



Scotland Bill: amendments in the House of Lords

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This Note lists the amendments made to the *Scotland Bill* in the House of Lords. Significant amendments were made in committee and, in particular, on report following an agreement between the UK and Scottish Governments.

The Note does not cover amendments that were proposed but not agreed. It therefore summarises the Government amendments and gives a guide to the Bill in its final form. Lords amendments were considered in the Commons on 26 April 2012, and all were agreed.

Previous Library briefings on the Bill are:

[Scotland Bill](#), Research Paper 11/06, 18 January 2011

[Scotland Bill: Committee Stage Report](#), Research Paper 11/49, 14 June 2011

[Scotland Bill: latest developments](#), Standard Note 6185, 26 January 2012

[Devolution of tax powers to the Scottish Parliament](#), Standard Note 5984, 2 February 2012

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1 Committee stage

1.1 Day one: 26 January 2012

Amendment 3: elections

Government technical amendment moved by Lord Wallace and agreed without a vote.¹

Amendments 9 and 10, and 12 to 15: partial suspension of Acts referred to Supreme Court

Government amendments moved by Lord Wallace and agreed without a vote.² These amendments were largely technical. However, Amendment 12 gave Scottish Ministers a power to make necessary provisions as a result of delay in parts of an Act coming into force, if those parts had been referred to the Supreme Court for a decision as to whether they were within the Scottish Parliament's legislative competence. This was superseded by the removal on report of the option for partial referral. See section 3.1 below.

1.2 Day two: 2 February 2012

Amendment 21: health professions

Government technical amendment moved by Lord Wallace and agreed without a vote.³ It clarified the position that, while the Government intended to re-reserve the regulation of health professions as a whole, the regulation of social care professions would remain a devolved matter.⁴ This was superseded by the removal on report of the reservation of health professions. See section 3.2 below.

Clause 17 stand part, and amendments 71 and 72: appeals over ECHR rights and EU law in Scottish criminal cases

The Government chose to withdraw its original clause 17, which dealt with questions of compatibility with the ECHR or EU law arising in criminal cases, and therefore argued against that clause standing part, but in favour of amendments that effectively replaced it. Lord Wallace explained the thinking by reference to a review group appointed by the Scottish Government and led by Lord McCluskey:

The purpose of Clause 17 was to provide that questions as to whether acts of the Lord Advocate, acting as the head of the criminal prosecution service, were compatible with ECHR or EU law should not be devolution issues under the 1998 Act. Clause 17 provided a separate statutory right of appeal to the Supreme Court for these issues. Under the current Scotland Act, acts of the Lord Advocate acting as the head of the criminal prosecution system in Scotland that are not compatible with ECHR or EU law would be ultra vires by virtue of Section 57(2) of the Scotland Act 1998.

In order to take account of some of the recommendations from the committee chaired by the noble and learned Lord, we thought it better to seek to delete Clause 17 and bring forward new clauses, otherwise it was going to get very difficult and convoluted indeed.⁵

¹ HL Deb 26 January 2012, c1226

² HL Deb 26 January 2012, cc1256-7

³ HL Deb 2 February 2012, c1698

⁴ HL Deb 2 February 2012, cc1697-8

⁵ HL Deb 2 February 2012, c1761

Amendment 71 provided that the right of appeal to the Supreme Court in criminal proceedings should extend to acts of public authorities alleged to be incompatible with the *European Convention on Human Rights* (ECHR) and EU law.⁶ This extended the appeal on such grounds beyond acts of the Lord Advocate, as had previously been the case. It was a response to the recommendations of the review group, and to the views of the Lord President of the Court of Session as expressed in a letter to the Clerk of the Parliaments.

Lord Wallace gave the following account of Amendment 72:

The review group led by the noble and learned Lord made a persuasive case that when the Supreme Court considers a compatibility issue, it should not consider whether a miscarriage of justice arose as a result of the compatibility issue. Instead, the Supreme Court should be required to determine a compatibility issue and then remit the matter to the High Court of Justiciary in Scotland. Amendment 72 provides that the new appeal right to the Supreme Court can apply only to the determination of a compatibility issue. The Supreme Court can reformulate the question it is considering, but only for the purpose of determining the compatibility issue. Amendment 72 clearly provides that the powers of the Supreme Court can be exercised only to determine the compatibility issue, and once the court has done this it must remit the proceedings to the High Court of Justiciary.⁷

Clause 17 was disagreed.⁸ The amendments were taken on Day Four, see below.

