed recommendations.

[...]

Strengthening financial accountability²⁷

In the section of our Report on Strengthening Accountability in Finance we set out our detailed recommendations for achieving this. They include:

- cutting basic and higher rates of income tax levied by the UK Government in Scotland by 10 pence in the pound, with a corresponding reduction in the block grant;
- replacing the Scottish Variable Rate of income tax with a new Scottish income tax rate, applying to basic and higher rates of tax and collected as now; a 10 pence rate would replace the reduction in block grant;
- devolving Stamp Duty Land Tax, the Aggregates Levy, Landfill Tax and Air Passenger Duty to the Scottish Parliament, again with a corresponding block grant reduction;
- giving Scottish Ministers additional borrowing powers; and
- strengthening the inter-governmental relationships that deal with finance.

For background on this part of the report see Library standard note SN/EP/4750 [The Barnett formula: recent developments](#).

²⁷ For background on this section of the report see Library standard note SN/EP/4750 *The Barnett formula: recent developments*

12 Responses to the Commission's final report

12.1 Secretary of State for Scotland's statement, 15 June 2009

The Secretary of State for Scotland, Jim Murphy, made a written statement to the House of Commons on 15 June 2009 welcoming the Commission's final report. He announced the setting up of a steering group comprising the parties involved in the Calman process, chaired by him, to help the UK Government and the Scottish Parliament plan how to take forward the Commission's recommendations.

The Secretary of State for Scotland (Mr. Jim Murphy): On behalf of the Government I welcome the publication today of the final report from the Commission on Scottish Devolution.

The Commission was set up by the Scottish Parliament and supported by the UK Government. The Commission's remit was:

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

The Commission, under the chairmanship of Professor Sir Kenneth Calman, have produced a detailed report, based on sound analysis, a robust evidence base and extensive engagement with people in Scotland. I welcome in particular the efforts the Commission made to engage as widely as possible, through public events across the country, through oral and written evidence, a public questionnaire and through their website.

I welcome their conclusion that the devolution settlement in Scotland has been "a remarkable and substantial success". We are approaching the 10th anniversary of the Scottish Parliament receiving full legislative competence, and there is broad support in Scotland and across the UK for the devolution settlement. The Scottish Parliament has established itself firmly in public life, bringing greater accountability to the people of Scotland, and innovation in both policy and working methods.

The Government agree with the Commission's conclusion that, in order to serve the people of Scotland better, and to secure the position of Scotland within the United Kingdom, the institutions of the United Kingdom and Scotland must be able to work together effectively. The Government have already taken steps to reinvigorate the Joint Ministerial Committee and to ensure close working with the Scottish Government, in particular in the face of the global economic downturn. We will consider the Commission's recommendations in this area carefully.

Ten years on, the Scottish Parliament needs to have the financial responsibilities to match its ambitions for Scotland. We asked the Commission to examine the options for improving financial accountability. The Commission outlines a new financial model that would give significantly more responsibility to the Scottish Parliament for decisions on tax and spending in Scotland. The Commission's model empowers and requires the Scottish Parliament to make a decision on the balance between taxes and public spending. Their recommendations draw from the work of Professor Anton Muscatelli's group of independent financial experts.

The Government agree that financial accountability could be achieved by moving to a system where a greater proportion of the Scottish Parliament's budget comes from their own decisions. We welcome the Commission's model which provides a promising

and well-evidenced basis on which we can work with the Scottish Parliament and others to bring forward practical proposals. The suggested changes are complex, and require detailed and careful consideration. The Government will assess, and explore how to implement, these proposals. We agree with the Commission's recommendation that any change should be introduced in a phased way to manage the risks of instability in public finances and of windfall gains or shocks and will take this into account in developing proposals.

The Commission proposes further changes to the powers and functions of the Scottish Parliament, based on the work of a task group led by Sir David Edward. I am grateful for their careful consideration of this important area. Their work highlights the range and depth of responsibilities which the Scottish Parliament already has. They broadly endorse the existing settlement, but recommend adjustments. The Government are willing to adjust the devolution settlement, where there is benefit to the people of Scotland and where it will strengthen Scotland's place within the Union.

A steering group comprising parties involved in the Calman Commission process, chaired by myself, will help the UK Government and the Scottish Parliament plan how to take forward the Calman recommendations and deliver stronger devolution within a stronger United Kingdom.

The Government warmly welcome this report, copies of which have been placed in the Libraries of both Houses and the Vote Office. I am grateful to Sir Kenneth and the members of his Commission for their work. I look forward to working with colleagues, partners and stakeholders here and in Scotland to take forward the report.²⁸

12.2 Scottish Parliament debate, 25 June 2009

There was a [debate](#), instigated by the Scottish Labour Party, in the Scottish Parliament on 25 June 2009 on the Commission's final report.²⁹ This was on motion S3M-4490, in the name of Michael McMahon. It stated:

S3M-4490 Michael McMahon: Calman Commission Report—That the Parliament warmly welcomes the Calman Commission on Scottish Devolution's report, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, which is based firmly on evidence and engagement with the people of Scotland; thanks the chair and members of the commission for their work on behalf of the Parliament and the UK Government; agrees that the commission's report is a comprehensive response to the remit approved by the Parliament on 6 December 2007; welcomes the establishment of the steering group to take forward the report's recommendations to strengthen devolution and enable the Parliament, through new powers and responsibilities, to serve the people of Scotland better in the United Kingdom; calls on the Scottish Government to make fully available the resources of the Scottish administration to cooperate in this respect, and calls on the Scottish Parliamentary Corporate Body to continue to allocate appropriate resources and funding to enable the Parliament to support the work of the steering group and consider the recommendations that apply to the Parliament.

The Presiding Officer, Alex Fergusson, selected an amendment in the name of Michael Russell (SNP), Minister for Culture, External Affairs and the Constitution:

S3M-4490.1 Michael Russell: Calman Commission Report—As an amendment to motion (S3M-4490) in the name of Michael McMahon, leave out from after first "Parliament" to end and insert "welcomes the constitutional debate in Scotland; notes

²⁸ HC Deb 15 June 2009 cc6-7WS

the Calman Commission on Scottish Devolution's report, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, and puts forward a plan for implementation that (a) urges the UK Government to work with the Scottish Government to implement now those recommendations for additional powers that have attracted consensus by devolving electoral administration (5.1), airguns (5.13), licensing of controlled substances for treating addictions (5.14), drink-driving limits (5.15) and national speed limits (5.16), (b) calls on the Parliamentary Bureau to consider the recommendations that apply to the procedures of the Parliament, (c) further calls on the Scottish Government to work with other devolved administrations and the UK Government to take forward recommendations on the relationships between the respective governments, and (d) calls for continued debate towards a decision by the Scottish people on the merits of the Calman Commission on Scottish Devolution's financial proposals in contrast to those that would offer real financial independence for Scotland."

The motion was moved by the Labour leader in the Scottish Parliament, Iain Gray, who welcomed the Commission's report and looked forward to its proposals being progressed:

Calman's conclusion was that devolution is lop-sided. All the significant legislative powers that should properly have been devolved to Holyrood were devolved, but the Scotland Act 1998 provided limited devolution of fiscal power.

The Commission on Scottish Devolution represents a remarkable achievement, and I welcome Sir Kenneth Calman to the public gallery. The commission was cross-party and it was driven by the Scottish Parliament, against the will of its executive arm. It was also cross-Administration, with support from the UK Government, and it was cross-sector, with its members' mix of business, voluntary sector and political backgrounds. However, it delivered a unanimous report.

At a time when the people's trust in their politicians is as low as we have known it to be, the commission's recommendations are not about giving more power to members of the Scottish Parliament; they are about accountability and giving more power to the people who elect us. The Calman process was characterised by rigour, attention to evidence and the breadth of consensus that the commission commanded throughout the process.

To maintain that consensus and momentum, the steering group has quickly established itself and begun to discuss how to progress Calman's proposals. Only the Scottish Government stands aloof and alone, outside the consensus, in defiance of the will of the Parliament—the very body to which it is democratically accountable. We should not be surprised, given that whenever the heavy lifting on devolution is to be done, the Scottish National Party is always posted missing—from the Scottish Constitutional Convention onwards. I paraphrase a saying from that time: when it comes to Calman, the Scottish Government says no, but we are the Parliament of Scotland and we say yes.³⁰

Moving the amendment to the motion, the Minister for Culture, External Affairs and the Constitution, Michael Russell, paid tribute to the members of the Commission and said that the Scottish Government could move forward with some, but not all, of the Commission's recommendations:

I pay tribute to the members of the Calman commission. It may have had as many peers on it as are in Gordon Brown's Government, but it genuinely tried to examine the

²⁹ SP OR 25 June 2009 cc18835-88

³⁰ Ibid cc18836-7

issues in Scotland and there are issues in its report on which we can agree. Indeed, I am happy to say that there is no difficulty with ensuring that we make progress on three out of the four main areas of recommendation not in six months, in a year, or at an unspecified time when the consultative group gets round to it, but now. We can do things now: we can devolve responsibility for electoral administration, solve the problem of air-guns in Scotland and get drink-driving limits and speed limits right for Scotland. The Parliament also has it within its power to consider the issues with the way in which it conducts its business, and it is moving towards doing that. Those changes, too, can take place now. Clearly, other partners are involved in intergovernmental relations—the Welsh and Northern Irish have to be part of it—but I announce that I have asked my officials to start to draft amendments to the memorandum of understanding, which is not concluded yet, so that we can propose the Calman changes this summer. We are moving forward on each issue.³¹

There was one area of substantive disagreement between the Commission and the Scottish Government:

Only on one area is there substantive disagreement, which needs to be listened to. Calman's recommendations may appear to give Scotland more control over its finances, but the reality is very different from the appearance. On a superficial level and a deep level, Calman offers nothing to Scotland in fiscal terms. Indeed, it could actually make things worse in our fiscal activity.³²

The real energy in the debate came from the National Conversation:

Let me say a final word about the real process of discussion that Scotland needs. I welcome what Calman has contributed, but it is not enough. We can move forward with some, but not all, of what it has contributed. However, the real energy in the debate comes not from Calman but from the people of Scotland, who over the past year have contributed to the national conversation and attended repeated meetings throughout Scotland.³³

The Conservative leader, Annabel Goldie welcomed the Commission's report, but had some criticisms of its recommendations:

I welcome the report, but I will not accept uncritically the Calman recommendations. I will give thorough reflection to the detail of the proposals. That said, I will not reject out of hand proposals over which the commission—whose remit was endorsed overwhelmingly by this Parliament—spent months deliberating. In our 2007 manifesto, the Conservatives acknowledged the need for a debate on devolution powers and funding. I repeat what I said earlier: I want our response to the Calman recommendations to be right, not rushed. Whatever we do to the devolved settlement must be built to last; it must be a secure legacy from this generation of MSPs to future generations of Scots.