1.3 Day three: 28 February 2012

No amendments were made.

1.4 Day four: 15 March 2012

Amendments 71 and 72: appeals over ECHR rights and EU law in Scottish criminal cases

Government amendments moved by Lord Wallace and agreed without a vote,⁹ see discussion in section 1.2 above. The issue is discussed in greater detail in previous papers on the Bill, RP [11/49](#) and [11/06](#).

1.5 Day five: 21 March 2012

Clause 10 stand part, and amendment 95: continued effect of provisions where legislative competence conferred for limited period

Clause 10 was disagreed and Government amendment 95 was moved by Lord Wallace in its place, which was agreed without a vote.¹⁰

Lord Wallace explained that the new clause in amendment 95 would replace clause 10. This had allowed for laws passed by the Scottish Parliament under a temporary transfer of powers to continue in force after that temporary transfer had come to an end. The new clause widened the scope such that laws would continue to have effect in any case where the competence of the Scottish Parliament to legislate had been removed, regardless of whether it had been granted on a temporary basis or had been a long-term power.¹¹

⁶ HL Deb 2 February 2012, c1762

⁷ HL Deb 2 February 2012, c1763

⁸ HL Deb 2 February 2012, c1783

⁹ HL Deb 15 March 2012, cc530 and 531

¹⁰ HL Deb 21 March 2012, cc1013 and 1016

¹¹ HL Deb 21 March 2012, cc1014-5

2 Agreement between UK and Scottish Governments

On 21 March 2012 the UK and Scottish Governments announced that they had reached agreement on changes to the Scotland Bill and supporting non-legislative measures. This resolved a potential difficulty in passing the Bill. It is subject to the Sewel Convention, whereby the UK Government undertakes not to invite Parliament to legislate on devolved matters without consent from the Scottish Parliament. The previous Scottish Parliament had given its consent, but this was conditional on changes being made to the Bill and on a new consent motion being obtained after the May 2011 elections. Those elections gave a majority to the SNP for the first time; the new committee set up in the Scottish Parliament to look at the Bill declined to recommend consent without further changes.

The changes were announced by the Secretary of State for Scotland, Michael Moore, in a written statement on 21 March 2012:

The Scotland Bill is a significant step forward in Scottish devolution. It provides for the biggest transfer of fiscal power from London since the creation of the United Kingdom—including a new Scottish rate of income tax, full devolution of stamp duty land tax and landfill tax, and new borrowing powers. Together, the Office for Budget Responsibility (OBR) forecast that these measures will enable the Scottish Government to raise between £5 billion and £6 billion of their budget in addition to around £4 billion they currently raise in council tax and non-domestic rates.

Since its introduction in November 2010, the Bill has had detailed scrutiny in the UK and Scottish Parliaments. In Westminster, it has passed successfully through its Commons stages and will soon complete Lords Committee consideration. In Holyrood, the Scottish Parliament voted overwhelmingly in support of the Bill last March.

After productive discussions with the Scottish Government in recent weeks, the Government are today announcing a package of measures in the Bill and supporting non-legislative arrangements to show that the powers will operate in a fair and sustainable way to the benefit of Scotland and the rest of the UK.

Agreement has been reached with the Scottish Government on both the finance and non-finance provisions included in the Bill and the Scottish Government will today table a legislative consent memorandum recommending that the Scottish Parliament votes in support of the Bill on a further legislative consent motion for the Bill.

Today's announcement provides more detail about the operation of the new tax and borrowing powers and about the non-finance elements of the Scotland Bill. The Government are committed to:

Transferring tax and borrowing powers transparently

The Government will ensure that changes in the Scottish Government's budget are closely linked to the performance of their economy by adjusting Scotland's budget to reflect new tax powers using the model recommended to the Welsh Assembly in the Holtham report. This approach, agreed with the Scottish Finance Minister and the Chief Secretary to the Treasury, will help protect the Scottish Government's budget from wider macro-economic shocks.