I am a committed unionist. I will do nothing to put at risk a partnership that has served our nation well for centuries. That is the agenda of another party. However, as we recognised in 2007, when we voted to establish the commission, devolution was at a crossroads. At that time, we asked a simple question: is the current arrangement incapable of improvement? I believe the answer to that question was no. For instance, I believe that devolution has been done a disservice by the lack of mutual respect

³¹ Ibid cc18840-1

³² Ibid c18841

³³ Ibid c18842

between Governments and Parliaments. We need to see a vast improvement in that area.

The answer that flows from the simple question "Can things be improved?" is fundamental for those of us who are unionists. Is the best way of securing Scotland's continued place in the United Kingdom to reject all change? I am clear that the answer to that is no. Rejecting any and all change would be to play into the hands of the separatists and to stoke the fires of resentment that the SNP Government has been busy igniting over the past two years.

Given my strong and unwavering commitment to the union, let me make it clear that supporting the creation of the commission was not a decision that I entered into lightly. I believed it to be—I still believe it to be—the best way of progressing the unfinished business of building a stable devolved settlement that will secure Scotland's place in the union³⁴

For the Liberal Democrats, Tavish Scott congratulated the Commission on its work, felt its proposals would have a real impact and called on all parties to implement its recommendations as soon as possible:

I am pleased that the leaders of the Labour and Conservative parties here and at Westminster have agreed to form a delivery group, but it must be about implementing Calman. The old establishment politics of Westminster—which fool no one, alienate yet more of the public across the UK and fail utterly to recognise the desire for something different—have no place here.³⁵

[...]

Now is the moment for those in the Government who want to see more powers for this Parliament to be part of the plans. I cannot conceive why any nationalist can be against change and reform that strengthens this Parliament's accountability. The SNP cannot pick and choose: being against change is not an option for the SNP or for any others. Let us get this done and move the country further forward towards a stronger home-rule Parliament that is a stronger Parliament within the UK, a Parliament with a purpose and a Parliament with powers for a purpose.³⁶

In a division after the debate the motion was agreed by 69 to 49 with one abstention.

12.3 Scottish Government response, 9 November 2009

The Scottish Government response to the recommendations of the Commission on Scottish devolution was published on 9 November 2009. It supported certain recommendations and rejected others – notably on taxation.

A press release from the Scottish Government on 8 November 2009 stated

Scotland's constitutional future

08/11/2009

The Calman Commission was a missed opportunity, Constitution Minister Michael Russell said today.

³⁴ Ibid cc18844-5

³⁵ Ibid c18847

³⁶ Ibid c18848

Mr Russell was responding formally to the Commission's report and said that only the National Conversation represented the potential for real change.

The Minister, who on Monday evening will deliver a lecture on Scotland's constitutional future at University College London, said that while he welcomed recognition that change was required, the Commission's work was fundamentally flawed because of its inability to consider options for Scotland outwith current constitutional arrangements.

Mr Russell said:

"The success of the Parliament has inevitably led to a hunger for further reform of the devolution settlement. The establishment of the Calman Commission recognised that hunger - but it provided very limited nourishment.

"Let me be clear - there are recommendations within their report, around half of the total, that we agree with. Indeed there are proposals on which we would welcome early and decisive action - control of airguns, drink driving limits and having the responsibility to run elections to the Scottish Parliament, amongst others.

"But the Commission was strictly limited in its remit and its outcomes. On several key issues - most notably finance - Calman's recommendations are either flawed or do not go nearly far enough. Scotland would remain reliant on UK Government funding, and what the Treasury gave with one hand it could take away with another.

"Calman did not consider independence or full fiscal autonomy to allow Scotland to take responsibility for the money it spends, and take important economic decisions for itself. And it chose not to recommend changes to major areas of policy still decided in London for Scotland - on the economy, on energy, on benefits, on employment and on company law.

"I firmly believe that Scotland will not fulfil its potential until the powers of the Parliament are complete and Scotland is independent. Independence would provide the opportunity to make decisions for ourselves - it would bring new rights as well as new responsibilities.

"Our National Conversation - unlike the Calman Commission - is prepared to welcome all views. The Scottish Government - unlike the UK Government - believes that the Scottish public should have their voice heard on Scotland's constitutional future.

"That is why we will bring forward a White Paper on a Referendum Bill on St Andrew's Day. And that is why we will bring forward a Referendum Bill to Parliament in 2010.

"Scotland's people have the right to choose. No politician should stand in the way of that basic truth."

Mr Russell will be speaking at an University College London lecture entitled 'The Debate about Scotland's Constitutional Future' at 1800 hours on Monday, November 9.

12.4 UK Government response, *Scotland's future in the United Kingdom*, 25 November 2009

The UK Government published its white paper [*Scotland's future in the United Kingdom: building on ten years of Scottish devolution*](#)³⁷ on 25 November 2009, setting out its response to the Calman Commission's recommendations. In a [statement](#) to the House of Commons the Secretary of State for Scotland, Jim Murphy, said:

³⁷ Cm 7738 25 November 2009

The Secretary of State for Scotland (Mr. Jim Murphy): With permission, Mr. Speaker, I would like to make a statement on Government plans about devolution in Scotland: for a stronger Scotland in a stronger United Kingdom.

Devolution has proved itself to be the right form of governance for Scotland. Scots know that as part of the United Kingdom we have the best of both worlds. First, Scots are proud of the Scottish Parliament and the way that it allows them to find what the late Donald Dewar called "Scottish solutions to Scottish problems". Secondly, the economic events of the past year demonstrate again the added strength of being part of the UK, the fifth largest economy in the world. While Britain brings strength to Scotland, Scotland brings breadth to Britain.

The White Paper that we are publishing today takes forward the recommendations from the final report of the Commission on Scottish Devolution; again, I would like to put on record our thanks to Sir Ken Calman and his commissioners. On 15 June this year, I welcomed the commission's report on behalf of the Government. I pledged to take the recommendations forward, with consensus and momentum. That is why we established a cross-party steering group. I thank representatives of the Labour party, the Liberal Democrats and the Conservative party in the House of Commons and in the Scottish Parliament for working together on that group.

The commission concluded that devolution has been a "remarkable and substantial success". It brings government closer to the people of Scotland and secures Scotland's position within the United Kingdom. In order to refresh the settlement, the commission made recommendations in three distinct areas. First, it recommended that closer working was needed between the UK Parliament and the Scottish Parliament and between the UK Government and the Scottish Government. Secondly, it recommended that a new, more accountable means of financing devolved spending in Scotland was needed, to strengthen the financial accountability of the Scottish Parliament. Thirdly, it recommended that while the division of responsibilities between the UK Parliament and the Scottish Parliament works well, some changes could be made in both directions to further strengthen the devolution settlement. The Government agree with the commission's conclusions, which were based on a wealth of evidence.

I turn to the first of those recommendations. Scotland has two Parliaments—this Parliament, which remains an important symbol of the UK and continues to have vital daily relevance to Scotland, and the Scottish Parliament at Holyrood, which has firmly established itself over the past decade in Scottish hearts and minds. The commission recommended that the two Parliaments should examine how they work together in the interests of Scotland and the UK. Many of the recommendations are first a matter for you, Mr. Speaker, and for the Presiding Officer in the Scottish Parliament, and I have had the opportunity to meet you both separately.

The core of the commission's recommendations is about funding for Scotland. Under this Government, public spending across the UK increased in real terms by 42 per cent. in the decade after 1997. The Barnett formula meant that Scotland got the same per-head increase over that period. The commission recognised the benefits of that funding mechanism and how it had given the Scottish Parliament a good start, but 10 years on, it recommended a new deal on funding, retaining the stability and fairness of the block grant while improving accountability.

Since the first day of devolution, the Scottish Government have been accountable for how they spend taxpayers' money. Under today's proposals, they will also be held to account for how they raise it. We will give the Scottish Parliament greater freedom, but also the responsibility, to set the level of income tax in Scotland. In future, the size of Scotland's budget will be down to decisions made in Scotland. In addition to new tax

powers, we will give the Scottish Parliament new powers and responsibilities on capital borrowing. We will also devolve stamp duty land tax, aggregates levy and landfill tax, and we will keep the commission's recommendation about air passenger duty under review.

While we rightly celebrate today the strength that the Union of the United Kingdom provides, that unity does not mean uniformity. So in addition to a new deal on funding, we agree in principle to devolve new powers to the Scottish Government and the Scottish Parliament. On the power to regulate air weapons, the Government have kept controls under close scrutiny and there are encouraging signs that recent changes are having an effect. However, the Government agree in principle to devolve the regulation of air weapons to the Scottish Parliament.

We will also devolve the power to set the drink-drive limit. We believe that there are benefits to having a single drink-drive limit in place across Great Britain, but there are no overwhelming reasons why the limit should not be devolved. Additionally, the Government will ensure that Scottish Ministers have the power that they need to determine the national speed limit in Scotland, along with their existing broad powers to determine speed limits.

Elsewhere we will take the opportunity, as the commission recommended, to reserve powers to the UK Parliament where experience has shown that a common approach across Britain or the UK works better. For example, we will reserve the regulation of all health care professions to ensure a consistent regulatory regime across the country.

The full package of proposals is set out in the White Paper that we are publishing today. We will continue to take our plans forward with consensus and momentum, and we will introduce a Scotland Bill as soon as possible in the next Parliament to introduce the Calman package. We will phase in the new financial arrangements carefully, and we plan to have the changes in place during the next term of the Scottish Parliament.

Support for Scottish devolution remains strong in Scotland and elsewhere in the UK, and so does support for the Union of the United Kingdom. The plans that the Government are setting out today will create a stronger, more accountable Scottish Parliament within the framework of the United Kingdom. That strength through unity is a great asset, and today is an important step in building a stronger Scotland and a new deal for devolution. I commend this statement to the House.³⁸

Later, during questions on the statement, Jim Murphy gave more detail about the extent to which the Government would take forward the Commission's recommendations. It was the Government's intention to deal with them as a package in a Scotland Bill early in the new Parliament:

The hon. Gentleman and the House will be interested to know that Sir Ken Calman made 63 recommendations. Twenty-one were for the Parliaments, but 42 were for Her Majesty's Government, and we are committed to taking forward 39 of them. We have been very clear about this: it is our intention to introduce a Bill, as soon as possible in the next Parliament, to put those measures in place during the next Scottish Parliament. I think that that will be welcomed across Scotland.

Finally, on the hon. Gentleman's point about the time scale, Sir Ken Calman himself said that

³⁸ HC Deb 25 November 2009 c547-56:
<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091125/debtext/91125-0006.htm#09112522000003>

"it is...a package of 63 recommendations which hang together."