The Government will work together with the Scottish Government over coming months and years to give operational effect to the powers including the block grant adjustment, in a fair and sustainable way and should reach agreement on all implementation issues.

The Scotland Bill will be amended to require the Secretary of State for Scotland and Scottish Ministers to produce annual reports to the UK and Scottish Parliaments on the progress of transferring the tax and borrowing powers to the Scottish Government.

In line with long-standing principles of devolved funding, the Scottish Government will pay for their new income tax system of administration. The Government will explore the scope to offset some of the savings from HMRC ceasing its administration of stamp duty land tax and landfill tax.

Ensuring the new borrowing regime is sustainable

Borrowing limits will be reviewed regularly ahead of spending reviews through the Joint Exchequer Committee.

The Scottish Government will be given access to loans over a longer period in principle, subject to the ability to repay and the type of asset.

The Government will shortly launch a consultation on the Scottish Government issuing their own bonds.

Further devolution in the future

Aggregates Levy will be devolved once the legal challenges in the European and UK courts have been fully resolved.

The Government are open to considering what further powers might be devolved after a referendum on independence.

Non-finance elements of the Scotland Bill

The clauses reserving the regulation of health professions and insolvency will be removed, following assurances from the Scottish Government that they will work closely with the Government to ensure consistent regulatory regimes apply to health professions and that insolvency procedures are kept up to date and operate effectively throughout the UK.

The clause allowing partial referral of Acts of the Scottish Parliament to the Supreme Court will be removed at the request of the Scottish Government. This means in the future—as at present—a full Act could be referred to the Supreme Court, even if only a single provision raised competence issues.

The clause on implementing international obligations will be removed following assurances from the Scottish Government that they will work closely with the Government to ensure that the UK continues at all times to implement its international obligations. If there is a failure to implement any international obligation the UK Government may use their powers under s.58 (2) of the Scotland Act to direct Scottish Ministers.

Additional amendments will be made to the provisions on appeals to the Supreme Court from Scottish criminal cases. A certification requirement will not be introduced. However, the new arrangements will be subject to a review, chaired by the Lord Justice General of Scotland, after three years of operation. Certification will be included within the scope of the review, and it will be possible for changes to be made to the arrangements by subordinate legislation following the review.

These announcements today meet the tests the Government have set for changes to the Bill package—they are based on evidence, maintain the cross-party consensus

which supports the Bill, and will benefit Scotland without detriment to the rest of the UK.¹²

The following involved amendments to the Bill:

- The requirement on the Secretary of State and Scottish Ministers to produce annual reports on the progress of transferring the tax and borrowing powers to the Scottish Government
- Removal of the clause reserving regulation of the health professions
- Removal of the clause reserving insolvency
- Removal of the clause allowing parts of Acts of the Scottish Parliament to be referred to the Supreme Court where competence is in doubt (full Acts will be referred instead, as at present)
- Removal of the clause on implementing international obligations
- Further changes to the provisions on appeals to the Supreme Court in Scottish criminal cases, such that certification will not be introduced, and that there will be a review by the Lord Justice General of Scotland after three years.

Following the agreement between the two governments the SNP tabled a legislative consent motion in the Scottish Parliament.

This motion, with its accompanying memorandum, was reproduced on the website of the Scottish Parliament's [Scotland Bill Committee](#), along with an exchange of letters between the Secretary of State and Bruce Crawford, Cabinet Secretary for Parliamentary Business and Government Strategy in the Scottish Government. These letters set out the substance of the agreement as reflected in the Written Statement above.

The legislative consent motion read as follows:

That, further to motion S3M-8114 passed on 10 March 2011, the Parliament:

notes the letters exchanged between the Scottish and UK Governments on 21 March 2012; and agrees that the Scotland Bill, introduced in the House of Commons on 30 November 2010, as amended, should be considered by the UK Parliament.

The motion was passed by the Scottish Parliament on 18 April 2012 without a vote.