It is our intention to deal with them as a package in a Scotland Bill early in the new Parliament.³⁹

Responding to the statement, David Mundell, for the Conservatives, said:

David Mundell (Dumfriesshire, Clydesdale and Tweeddale) (Con): I thank the Secretary of State for his statement, for the advance notice of it and for the extent to which both he and his predecessor have engaged with fellow Unionist politicians in Scotland during the Calman process. I also put on record my thanks to the commissioners for their work. The Conservatives fully supported the setting up of the commission and have played a full part in its work.

I look forward to reading the White Paper, but does the Secretary of State concede that the timing of it so near an election inevitably means that the issue will have to be revisited by the next Government? Does he acknowledge that his Government's White Paper should not bind any incoming Conservative Government? Conservatives accept that the Scottish Parliament needs to be more financially accountable, that the devolution settlement needs to be tidied up and that Westminster and Holyrood need to start working constructively together for the good of Scotland and Britain, but we will ensure those things through our own White Paper, not this Government's proposals launched in the dying days of this Parliament. Will the Secretary of State welcome that commitment and undertake to continue in the spirit of Calman, on the basis of consensus and momentum, regardless of who is in government, and resist the temptation to play party politics with such an important issue as Scotland's constitution?

Will the Secretary of State acknowledge that the guiding principle in deliberations on the Calman process has been, and must continue to be, securing Scotland's position within the United Kingdom? Is he as heartened as I am by recent polling in Scotland that demonstrates that there is very little support for separatism and an independence referendum? Does he accept Sir Kenneth Calman's view that the establishment of better working relationships between the British Government and the Scottish Government and between the Parliaments here and at Holyrood must be in place to underpin every other recommendation in his report? Given that most of the measures to improve relationships do not require any legislation, can he tell us what he will do to re-establish the good will between Westminster and Holyrood, which appears to have ebbed away?

Whatever differences we may have with the Labour Government about how to take forward the Calman recommendations, may I invite the Secretary of State to agree with me that they are as nothing compared with the divide between us and the Scottish National party? We are Unionists; they are separatists. We are in the mainstream of the constitutional debate; they are on the extreme.

However, does the Secretary of State also agree that there are no grounds for complacency? The Calman commission contrasts markedly with the so-called "national conversation", whose main participants appear to be insomniac cyber-nats. Is it not the case that the work of the commission, not Mr. Salmond's publicly funded, self-indulgent chit-chat, will endure and form the basis for taking-

Mr. Speaker: Order. I appreciate that the hon. Gentleman is in the midst of his rhetorical flow, but I appeal to him to remember that when he is referring to a right hon.

³⁹ Ibid c552

Member of the House, he must do so with respect to the constituency rather than by identifying a Member by name.

David Mundell: Is it not the case that the First Minister of Scotland's publicly funded, self-indulgent chit-chat will not survive? It is the work of the commission that will endure and form the basis for taking forward the devolved settlement in Scotland for the benefit of the people of Scotland and Britain.⁴⁰

For the Liberal Democrats, Alistair Carmichael, said:

Mr. Alistair Carmichael (Orkney and Shetland) (LD): I, too, thank the Secretary of State for his statement and for advance sight of it prior to coming to the Chamber. I also place on record my party's gratitude to Sir Kenneth Calman and the members of his commission for their very substantive and substantial piece of work. I should also place on record some recognition of the contribution of the Secretary of State's predecessor, the right hon. Member for Kilmarnock and Loudoun (Des Browne), who was instrumental in introducing this process.

On the substance of the White Paper and the Secretary of State's statement, I am completely in support of the Government's position, which is of practical as well as constitutional significance. For those in Scotland who want a new Forth bridge, for example, and who see it as vital to Scotland's economic future, there is now no barrier to its delivery. If the Government in Edinburgh want to delay it further, they will have to blame themselves rather than looking south of the border.

However, I must ask the Secretary of State what his White Paper really adds to the process apart from further delaying implementation when there is consensus, and giving the Conservatives an opportunity for the sort of backsliding that we have just seen. I listened to the hon. Member for Dumfriesshire, Clydesdale and Tweeddale (David Mundell) speaking about producing another White Paper the other side of a general election, and I could almost hear the ghost of Sir Alec Douglas-Home speaking prior to the 1979 referendum. He promised that we would get something better from the Conservatives, but they betrayed us after the 1979 election, and they would betray us again tomorrow given half a chance which, fortunately, they are unlikely to get.

May I also remind the Secretary of State that Calman was established because we wanted to make the UK work better? In order to do that, we must now move forward with the work that Calman acknowledged needed to be done, and we must find a needs-based formula to replace the Barnett formula. When will the Secretary of State and the Government understand that serious threats to the future of the Union, which exist, can come from the south as well as the north of the border?⁴¹

For the Scottish National Party, Angus Robertson said:

Angus Robertson (Moray) (SNP): I thank the Secretary of State for the advance copy of his statement. I note how pleased Labour and Conservative MPs have been to agree with what he has said so far.

I am pleased that there is a growing consensus that normal nations should make decisions for themselves while working closely with their neighbours and friends. The best future for Scotland is guaranteed with the full powers of independence, and the people should be able to decide that in a referendum. We should bring that referendum on.

⁴⁰ Ibid cc549-50

⁴¹ Ibid c551

There is cross-party consensus that we should devolve decision making on air weapons, the drink-drive limit and the speed limit. Given the agreement of the Scottish Government since June to implement these measures immediately through statutory instrument, why are they being put off by Whitehall until after the election? What explanation will the Secretary of State give to the mother, father and family of a victim who could have been saved from harm, but was not because the UK Government did not act for a year?⁴²

The Government's response to the Commission's recommendations is set out in an annex to the white paper and is reproduced in Appendix 2 of this note.

In an article published in *The Times* on 26 November 2009 the Conservative leader set out his initial response to the white paper.⁴³ The article included the following:

Sir Kenneth is surely right when he says that the division of powers between Holyrood and Westminster is skilfully drawn up at present. The settlement does need tidying up but overall it strikes the right balance between reserved and devolved issues.

But as a matter of principle as well as good working practice, I believe strongly in decentralisation and devolving powers away from big government. So we back the Calman recommendations on non-financial powers. This will include speed limits, control over airguns and MSPs taking responsibility for administering the Holyrood elections, so that the mess which Labour MPs made of the 2007 Scottish Parliament elections does not happen again.

But one thing which clearly has not been working properly is the balance of financial powers. If Mr Salmond wants to fund his populist policies, he needs to be clear about how he would pay for them. He cannot be allowed to keep blaming Britain whenever he runs out of cash.

Giving the Scottish Parliament greater powers over raising and spending taxes and over borrowing would help to provide that accountability. The recommendations in the Calman report should be the starting point for changes in this area, and we would set out full details of what needs to happen in our own White Paper in government.

12.5 Scottish Parliament debate, 9 December 2009

There was a debate, in the Scottish Parliament on 9 December 2009 on further powers for the Parliament. This was on motion S3M5365, in the name of the Minister for Culture and External Affairs, Fiona Hyslop, which stated:

S3M-05365 Fiona Hyslop (Lothians) (Scottish National Party): Further Powers for the Scottish Parliament— That the Parliament welcomes the recommendations of the Calman Commission on Scottish Devolution that responsibility for the law across a range of areas be devolved to the Scottish Parliament *and also* welcomes the recommendations for closer working between the Scottish and UK Ministers to ensure that the needs of Scotland are properly represented, and urges the UK Government to work with the Scottish Parliament to ensure that, where there is consensus, all such recommendations are implemented before the dissolution of the current UK Parliament.

The Presiding Officer, Alex Fergusson, selected an amendment in the name of Pauline McNeil (Scottish Labour Party) which stated:

⁴² Ibid c553

⁴³ 'Salmond is wrong. A Tory win will not help him: Scots must know how the First Minister would pay for his populist policies. The Calman report is a good starting point.', *The Times*, 26 November 2009

S3M-05365.1 Pauline McNeill (Glasgow Kelvin) (Scottish Labour): Further Powers for the Scottish Parliament— As an amendment to motion S3M-5365 in the name of Fiona Hyslop (Further Powers for the Scottish Parliament), leave out from first “recommendations” to end and insert “proposal to strengthen devolution for Scotland and its place within the United Kingdom through the recommendations of the Calman Commission on Scottish Devolution and the subsequent UK Government white paper; recognises the efforts of Scottish Labour, the Scottish Conservatives and the Scottish Liberal Democrats and their respective UK parties in the establishment of and support for the Calman commission, and believes that, 10 years after the establishment of devolution, the purpose of the commission was to take forward a package of greater powers and better accountability for the Scottish Parliament to enhance the devolution settlement for the benefit of all Scots.”

Moving the motion, Fiona Hyslop, called for the powers on which there was agreement between the UK and Scottish Governments to be extended now:

The powers that we can agree on are something that we can take forward now, and I want to develop my arguments about why we should do that and why we should respect the decision that this Parliament has already made that those powers should be transferred.

We already have a procedure for extending devolved powers. Just as powers relating to freedom of information, railways and so on have been changed by orders that have been laid in Edinburgh and London, today's measures can be delivered promptly and effectively. Presenting them as a package of constitutional powers for politicians means unnecessary delay. The powers should be extended now, for the purpose of helping us deal with the heart-rending impact on people of the abuse of air-guns, drink-driving and irresponsible driving.

However, the Scottish Government wished to return to other recommendations of the Calman Commission, in particular economic issues:

There are areas in which there is consensus, but Patrick Harvie is right to identify the economic, tax, finance and borrowing issues as the substantive issues that would make a difference to the powers of this Parliament. We will continue to argue for independence as the best way to execute those powers, but it can be contended—I will develop this point—that the arguments around taxation, borrowing and finance, in the Calman commission and particularly in the UK Government's response to it, are extremely problematic and expose extreme risks and dangers to this Parliament as it currently exists. I propose that we move forward on the powers on which we have agreement, while identifying—as the member rightly points out—taxation as the issue to which we will need to return.

Moving the amendment to the motion, Pauline McNeill called for the recommendations of the Calman Commission to be taken forward as a package:

The way in which the UK Government is proceeding makes sense to me and the proposal to publish a Scotland bill is absolutely in line with what the commission said. We realise that that approach will be somewhat time-limited at Westminster, but we do not want a piecemeal approach to be taken.

Of the Calman commission's 63 recommendations, 42 apply specifically to the UK Government and 21 to the UK Government and Scottish Parliament. The UK Government is taking forward 39 of its 42 recommendations, but the Scottish Government accepted only the recommendations that would give further powers to Holyrood and rejected all those that would result in a UK or Great Britain-wide solution,

despite the evidence gathered by the commission showing that such a move would be in the Scottish people's interest. The Scottish Government also rejected two thirds of the recommendations that sought to strengthen interparliamentary relations. I am disappointed by that attitude, but it simply underlines the current Administration's lack of interest in Holyrood and in ensuring that devolution continues to work for the people of Scotland.

In divisions Pauline McNeil's amendment to the motion was disagreed to (For 59, Against 66, Abstentions 0) and Fiona Hyslop's motion was agreed to (For 63, Against 61, Abstentions 1). Labour and Conservative MSPs voted for the amendment and SNP and Liberal Democrat MSPs for the motion; Green MSPs voted against the amendment and the motion; the Independent MSP, Margo Macdonald, voted against the amendment and abstained in the division on the motion.

12.6 Scottish Affairs Committee evidence session, 13 January 2010

The Scottish Affairs Committee held a [meeting](#) on 13 January 2010 to take evidence on the Government's white paper from the Secretary of State for Scotland, Jim Murphy, and the Head of Financial Services, Scotland Office, Robin Haynes.⁴⁴ Much of the questioning focussed on the financial aspects of the Calman report but other subjects covered were: entrenching the Sewel Convention in Standing Orders of the UK Parliament;⁴⁵ holding a regular 'state of Scotland' debate in the House of Commons; the attendance of the Secretary of State for Scotland at the Scottish Parliament; relations between the Secretary of State for Scotland and the Scottish First Minister; the understanding of devolution in Whitehall departments; the timetable for implementation of those Calman recommendations that were for the UK Government and accepted by it.

Shortly after this meeting, on 20 January 2010, the Secretary of State for Scotland, Jim Murphy, sent a [memorandum](#) from the Scotland Office to the Committee.⁴⁶ This reproduced the Scottish Government's response to the proposals by the Calman Commission that the Secretary of State for Scotland should attend the Scottish Parliament after the Queen's Speech to discuss the legislative programme and answer any questions that the MSPs may have. The Scottish Government did not, at that stage, support this recommendation. Jim Murphy repeated his view that it "would be a useful and welcome exercise" for the Secretary of State for Scotland to attend the Scottish Parliament in the same way that the Secretary of State for Wales appeared before the Welsh Assembly. He welcomed the statement by the First Minister of Scotland, Alex Salmond, when he appeared before the Scottish Affairs Committee on 12 January 2010, that he would be willing for UK Government ministers to appear before the Scottish Parliament.⁴⁷ Jim Murphy stated that he "welcomed this change of tone".

12.7 Scottish Affairs Committee report, *Commission on Scottish Devolution*, 11 March 2010

The Scottish Affairs Committee published its [report](#) on the Calman Commission on 11 March 2010.⁴⁸ This was in response to an invitation from the Speaker requesting the Committee's

⁴⁴ Scottish Affairs Committee, *Commission on Scottish Devolution*, HC 255, 2009-10, Ev 35-46

⁴⁵ Under an agreement known as the "[Sewel Convention](#)", Westminster will not pass bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament.

⁴⁶ HC 255, 2009-10, Ev 49

⁴⁷ Scottish Affairs Committee, *Scotland and the UK: cooperation and communication between governments*, HC 256, 2009-10, Q53-4

⁴⁸ HC 255, 2009-10

views on the Calman Commission recommendations relating to relations between the UK and Scottish Parliaments (Part 4 of the Calman Commission report). The Speaker's [letter](#) to the Chairman of the Committee of 25 November 2009 is included in the report.⁴⁹ The report also included the Memorandum from the Scotland Office of 20 January (see above) and the evidence taken from the Secretary of State for Scotland, Jim Murphy, and the Head of Financial Services, Scotland Office, Robin Haynes, on 13 January 2010 (also see above) and reprinted the evidence taken from Sir Kenneth Calman, Chairman, Professor Jim Gallagher, Secretary, and Paul Kett, Head of Secretariat, Commission on Scottish Devolution, on 11 February 2009 and from Sir Kenneth Calman and Professor Jim Gallagher on 6 July 2009.⁵⁰

The Scottish Affairs Committee held a seminar on 9 February 2010, to which all Scottish MPs, members of the Procedure Committee and members of the Scottish Affairs Committee were invited. During the seminar guest speakers were invited to share their views on the recommendations in Part 4 of the Calman Commission report. The seminar heard from Sir Kenneth Calman; Professor Jim Gallagher, Director General of Devolution at the Ministry of Justice; Mr Paul Evans, Principal Clerk of Select Committees at the House of Commons; Mr Lee Bridges, from the Scottish Parliament; Professor James Mitchell from Strathclyde University and David Porter, BBC Scotland's Westminster correspondent.

The report found that closer cooperation between the UK and Scottish parliaments and governments was only possible if backed up by political will:

Closer cooperation between the UK and Scottish parliaments and governments is only possible if backed up by political will, concludes the Scottish Affairs Committee in a report published today (11 March 2010).

It says removing procedural barriers is only one part of improving communication and cooperation; structural changes alone will not make the difference.

The report examines the recommendations of the Commission on Scottish Devolution ('the Calman Commission'), specifically the parts which relate to relations between the two parliaments.

[...]

The Chairman of the Committee, Mohammad Sarwar MP, said: "That we continue to debate the findings of the Calman Commission is testament to its importance. We warmly commend the work of the Commission and agree with its key finding that mutual respect between the governments and parliaments is paramount.

"The recommendations we have made in our report are designed to facilitate closer cooperation, but this will only become a reality if supported by genuine political will. We urge the future Scottish Affairs Committee to continue our work to ensure this happens."⁵¹

The conclusions and recommendations of the report were as follows:

⁴⁹ HC 255, 2009-10, Ev 47-8

⁵⁰ HC 255, 2009-10, Ev 1-34

⁵¹ Press notice issued on publication of the report on 11 March 2010:
<http://www.parliament.uk/business/committees/committees-archive/scottish-affairs-committee/sacpn100305no1/>

- 1.** The House should agree a resolution endorsing the principle that the consent of the Scottish Parliament should be sought where it is intended to bring in a government bill which includes provisions touching on devolved matters (Paragraph 21.a)
- 2.** A Standing Order should be made providing for the Speaker to lay before the House any communication received from the Presiding Officer of the Scottish Parliament relating to legislative consent motions or related matters. (Paragraph 21.b)
- 3.** We conclude that the recommendation that one or more Scottish MPs should be included on a Public Bill Committee examining a bill that engages the Sewel Convention is welcome, and recommend that the Committee of Selection endeavour to ensure that a representative range of political views be covered by such appointments. (Paragraph 23)
- 4.** We recommend that the Procedure Committee give positive consideration to the possibility of extending evidence-taking powers, along the lines of those given to public bill committees, to delegated legislation committees in defined circumstances. An alternative would be for the Secretary of State for Scotland to invite this Committee to undertake some form of pre-legislative scrutiny of such orders, as the Welsh Affairs Committee does with proposals for legislative competence orders relating to the powers of the National Assembly (Paragraph 25)
- 5.** We recommend that the Government should provide time for a regular "State of Scotland" debate which would extend to devolved matters. The resolution of the House of 25 October 1999, relating to questions to Ministers, and the wider application of the "self-denying ordinance" are matters which we hope will be considered by the Procedure Committee at an early date. (Paragraph 27)
- 6.** We recommend that the necessary changes be made to standing orders to allow the Scottish Affairs Committee to invite members of committees of the Scottish Parliament to attend its committee meetings in a non-voting capacity. We invite the Scottish Parliament to consider reciprocal provisions in its standing orders. (Paragraph 30)
- 7.** We invite the Procedure Committee to revisit the idea of a "Scottish Super Grand Committee". (Paragraph 32)
- 8.** We conclude, however, that removing procedural barriers is only one part of improving communication and co-operation between committees. The structures should be put in place to facilitate co-operation, but that co-operation will only result if there is the political will for committees to work together. (Paragraph 33)
- 9.** We recommend that the House of Commons Administration Committee examine the access arrangements for MSPs visiting Westminster and we suggest that its equivalent committee at the Scottish Parliament examine the arrangements for MPs visiting Holyrood so that unnecessary barriers to working together can be removed. (Paragraph 35)
- 10.** Both the UK Government and Scottish Executive have indicated that they would be willing to respond positively to requests to appear before committees of either Parliament. However, we conclude that invitations should be at the discretion of the committee or Parliament and reflect the workload and timetable of both UK and Scottish Government Ministers and the Secretary of State for Scotland. (Paragraph 39)
- 11.** We agree with the recommendation that Scottish MPs should regularly scrutinise the shape and operation of the devolution settlement. We, as a Committee, engage in

this scrutiny on a regular basis and encourage our successors to continue in a similar fashion. (Paragraph 41)

12. We invite Mr Speaker to encourage the permanent service of the House to recognise as one of its tasks the enhancement of communication and co-operation between the House and the Scottish Parliament, and to apply appropriate resources to this duty. (Paragraph 43)

13. We recommend that the House authorities encourage and fund a planned programme of exchanges and secondments with the Scottish Parliament, in co-operation with the permanent service of that Parliament, with the aim of having at least one such arrangement running at any time. (Paragraph 44)⁵²

In a written ministerial statement on 6 April 2010 the UK Government welcomed the Scottish Affairs Committee's report on the inter-parliamentary recommendations made by the Commission on Scottish Devolution (see below).

13 Next steps

13.1 Labour Government

The UK Government white paper *Scotland's future in the United Kingdom: building on ten years of Scottish devolution*, published on 25 November 2009⁵³ set out conclusions and next steps:

6.1 The Government sees these plans as part of a coherent package for refreshing devolution in Scotland. Changes to the powers and financial accountability of the Scottish Parliament will require legislation. The Government envisages introducing legislation as soon as possible in the next Parliament. The legislation will require the consent of the Scottish Parliament under the Sewel Convention.

6.2 Discussions on improving intergovernmental cooperation have already begun in the Joint Ministerial Committee. The Government will wish to undertake detailed work with Scottish Ministers on the introduction of the new financial system and to discuss budgetary implications with them in due course.

6.3 The Government welcomes the commitment of the UK Parliament and the Scottish Parliament to take forward work on those of the Calman Commission's recommendations which are for them, and will continue to be involved in those discussions where they consider it helpful for us to do so.

6.4 We believe that these changes, once implemented, will provide a strong foundation for building on the Scottish Parliament's successful first ten years, to refresh devolution and reinvigorate Scotland's place at the heart of the United Kingdom.

In [evidence](#) to the Scottish Affairs Committee on 13 January 2010 the Secretary of State for Scotland, Jim Murphy, indicated which of the recommendations of the report of the Calman Commission the UK Government was accepting and would be taking forward:

Q286 (13.01.10) Chairman: Sir Kenneth Calman described the recommendations as "a package of 63 recommendations which hang together".^[5] Has the Government disrupted this by only accepting selected recommendations?