The Scottish Government summarised its position on the agreement, which was a form of qualified support, in its memorandum to the Scotland Bill Committee:

25. The Scottish Government remains of the view that the Scotland Bill could have been improved significantly and an opportunity has been missed to provide further responsibilities to the Scottish Parliament and Government, particularly in relation to job-creating and economic powers. The Scottish Government believes that view has been reflected in the reports of Committees of the UK and Scottish Parliaments, as well as the outcome of the Scottish election in May 2011 and subsequent events.

26. Despite these views, the Scottish Government believes that the measures in the Bill provide additions to the responsibility of the Parliament and Government in the following areas:

- Increased financial, particularly borrowing responsibilities;
- Powers to address the issue of air weapons in Scotland;

¹² HC Deb 21 March 2012, cc61-64WS

- Responsibility for drink driving and speed limits on Scotland's roads;
- A role in appointments in broadcasting and the Crown Estate;
- An improved new procedure for Scottish criminal cases to go to the UK Supreme Court.

The Scottish Government also believes that the previous risks to devolved institutions have been addressed:

- Assurance will be provided to the Parliament on the implementation of the financial provisions, and, consistent with the principle of consent, both governments should reach agreement on implementation issues, including adjustments to the block grant, to take account of the Scottish Parliament's new fiscal powers. The Scottish Government proposes to seek the agreement of the Scottish Parliament as part of this process.
- The proposed reservations of health professions and insolvency have been removed, as have provisions that risk the integrity of Acts of the Scottish Parliament and the Parliament's role in international obligations.

The Scottish Government is therefore prepared to recommend that Parliament consents to the Bill.¹³

3 Report stage

In line with the agreement between the two governments, a number of amendments were introduced on report in the House of Lords.

3.1 Day one: 26 March 2012

Amendment 1: partial referral of Acts to the Supreme Court

Government amendment moved by Lord Wallace, who also spoke to amendments 4 and 5 (insolvency), 7 (health professions) and 14 (international obligations).¹⁴

Amendment 1 removed clause 7 from the Bill. This would have allowed the referral to the Supreme Court of part of an Act of the Scottish Parliament to determine whether it was within its legislative competence. The Government's stated aim was to prevent unnecessary delays where only part of an Act was at question. At present only the whole Act may be referred, thereby delaying its entry into force and the provision to allow partial referral was cast as a more efficient approach. However, the Scottish Government asked for the provision for partial referral to be removed, on the grounds that it risked the integrity of Acts of the Scottish Parliament.¹⁵

The amendment was agreed without a vote.¹⁶

3.2 Day two: 28 March 2012

Amendments 4 and 5: insolvency

Government amendments moved by Lord Wallace, as cited in section 3.1 above. These amendments removed clause 12 and the associated schedule 2, which related to insolvency.

¹³ Scottish Government, [Legislative Consent Memorandum: Scotland Bill](#), March 2012

¹⁴ HL Deb 26 March 2012, cc1187-9

¹⁵ Scottish Government, [Legislative Consent Memorandum: Scotland Bill](#), March 2012, para 26

¹⁶ HL Deb 26 March 2012, c1192

They would have reserved responsibility for all aspects of the winding up of business associations. According to Lord Wallace,

The United Kingdom Government continue to believe that, where appropriate, Scottish procedures for insolvency should be in step with the rest of the United Kingdom. Our discussions with the Scottish Government have provided us with assurances that these concerns can be addressed without amending the devolution settlement in this respect. We therefore seek to remove this clause on the understanding that the Scottish Government will consider the modernisation measures for the devolved areas of winding up in Scotland introduced into the reserved insolvency procedures in 2009 and 2010; and have provided assurances that future changes made by the UK Parliament or Ministers in this area will be considered timeously by the Scottish Government in their area of competence.¹⁷

The amendments were agreed without a vote.¹⁸

Amendment 7: health professions

Government amendment moved by Lord Wallace, cited in section 3.1 above. This removed clause 13, which would have reserved to the UK level responsibility for the regulation of all health professions. Lord Wallace said that “the Scottish Government have provided us with clear assurances that they will work closely with the Government to ensure that consistent regulatory regimes apply to all health professions.”¹⁹