⁵² HC 255, 2009-10, pp16-7

⁵³ Cm 7738 25 November 2009

Mr Murphy: There are 63, as you say, Chairman, 42 for the Government, 21 for others, including the two Parliaments. Of the 42 we are accepting and taking forward 39. It may be helpful for me to mention the three that we are not currently progressing. One is the JMC on finance. We think the current arrangements on the Finance Quadrilateral arrangements are right. The other two are on housing benefit and deprived area funds money because we believe in a social union of the United Kingdom and that people, whether they are unemployed in Glasgow or Gateshead, should have similar access to benefit entitlements in a welfare state. We instinctively believe as a Government that the welfare state is one of the great unifying things of our nation and in times like these in particular it is important that we support it. Those are the three that we are not attracted to at the moment.

Q287 (13.01.10) Chairman: Yes, but is work on the implementation of the recommendations already underway or will it be delayed into the new Parliament?

Mr Murphy: Behind the scenes and across Whitehall a huge amount of work is going on. We want to get to a position where we have a Bill ready to go early in the next Parliament, so we cannot wait through the preparations until the next Parliament begins. As I alluded to earlier, Chairman, I met with the Chancellor yesterday and officials met with Treasury officials yesterday, because that is by far and away the vast work that has got to be done out of Calman's recommendations. The work is taking place and we will try and show that that work is taking place before too long, but we will continue to listen to this Committee and others as to how they think we should progress with it.⁵⁴

The UK Government's position was re-stated by Lord Bach, replying to a [debate](#) in the House of Lords on constitutional reform on 28 January 2010. Responding to points made by Lord Wallace of Tankerness, a member of the Calman Commission, Lord Bach said:

The noble Lord, Lord Wallace of Tankerness, asked about devolution. He served with distinction on the Calman commission. We think that devolution has been a great success for the past 10 years. We want to make it better and more accountable. Our proposals will set out a new deal. We are committed to bringing forward a single piece of primary legislation as soon as possible in the next Parliament to ensure that people in Scotland have robust legislation, grounded in proper analysis, to deliver this enhanced devolution. As the House will be aware, the Calman recommendations were designed as a package and are being treated as such. Our feeling is that any attempt to cherry pick a small number of recommendations while simply dismissing the vast majority of proposals ignores the deliberations of the commission, evidence-based as it was, and disregards the need to ensure that these recommendations are carefully and coherently introduced.⁵⁵

Similar points were made by the Secretary of State for Scotland answering oral questions in the Commons on [24 February 2010](#)⁵⁶ and [7 April 2010](#).⁵⁷

The UK Government welcomed the Scottish Affairs Committee's report on the inter-parliamentary recommendations made by the Commission on Scottish Devolution. In a written ministerial statement on 6 April 2010 the Secretary of State for Scotland, Jim Murphy, stated:

Commission on Scottish Devolution

⁵⁴ HC 255, 2009-10, Ev 46, Q286-7

⁵⁵ HL Deb 28 January 2010 c1599

⁵⁶ HC Deb 24 February 2010 c284-7

⁵⁷ HC Deb 7 April 2010 cc955-6

The Secretary of State for Scotland (Mr. Jim Murphy): The Government welcome the Scottish Affairs Committee's report on the inter-parliamentary recommendations made by the Commission on Scottish Devolution. The commission, established by the Scottish Parliament in December 2007 and supported by the UK Government, produced its final report in June 2009. The report set out a package of measures designed to review 10 years of experience of devolution and to recommend changes to enable the Scottish Parliament to serve the people of Scotland better, to improve the financial accountability of the Scottish Parliament and continue to secure the position of Scotland within the United Kingdom.

The Government welcomed the final report from the Commission on Scottish Devolution on its publication and responded formally with a White Paper "Scotland's Future in the United Kingdom" on 25 November 2009. Of the 63 recommendations, 42 were for Government to consider and 39 were accepted in the White Paper, including a radical package of reform to the financial accountability of the Scottish Parliament. The Government signalled their commitment to bring forward legislation as soon as possible in the next Parliament for those matters outlined in the White Paper that require it.

The Scottish Affairs Committee's consideration followed a letter from the Speaker of the House of Commons to both the Scottish Affairs Committee and the Procedure Committee to ask for their views on how the recommendations in part 4 of the Calman commission's final report might be taken forward. Part 4 of the commission's final report related to relations between Parliaments and Governments.

Response to the Committee's Recommendations and Findings

The Scottish Affairs Committee's report provides consideration of the recommendations made by the Commission on Scottish Devolution in relation to strengthening co-operation and communication between the House of Commons and the Scottish Parliament. These recommendations cover the following areas of co-operation and communication:

Operation of the Sewel Convention between Parliaments;

Increased involvement of Scottish MPs on Public Bill Committees where the Sewel Convention is engaged;

Introduction of a regular "State of Scotland" debate and reconsideration of the "self-denying ordinance";

Ensuring that Standing Orders allow greater co-operation between committees in the House of Commons and Scottish Parliament;

Consideration of a "Scottish Super Grand Committee";

Examination of the access arrangements for MSPs and removal of the equivalent barriers in the Scottish Parliament;

Discretion for committees and Parliaments to invite Ministers to appear before committees of either Parliament;

Continued role for MPs and Scottish Affairs Committee in scrutinising the shape and operation of the devolution settlement;

Enhanced communication and co-operation between the House of Commons and the Scottish Parliament, including appropriate resourcing to enable this to happen and a recommendation for secondment and exchanges of staff.

All of these recommendations relate to the operation of effective inter-parliamentary relations. These are matters for the House, as acknowledged by the Government in the White Paper. Where the committee recommends changes to Standing Orders the Government will give consideration to bringing forward the necessary motions early in the next Parliament.

In the White Paper the Government agreed that a strong relationship between the UK Parliament and the Scottish Parliament was an essential part of a framework for co-operation within the UK. We also welcomed the support shown by the Speaker of the House of Commons and the Presiding Officer of the Scottish Parliament to consideration of how to strengthen their relationships in its White Paper.

The Government believe that the third report from the Scottish Affairs Committee provides a very positive response and a strong framework for improving co-operation in line with the recommendations from the Commission on Scottish Devolution.⁵⁸

13.2 Coalition Government

The Conservative – Liberal Democrat Coalition Government have published *The Coalition: our programme for government* which states:

- We will implement the proposals of the Calman Commission and introduce a referendum on further Welsh devolution⁵⁹

The Queen's Speech on 25 May 2010 announced legislation to "implement recommendations from the Final Report of the Commission on Scottish Devolution".⁶⁰ Briefing on the website of the Prime Minister's Office⁶¹ stated:

Queen's Speech – Scotland Bill

"My Government will introduce legislation to implement recommendations from the Final Report of the Commission on Scottish Devolution."

The purpose of the Bill is to:

The Bill would implement recommendations of the Final Report of the Commission on Scottish Devolution (the Calman Commission).

The main benefits of the Bill would be:

- Strengthening the devolution settlement in Scotland.
- Increasing the financial accountability of the Scottish Parliament.
- Renewing the policy responsibility split between the UK and Scottish Parliament.
- Improving the relationship between the UK Government and Scottish Ministers.

The main elements of the Bill are:

They will be made clear in due course.

Existing legislation in this area is:

⁵⁸ HC Deb 6 April 2010 cc136-7WS

⁵⁹ HM Government, *The Coalition: our programme for government*, May 2010, p28

⁶⁰ HC Deb 25 May 2010 c32

⁶¹ <http://www.number10.gov.uk/>

The Scotland Act 1998.

Devolution:

The issues addressed in this Bill concern the devolution of various powers to the Scottish Parliament

Further details were given during the [debate](#) on the Queen's Speech in the House of Lords on 27 May 2010 by the Minister of State, Ministry of Justice, Lord McNally:

We will also bring forward legislation to implement the Calman commission's final report on Scottish devolution.⁶²

and the Minister of State, Home Office, Baroness Neville-Jones, who said she hoped the bill would be introduced in the autumn:

I want to refer to two other points of constitutional significance that were raised during the debate. The first concerned Scotland. The noble and learned Lord, Lord Boyd of Duncansby, who served on the Calman commission, asked about the timing of a Bill to implement the commission's recommendations. It is hoped that a Bill will be introduced in the autumn. Obviously, given its importance both Houses will want to give it careful consideration and it would be premature at this stage to anticipate when it will reach the statute book. However, the noble and learned Lord can be reassured that we want the Bill to make steady progress through Parliament. That is one of the things that we want to get through. I also confirm that on this issue the respect agenda goes across the political spectrum. Already this week, the noble and learned Lord, Lord Wallace of Tankerness, met the leader of Labour MSPs, at Mr Iain Gray's request, so the matter is under way.⁶³

13.3 Scottish Parliament debate 27 May 2010

The Scottish Parliament held a [debate](#) on motion S3M-6409, in the name of Annabel Goldie, on relationships between Her Majesty's Government and the Scottish Parliament and Government.

S3M-06409 Annabel Goldie (West of Scotland) (Scottish Conservative and Unionist Party): Relationships between HM Government and the Scottish Parliament and Government— That the Parliament welcomes the commitment of HM Government to establish a positive and constructive working relationship with the Scottish Government and Parliament to tackle the problems facing the country and, in particular, welcomes the commitment in the Queen's Speech to introduce legislation to implement recommendations from the final report of the Commission on Scottish Devolution and the willingness to consider matters in relation to the Fossil Fuel Levy

Amendments were lodged by MSPs from other parties:

S3M-06409.1 Fiona Hyslop (Lothians) (Scottish National Party): Relationships between HM Government and the Scottish Parliament and Government— As an amendment to motion S3M-6409 in the name of Annabel Goldie (Relationships between HM Government and the Scottish Parliament and Government), insert at end "and fiscal responsibility issues."

⁶² HL Deb 27 May 2010 c137

⁶³ HL Deb 27 May 2010 c243

Supported by: Bruce Crawford

S3M-06409.2 Mike Rumbles (West Aberdeenshire and Kincardine) (Scottish Liberal Democrats): Relationships between HM Government and the Scottish Parliament and Government— As an amendment to motion S3M-6409 in the name of Annabel Goldie (Relationships between HM Government and the Scottish Parliament and Government), insert at end “, and believes that the UK Government’s programme, including plans to raise the income tax threshold to £10,000, build a new, sustainable economy and reform the political system, will put fairness at the heart of government and deliver real benefits to the people of Scotland.”

S3M-06409.3 Pauline McNeill (Glasgow Kelvin) (Scottish Labour): Relationships between HM Government and the Scottish Parliament and Government— As an amendment to motion S3M-6409 in the name of Annabel Goldie (Relationships between HM Government and the Scottish Parliament and Government), leave out from “, in particular,” to end and insert “calls on the UK Government to implement the recommendations of the Commission on Scottish Devolution in full and without delay.”

The Minister for Culture and External Affairs, Fiona Hyslop, emphasised the importance of the relationship between the UK Government and the Scottish Government and set out the extent of the Scottish Government’s support for the recommendations of the final report of the Calman Commission.

The Minister for Culture and External Affairs (Fiona Hyslop): We agree that it is important to have a positive and constructive relationship between the UK Government and the Scottish Government to advance Scotland’s interests. In addition, we note the early contact by the new UK Government with the Scottish Parliament.

We think that the relationship between the UK and Scottish Governments should be based on mutual respect and parity of esteem. The Prime Minister has met the First Minister. I understand that that was a productive meeting, and I look forward to the development of a constructive intergovernmental relationship with the UK Government. That is how it should be, but the fact that some progress is now being made probably says more about the previous Labour UK Government than anything else. What we have called for is straightforward normal intergovernment practice. Although some might see progress as concessions, those shifts are just the realisation of reasonable requests and of normalising a Government-to-Government approach.

However, we have been clear that the test of this respect relationship will be deeds, not words. If the UK Government makes progress on the issues that we have raised—including capital acceleration, borrowing powers for the Scottish Parliament, releasing the £180 million fossil fuel levy rather than just reviewing it, and a fair approach to Olympics regeneration Barnett consequentials—that would indicate respect in action.

Robert Brown (Glasgow) (LD): Will the minister outline the Scottish Government’s side of the respect agenda?

Fiona Hyslop: I was about to come on to that point, on which we have indeed made progress.

In addressing the content of the Conservative motion, I confirm, as we did in our response at the time, that we can support a significant number of the Calman recommendations, particularly in the areas of relationships and legislation. There are

29 recommendations that we accept and a further 20 that either need more clarification or relate to the Parliament. I have already indicated to the Secretary of State for Scotland that we can work with him on the issues. We note that the Conservative motion does not commit to the implementation of all the Calman recommendations.

14 Financial and other support for the Commission

Information about financial and other support given to the Calman Commission by the UK Government and the Scottish Parliament Parliamentary Body has been given in parliamentary answers:

Support from the UK Government

Pete Wishart: To ask the Secretary of State for Scotland what (a) financial and (b) other support the UK Government has made available to support the work of the Calman Commission. [285582]

Ann McKechin: The UK Government provided around £500,000 for the commission's work, which concluded on 15 June 2009 with the publication of the final report. The report which was widely welcomed across Scotland was presented jointly to the Scottish Parliament and the UK Government as co-sponsors.

During the commission's consideration the UK Government provided evidence and factual information to assist the commission with its deliberations. Both the Scottish Parliament, UK Parliament and the UK Government also provided resources such as committee rooms and technical support for some of the commission's oral evidence sessions.

As my right hon. Friend the Secretary of State for Scotland indicated in his written ministerial statement to the House on 15 June 2009, *Official Report*, column 5WS, the Government warmly welcome this report.⁶⁴

Support from the Scottish Parliamentary Corporate Body

S3W-25927 - Christina McKelvie (Central Scotland) (SNP) (Date Lodged Friday, July 17, 2009): To ask the SPCB, further to the answer to question S3W-25373 by Alex Fergusson on 16 July 2009, whether it will provide further breakdowns of the costs to it of the Calman Commission on Scottish Devolution.

Answered by Alex Fergusson (Tuesday, August 11, 2009): The breakdown of costs to the Scottish Parliamentary Corporate Body of the Calman Commission on Scottish Devolution are as follows: the secondment of a clerk team leader for 14 months - £84,500; official reports of evidence sessions " £17,181; events team (ushers, catering etc) - £4943; broadcasting " £3078, Scottish Parliament's Information Centre - £4891. The costs were met from the respective office budgets.

S3W-25374 - Christina McKelvie (Central Scotland) (SNP) (Date Lodged Thursday, June 25, 2009): To ask the SPCB whether it has projected the cost to the Parliament of being involved in a steering group arising from the recommendations of the Calman Commission on Scottish Devolution and, if so, how the costs would be incurred.

⁶⁴ HC Deb 10 July 2009 c938W

Answered by Alex Fergusson (Thursday, July 16, 2009): The SPCB has not yet established any projected costs arising from motion S3M-4490 agreed to by the Parliament on 25 June 2009. As with the support provided to the Calman Commission on Scottish Devolution, regular reports will be made to the SPCB.

S3W-25373 - Christina McKelvie (Central Scotland) (SNP) (Date Lodged Thursday, June 25, 2009): To ask the SPCB what the cost to the Parliament was of the Calman Commission on Scottish Devolution.

Answered by Alex Fergusson (Thursday, July 16, 2009): The final cost to the SPCB of fulfilling the direction contained in motion S3M-976 to support the Calman Commission on Scottish Devolution are as follows " £111,161.87 on staff time (seconded Clerk Team Leader for 14 months, broadcasting contractors, SPICe support, provision of Official Report and Events ushers); catering and other costs - £3,432.73. These costs were met from existing budgets.

15 Further information

See the following websites/article:

Commission on Scottish Devolution: <http://www.commissiononscottishdevolution.org.uk/>

Scottish Parliament: <http://www.scottish.parliament.uk/>

Scotland Office: http://www.scotlandoffice.gov.uk/scotlandoffice/CCC_FirstPage.jsp

Scottish Government: <http://www.scotland.gov.uk/Home>

Constitution Unit, University College London, *Devolution monitoring reports 2006-9* (see those on Scotland):

<http://www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html>

Constitution Unit, University College London, *Devolution matters blog*:

<http://devolutionmatters.wordpress.com/>

Alan Trench, 'The Calman Commission and Scotland's disjointed constitutional debates', *Public Law*, October 2009, pp686-96

Appendix 1: The Calman Commission's recommendations

The Commission made 63 specific recommendations. There appears to be no single listing of them in the [final report](#); they appear in (and are numbered according to) the part to which they relate. The recommendations are brought together and reproduced for convenience below.

Part 2: Understanding Scotland's place in the Union: Scotland's place in an economic and social union

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

Part 3: Strengthening accountability and finance

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

a. Therefore the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, collected by HMRC, which should apply to the basic and higher rates of income tax.

b. To make this possible, the basic and higher rates of income tax levied by the UK Government in Scotland should be reduced by 10 pence in the pound and the block grant from the UK to the Scottish Parliament should be reduced accordingly.

c. Income tax on savings and distributions should not be devolved to the Scottish Parliament, but half of the yield should be assigned to the Scottish Parliament's Budget, with a corresponding reduction in block grant.

d. The structure of the income tax system, including the bands, allowances and thresholds should remain entirely the responsibility of the UK Parliament.

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

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

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

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

a. The present Finance Ministers Quadrilateral Meeting should become a Joint Ministerial Committee on Finance (JMC(F)), and should meet regularly on a transparent basis to discuss not just spending but taxation and macro-economic policy issues.

b. HMRC should advise Scottish Ministers in relation to those devolved taxes it is tasked with collecting and their responsibilities in relation to income tax and should account to them for the operation of these Scottish taxes. Scottish Ministers should be consulted on the appointment of the Commissioners of HMRC.

c. All the relevant spending or grant calculations done by HMRC and HM Treasury should be audited by the National Audit Office which should publish an annual report on the operation of the funding arrangements, including reporting to the new JMC(F) and to the Scottish Parliament.

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

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

a. The existing power for Scottish Ministers to borrow for short term purposes should be used to manage cash flow when devolved taxes are used. Consideration should be given to using the power in the Scotland Act to increase the limit on it if need be.

b. Scottish Ministers should be given an additional power to borrow to increase capital investment in any one year. There should be an overall limit to such borrowing, similar to the Prudential regime for local authorities. The amount allowed should take account of capacity to repay debt based on future tax and other receipts. Borrowing should be from the National Loans Fund or Public Works Loans Board.

Part 4: Strengthening cooperation

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

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

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

a. There should be detailed communication about legislative consent motions (LCMs), and in particular if a Bill subject to an LCM is amended such that it is outside the scope of the LCM.

b. A mechanism should exist for each Parliament to submit views to the other, perhaps by passing a motion where appropriate.

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

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

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

a. Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed.

b. Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed.

c. Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.

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

a. UK and Scottish Government Ministers should commit to respond positively to requests to appear before committees of the others' Parliament.

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

RECOMMENDATION 4.8: Shortly after the Queen's Speech the Secretary of State for Scotland (or appropriate UK Government Cabinet Minister) should be invited to appear before the Scottish Parliament to discuss the legislative programme and respond to questions in a subsequent debate. Similarly, after the Scottish Government's legislative programme is announced the First Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters.

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

a. For any UK Parliament Bill which engages the Sewel Convention on a matter of substance, consideration should be given to including one or more Scottish MPs on the Public Bill Committee, who should then be invited, as appropriate, to meet the Scottish Parliament committee scrutinising the legislative consent memorandum

b. A Scottish Minister should as appropriate be asked to give evidence to the UK Parliament committee examining Orders made under the Scotland Act.

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

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

RECOMMENDATION 4.12: The JMC machinery should be enhanced in the following ways:

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

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

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

RECOMMENDATION 4.14: Where inter-governmental ministerial meetings are held to discuss the overall UK position in relation to devolved policy areas, the relevant Secretary of State should generally chair these meetings on behalf of the overall UK interest, with another relevant UK Minister representing the policy interests of the UK Government in relation to those parts of the UK where the policy is not devolved.

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

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

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

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

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

RECOMMENDATION 4.18: Closer involvement between Scottish MEPs and the Scottish Parliament is needed, and Scottish MEPs should be invited to attend, and

should attend, the Scottish Parliament European and External Relations Committee regularly on a non-voting basis. The Committee should schedule its meetings to facilitate their regular attendance.

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

a. Agendas and timelines should be published in advance of each JMC, JMC(E), JMC(D) or JMC(F) meeting, and a communiqué from each should be issued.

b. After each full JMC meeting the First Minister should make a statement to the Scottish Parliament, and the Prime Minister, or UK Government Cabinet Minister with responsibility for Scotland, should make a statement to the UK Parliament.

c. An annual report of the JMC should be prepared, and laid by each Government before its Parliament, and it should be scrutinised by the new of the UK Parliament and the Scottish Parliament.

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

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

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

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

Part 5: Strengthening the devolution settlement

The Commission identified a number of places where it felt the boundary of the settlement – either the legislative powers of the Scottish Parliament or the powers of Scottish Ministers – should be adjusted. These included a number of matters which it thought should be **devolved**.

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

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

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

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

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

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

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

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

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

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

Similarly there were a number of areas where the Commission thought that **matters would be more effectively dealt with at a UK level**. These were:

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

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

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

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

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

In addition to these areas where the Commission recommended adjustment to the boundary of the settlement, there were a number of matters where it thought the issues it had considered can be addressed through **closer working between the Parliaments and the Governments**. These are:

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

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

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

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

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

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

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

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

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

Part 6: Strengthening the Scottish Parliament

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

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

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

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

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

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

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

RECOMMENDATION 6.7: Section 19(1) of the Scotland Act should be amended so as to loosen the requirement on the Parliament to appoint a Presiding Officer and deputies at the first meeting of a new session, and to enable additional deputies to be appointed if and when that becomes appropriate.

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

Appendix 2: The UK Government's response to the Calman Commission's recommendations

In his statement to the House of Commons on 25 November 2009, the Secretary of State for Scotland, Jim Murphy, said:

The hon. Gentleman and the House will be interested to know that Sir Ken Calman made 63 recommendations. Twenty-one were for the Parliaments, but 42 were for Her Majesty's Government, and we are committed to taking forward 39 of them.

The Government's response to the Commission's recommendations in *Scotland's future in the United Kingdom*⁶⁵ is reproduced below (see text in italics):

Annex

THE GOVERNMENT'S RESPONSE TO THE COMMISSION'S RECOMMENDATIONS

2.1 The Scottish Parliament and UK Parliament should confirm that each agrees to the elements of those common social rights (and perhaps responsibilities) that shape the Union.

The Government is supportive of both Parliaments, and the other legislatures across the United Kingdom, giving consideration to and agreeing upon those elements of common social rights and responsibilities that make up the social union.

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

a. Therefore the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, collected by HMRC, which should apply to the basic and higher rates of income tax.

b. To make this possible, the basic and higher rates of income tax levied by the UK Government in Scotland should be reduced by 10 pence in the pound and the block grant from the UK to the Scottish Parliament should be reduced accordingly.

c. Income tax on savings and distributions should not be devolved to the Scottish Parliament, but half of the yield should be assigned to the Scottish Parliament's Budget, with a corresponding reduction in block grant.

d. The structure of the income tax system, including the bands, allowances and thresholds should remain entirely the responsibility of the UK Parliament.

The Government accepts the recommendation that part of the budget should now be found from devolved taxation under its control rather than from grant from the UK Parliament. The Government's plans are detailed in Chapter 4. The Government does not attach priority to the implementation of recommendation (c) as it creates difficult operational complications without genuinely improving financial accountability, although it will keep the situation under review.

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

⁶⁵ Cm 7738

The Government's plans in relation to stamp duty land tax, aggregates levy and landfill tax are set out in Chapter 4 above. The Government does not attach priority to the implementation of the recommendation on air passenger duty, although it will keep the situation under review.

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

The Government will carefully consider any taxes proposed by the Scottish Parliament that could be introduced alongside the proposals above as part of the proposed package of devolved taxes, subject to European state aids clearance.

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

The Government agrees that a block grant should continue to make up a substantial proportion of the Scottish budget, and that the Barnett formula should continue to be used to determine it. The Government has no plans to review the Barnett formula itself, but will continue to keep all aspects of public spending including the Barnett formula under review, and it will continue to keep the Barnett formula up to date.

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

a. The present Finance Ministers Quadrilateral Meeting should become a Joint Ministerial Committee on Finance (JMC(F)), and should meet regularly on a transparent basis to discuss not just spending but taxation and macro-economic policy issues.

b. HMRC should advise Scottish Ministers in relation to those devolved taxes it is tasked with collecting and their responsibilities in relation to income tax and should account to them for the operation of these Scottish taxes. Scottish Ministers should be consulted on the appointment of the Commissioners of HMRC.

c. All the relevant spending or grant calculations done by HMRC and HM Treasury should be audited by the National Audit Office which should publish an annual report on the operation of the funding arrangements, including reporting to the new JMC(F) and to the Scottish Parliament.

The Government has no plans to change the current arrangements for appointing HMRC Commissioners.

The Government has no present plans to replace the finance ministers' quadrilateral by a Finance JMC on the basis that there is no compelling case for the creation of an additional forum, but we will keep the situation under review.

The Government notes that the National Audit Office is already responsible for auditing the spending of the Scotland Office, and sees no need to extend this role.

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

The Government agrees that implementation should be phased in for the reasons that the Commission sets out and has taken this into account in developing the plans set out in Chapter 4.

3.7 The Scottish Ministers should be given additional borrowing powers:

a. The existing power for Scottish Ministers to borrow for short term purposes should be used to manage cash flow when devolved taxes are used. Consideration should be given to using the power in the Scotland Act to increase the limit on it if need be.

b. Scottish Ministers should be given an additional power to borrow to increase capital investment in any one year. There should be an overall limit to such borrowing, similar to the Prudential regime for local authorities. The amount allowed should take account of capacity to repay debt based on future tax and other receipts. Borrowing should be from the National Loans Fund or Public Works Loans Board.

Scottish Ministers currently have a power under the Scotland Act to borrow for short-term current spending, although this power has not yet been used. The Government proposes to maintain the existing borrowing power and keep the borrowing limit under review.

Furthermore, the Government considers that when greater tax devolution is introduced, it will be appropriate to introduce a new capital borrowing power to enable Scottish Ministers to borrow from the National Loans Fund at normal rates and terms to fund increases in agreed categories of capital investment. Such borrowing would be subject to limits set by the Treasury within the fiscal framework in place at the time, and would be self-financed by increasing revenue from taxation in Scotland above the level of the rest of the UK. This will mean that the Scottish Ministers will be able to allow more public investment in the Scottish economy. By the same token, they will be accountable through the system for the additional costs of repaying it. This will increase the power and responsibility of the Scottish Ministers and their accountability to Scottish taxpayers.

The total amount of borrowing available in any one year would be set in the Spending Review, in the light of the fiscal circumstances at the time. Treasury Ministers would take account of the levels of all borrowing, including borrowing by Scottish local authorities, in setting the limit.

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

The Government strongly agrees that mutual respect should be the guiding principle in relations within the UK.

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

The Government will continue to respect and adhere to the Sewel Convention. Each House may wish to consider passing a resolution on the Convention. The recommendation is for each House to consider.

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

a. There should be detailed communication about legislative consent motions (LCMs), and in particular if a Bill subject to an LCM is amended such that it is outside the scope of the LCM.

b. A mechanism should exist for each Parliament to submit views to the other, perhaps by passing a motion where appropriate.

This is for each House of Parliament and the Scottish Parliament to consider.

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

The Government believes that it is timely for both Houses to re-examine the constraints on backbenchers proposing debates on devolved matters as they affect Scotland. The Government supports the current House of Commons resolution and House of Lords guidance that Ministers are not normally questioned on devolved matters. The Secretary of State will participate in a 'state of Scotland' debate if the House of Commons so requests.

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

This is for each House of Parliament and the Scottish Parliament to consider.

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

a. Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed.

b. Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed.

c. Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.

The Government reiterates its agreement with the House of Commons Procedure Committee's 1999 report, The Procedural Consequences of Devolution, that there should be as few procedural barriers as possible where cooperation is desired. The recommendation is for each House of Parliament and the Scottish Parliament to consider.

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

a. UK and Scottish Government Ministers should commit to respond positively to requests to appear before committees of the others' Parliament.

b. The UK Government Cabinet Minister with responsibility for Scotland should be invited to appear annually before a Scottish Parliament Committee comprised of all committee convenors, and the First Minister should be invited to appear annually before the House of Commons Scottish Affairs Committee.

Government Ministers have previously appeared before committees of the Scottish Parliament. The Government welcomes further such invitations as a practical way of demonstrating mutual respect. Otherwise the recommendation is for the Scottish Parliament, the Scottish Affairs Committee and Scottish Ministers to consider but for its part, the Government would welcome such a move.

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

The Secretary of State will, if invited to do so by the Scottish Parliament, appear annually to discuss the legislative programme at a mutually convenient time. The second part of the recommendation is for the Scottish Affairs Committee and the First Minister to consider, but for its part, the Government would welcome such a move.

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

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

The Government will endeavour to secure the inclusion of Scottish MPs on Public Bill Committees for Bills subject to the Sewel Convention on a matter of substance. It is for the Scottish Parliament to consider whether to extend invites to any MPs. The second part of the recommendation is for each House to consider.

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

This is for each House of Parliament and the Scottish Parliament to consider.

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

This is for each House of Parliament and the Scottish Parliament to consider.

4.12 The JMC machinery should be enhanced in the following ways:

- a. The primary focus should be on championing and ensuring close working and cooperation rather than dispute resolution (though it will be a forum to consider the latter as well).
- b. There should be an expanded range of areas for discussion to provide greater opportunities for cooperation and the development of joint interests.

c. There should be scope to allow issues to be discussed at the appropriate level including the resolution of areas of disagreement at the lowest possible level.

The Government has taken steps over the last 18 months to enhance the JMC as set out in Chapter 3.

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

a. JMC(D) and JMC(E) should continue in much the same form, but with more regular meetings and to a longstanding timetable. There should be an additional JMC(Finance) which subsumes the role of the Finance Quadrilateral.

b. Sitting below the JMC(D), JMC(E) and JMC(F) meetings should be a senior officials meeting, JMC(O).

As set out in Chapter 3, the Government is in discussion with all three Devolved Administrations about how best to improve relations. The Government's position on JMC(F) is set out at 3.5, above.

4.14 Where inter-governmental ministerial meetings are held to discuss the overall UK position in relation to devolved policy areas, the relevant Secretary of State should generally chair these meetings on behalf of the overall UK interest, with another relevant UK Minister representing the policy interests of the UK Government in relation to those parts of the UK where the policy is not devolved.

As set out in Chapter 3, the Government is in discussion with all three Devolved Administrations about how best to improve relations.

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

The Government is content with current arrangements whereby ad hoc adjustments to the legislative competence of the Scottish Parliament are made in Parliament through Scotland Act orders. The current arrangements work well; but the Government is interested in the views of the Scottish Parliament on this recommendation.

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

a. Early and proactive engagement by the relevant UK Government department with its Scottish Government counterpart should be a matter of course.

b. In addition, Scottish Ministers and the relevant Scottish Parliament committee should become more proactive in identifying EU issues of interest to Scotland at an early stage, and taking the initiative accordingly.

c. The JMC(E) should continue to be used to determine the UK Government position on EU matters.

The Government's plans for strengthening the development of the UK Government position in relation to the EU are set out in Chapter 3.

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

a. When a request is received there should be a presumption that Scottish Ministers are accepted as part of the UK delegation where EU matters which cover devolved areas are for discussion.

b. When Scottish Ministers request to speak in support of the agreed UK Government line there should be a presumption that this is granted wherever practicable.

The Government is keen that Ministers make their decisions on whether a Devolved Administration may be

able to participate in a United Kingdom delegation on a timely basis, following clear guidance. The Cabinet Office will therefore draw up guidance, following consultation with the three Devolved Administrations, consolidating best practice and setting out the factors which need to be addressed when requesting attendance and when taking decisions on individual delegations.

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

This is for Scottish MEPs and the Scottish Parliament to consider.

4.19 The JMC process should be subject to greater parliamentary scrutiny and have greater public transparency:

a. Agendas and timelines should be published in advance of each JMC, JMC(E), JMC(D) or JMC(F) meeting, and a communiqué from each should be issued.

b. After each full JMC meeting, the First Minister should make a statement to the Scottish Parliament, and the Prime Minister, or UK Government Cabinet Minister with responsibility for Scotland, should make a statement to the UK Parliament.

c. An annual report of the JMC should be prepared, and laid by each Government before its Parliament, and it should be scrutinised by the new standing joint liaison committee of the UK Parliament and the Scottish Parliament.

The Government's plans to ensure greater transparency around the JMC process are set out in Chapter 3.

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

This is for Scottish MPs and the Scottish Affairs Committee to consider but for the Government's part we would support such a position.

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

The Government is committed to maintaining the unified civil service, and accepts this recommendation.

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

The Government recognises the importance of ongoing training and awareness raising programmes and we are working with the Devolved Administrations to improve understanding of devolution and encourage good working relations at all levels of all the administrations.

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

The Government agrees that it is important that mutual respect and cooperation should be at the heart of working relations amongst civil servants working for the Devolved Administrations and for the Government. The Government will consider how best this point might be reflected in the Civil Service Code when the next edition is produced.

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

The Government will consider carefully how certain aspects of executive responsibility for putting in place the framework for the administration of the Scottish Parliament elections might be devolved, whilst ensuring the efficient and effective conduct of elections.

5.2 There should be a single definition of the expressions 'charity' and 'charitable purposes' applicable for all purposes throughout the UK. This should be enacted by the UK Parliament with the consent of the Scottish Parliament.

The Government recognises the importance of ensuring charities can function effectively and simply across the whole of the UK. The Government is willing to work with the Devolved Administrations to consider improvements for the existing definitions.

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

The Government agrees that charities should be able to conduct their charitable business across the whole of the UK, regardless of registration. The legal framework for charities in England and Wales does not impose additional registration, reporting and accounting requirements on charities operating in England and Wales, but registered in another part of the UK. We will continue to work with the Devolved Administrations to consider improvements to the current system of regulation for charities that operate throughout the UK.

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

The Government accepts in principle that the role played by DCMS Ministers in the appointment of the Scottish member of the BBC Trust should be given to Scottish Ministers, subject to further consideration of the consequences of implementing the recommendation. As the recommendation notes, any appointment must be subject to the existing appointments process.

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

HSE already has a good working relationship with the Scottish Parliament and engages actively with MSPs and the Parliament and is keen to develop the relationship further. The Government is developing options which will help to maintain, and build on, these existing mechanisms to establish closer links with the Scottish Parliament, whilst ensuring that the clear line of formal accountability of the HSE to the UK Parliament is retained.

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

The Government already responds sensitively to Scottish needs on skills shortages when implementing immigration policy. We worked closely with the Scottish Government on the Fresh Talent Initiative which has now been subsumed in the new 'Tier 1' within the UK's points based system for managed migration. The Government also established the independent Migration Advisory Committee to advise on certain migration issues. The Migration Advisory Committee has considered evidence on shortage occupations in Scotland and has produced a separate list for Scotland, in addition to the main UK list. We believe that these measures already ensure active consideration to local variation in Scotland when developing UK-wide immigration policies.

5.7 In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the wellbeing of children in Scotland.

The Government fully recognises the responsibilities of the authorities in Scotland and we are sensitive to this role when carrying out UK Border Agency functions in Scotland. The Commission refer to the Dungavel Immigration Removal Centre in their report. The Government recognise the responsibility of South Lanarkshire Council for social work care when required. A Family Return project is currently running in Glasgow. It is being run by Glasgow City Council in partnership with UK Border Agency and the Scottish Government. The main aim of this project is to reduce the number of asylum seeker families with children that are detained by helping those not granted refugee status or humanitarian protection by the courts to return to their home nations voluntarily. In this action the Government is working closely with Scottish authorities and will continue to do so.

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

The Government recognises the case for proactive engagement with the Crown Estate in Scotland, and the Secretary of State does and will continue to engage on important issues as they arise. The statutory power of direction in the 1961 Act, a reserve power for use in extreme circumstances never used, remains a sanction of last resort.

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

The Government agrees that the appointment of the Scottish Crown Estate Commissioner should be made following formal consultation with Scottish Ministers.

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

The Government and Devolved Administrations in Northern Ireland, Scotland and Wales have established a cross-administration Project Board in relation to the devolution of the animal health budgets (Northern Ireland has observer status on the Board). This Project Board was set up prior to the publication of the Commission's Report and is considering all the animal health services that need to be held at the appropriate level (UK, GB or country) including the elements that comprise the budget, such as the handling of un-budgeted costs (exceptional and unforeseen occurrences). The Government believes it important for financial responsibility (including responsibility for financial risks) to be aligned with policy responsibility, which is already devolved. The Government will devolve the budget elements, as appropriate, taking account of the recommendations made by the cross-administration Project Board.

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

The Government shares the Commission's view that the single market within the UK should continue to operate freely and openly. It is our assessment that the existing European Directives that set the framework for legislation governing food content and labelling encourage a consistent approach to be taken across the UK, as has been the case to date. The Government will keep this issue under review and will take forward the recommendation should it be required in order to continue to protect the single market in the UK.

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

The Government agrees with the recommendation which will ensure consistent regulation of all health professionals including those in professions established after the Royal Assent of the Scotland Act.

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

The Government agrees in principle to devolve the power to regulate air weapons to the Scottish Parliament, as set out in Chapter 5.

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

The Government is committed to consolidating the Misuse of Drugs Regulations 2001 which set out the regime of control around prescribing, supplying or administering, safe custody, dispensing, record keeping, and destruction or disposal of all controlled drugs. During that process we will discuss any specific needs for change to the existing regulations with Scottish Ministers.

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

The Government accepts this recommendation to give Scottish Ministers the power to set the prescribed alcohol limit for driving in Scotland.

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

The Government accepts this recommendation. Responsibility for determining local speed limits in Scotland is already a matter for Local Authorities or for Transport Scotland. The Government believes, furthermore, that Scottish Ministers have existing powers that enable them to alter the level of the national speed limit on motorways and roads in rural areas in Scotland; however the Government will keep under review the existing regulatory powers to determine whether further changes may be required.

5.17 The effectiveness of the agreement on marine planning reached by the UK and Scottish Governments should be kept under review by the inter-governmental machinery, and that nature conservation should be devolved to the Scottish Parliament at an appropriate opportunity, in a way that safeguards reserved interests having taken into account the experience of the regime set out in the respective Marine Bills.

The Marine legislation recently enacted across the UK is ground-breaking. The Government agrees with the Commission that as the UK Marine Bill has only recently received Royal Assent and the Scottish Marine Bill continues its parliamentary passage, it will be vital that both pieces of legislation are allowed to embed successfully before any changes to the newly created framework can be considered, in the light of experience.

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

This recommendation is for Research Councils UK rather than for the Government. Eligibility for Research Councils funding is subject to a set of published criteria set by them which is applied UK-wide. Since the report of the Calman Commission, the Scottish Agricultural College has become eligible under these criteria. Any future applications from other Scottish institutions will be considered by the Research Councils against their published criteria.

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

The Government believes that the welfare system is a fundamental element of the social union. Changing the Housing and Council Tax Benefit systems for Scotland alone would undermine the social union as well as having negative practical consequences for the interaction between the welfare and wider taxation systems. The Government does not accept this recommendation. But we do recognise the close linkage between housing and council tax benefits on the one hand and devolved responsibilities for housing policy and council tax on the other; accordingly DWP will continue to consult Scottish Ministers on any proposed changes to the Housing Benefit or Council Tax Benefit systems and will also invite Scottish Ministers to suggest possible changes to the GB regime and consider these on their merits.

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

The Government accepts this recommendation and will develop options to ensure that Scottish interests are taken into account by engaging with the Scottish Government, local authorities and wider stakeholders in Scotland.

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

The Government believes that the welfare system is a fundamental element of the social union. Devolving the Deprived Areas Fund would undermine the social union. There is no compelling evidence that current arrangements create any difficulties in practice. The Government therefore does not accept this recommendation.

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

The Government believes that the welfare system is a fundamental element of the social union. However, as part of any considerations on future reform of the Social Fund, the Government will consider options for the handling of the application of the discretionary payments from the Fund in Scotland.

5.23 The UK Insolvency Service, with appropriate input from relevant departments of the Scottish Government, should be made responsible for laying down the rules to be applied by insolvency practitioners on both sides of the Border. This should be achieved by UK legislation.

The Government will work with the Scottish Government to ensure that rules applied by insolvency practitioners in liquidations north and south of the border are consistent, other than where fundamental differences between the two jurisdictions necessitate otherwise.

5.24 The definition of 'social security purposes' in the Scotland Act should be amended to make it clear that the exception refers to social security purposes of the type which are the responsibility of DWP.

The Government is clear that the definition of 'social security purposes' does not prevent the Scottish Parliament from creating schemes for legal advice and assistance, which are within devolved competence. An amendment to the Scotland Act is therefore not needed.

6.1 In relation to the Parliament's committee system:

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

This is for the Scottish Parliament to consider.

6.2 The current three-stage Bill process should be changed to a four-stage process, with Stage 3 becoming limited to a second main amending stage, taken in the Chamber, while the final

debate on whether to pass the Bill would become Stage 4.

This is for the Scottish Parliament to consider.

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

This is for the Scottish Parliament to consider.

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

This is for the Scottish Parliament to consider.

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

This is for the Scottish Parliament to consider. The Government will consider taking forward any proposals for change to the Scotland Act made by the Scottish Parliament as a result of their consideration of this recommendation.

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

This is for the Scottish Parliament to consider.

6.7 Section 19(1) of the Scotland Act should be amended so as to loosen the requirement on the Parliament to appoint a Presiding Officer and deputies at the first meeting of a new session, and to enable additional deputies to be appointed if and when that becomes appropriate.

This is for the Scottish Parliament to consider. The Government will consider taking forward any proposals for change to the Scotland Act made by the Scottish Parliament as a result of their consideration of this recommendation.

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

This is for the Scottish Parliament to consider. The Government will consider taking forward any proposals for change to the Scotland Act made by the Scottish Parliament as a result of their consideration of this recommendation.