The amendment was agreed without a vote.²⁰

Amendment 14: international obligations

Government amendment moved by Lord Wallace, cited in section 3.1 above. This removed clause 26, which would have allowed UK Ministers to implement international obligations on a UK basis, where it would be more convenient to do so, even if the subject matter were devolved. According to Lord Wallace,

The UK Government are willing to remove this clause, on the understanding of course that Scottish Ministers will ensure that any international obligations that fall within their responsibility are implemented on time. In turn, we have made clear to Scottish Ministers that the Government would be prepared to use their existing powers of direction under Section 58(2) of the Scotland Act 1998, should we have concerns about the implementation of international obligations within the remit of Scottish ministers.²¹

The amendment was agreed without a vote.²²

Amendment 29: Scottish rate of income tax: reports on implementation

Government amendment moved by Lord Sassoon. This inserted a new clause, which created a reporting responsibility on the implementation of the new financial powers in the Bill. Lord Sassoon explained it as follows:

The clause requires the Secretary of State for Scotland to publish an annual report to be laid before Parliament within one year of the Scotland Bill becoming an Act until a

¹⁷ HL Deb 26 March 2012, c1188

¹⁸ HL Deb 28 March 2012, c1440

¹⁹ HL Deb 26 March 2012, c1188

²⁰ HL Deb 28 March 2012, c1440

²¹ HL Deb 26 March 2012, c1188

²² HL Deb 28 March 2012, c1445

year after the tax and borrowing powers are fully transferred to the Scottish Parliament. The last report is therefore expected to be published in 2020. The Secretary of State will send a copy of his report to Scottish Ministers, who will lay a copy of it before the Scottish Parliament. The clause also requires Scottish Ministers to lay a report of the same title before the Scottish Parliament on an annual basis and to provide a copy to lay before both Houses of Parliament.²³

He went on to state that the Government intends these reports to cover implementation of both the legislative and non-legislative aspects of the new financial package, so as to ensure that the transfer of powers “is achieved in a transparent and open manner.”²⁴

The amendment was agreed without a vote.²⁵

Amendments 33, 35, 37, 38, 39, 41, 44, 47, 49, 51, 52, 53 and 54: role of Supreme Court in Scottish criminal proceedings

Government amendments moved by Lord Wallace. These amendments further adjusted the arrangements on the role of the Supreme Court in appeals arising from Scottish criminal cases on questions of compatibility with the ECHR or EU law (“compatibility issues”), as against questions of the legislative competence of the Scottish Parliament (“devolution issues”).

According to Lord Wallace, amendment 35 adjusted the definition of a compatibility issue so as to include Acts of the Scottish Parliament alongside acts of public authorities. Other questions about the competence of the Scottish Parliament to make a particular Act would remain devolution issues.²⁶ Amendment 39, on the other hand, removed from the definition of devolution issues any question relating to compatibility.²⁷ Amendment 33 restricted this machinery to issues arising from criminal proceedings: other questions about compatibility of Acts of the Scottish Parliament with EU law would remain devolution issues.²⁸

Amendment 37 established a procedure for compatibility issues to be referred from lower to higher courts.²⁹

A significant new development in this area was the introduction, in Amendment 52, of a review of the new arrangements after a period of three years. Lord Wallace explained that the Government was not persuaded, despite pressure from Lord McCluskey’s review group and the Lord Justice General, to introduce a certification regime, whereby a compatibility issue could be appealed to the Supreme Court only if the High Court certified that it raised a point of law of general public importance.³⁰ However, discussions between the UK and Scottish Governments had led to agreement on a review, to be chaired by the Lord Justice General and arranged by the Secretary of State, which would look at the operation of the new arrangements for compatibility issues, and at the introduction of time limits for appeals on devolution issues. This review would be required to look at the question of certification in particular, as well as the general operation of the new system. The review would take place

²³ HL Deb 28 March 2012, c1509

²⁴ HL Deb 28 March 2012, c1509

²⁵ HL Deb 28 March 2012, c1511

²⁶ HL Deb 28 March 2012, cc1528-9

²⁷ HL Deb 28 March 2012, c1529

²⁸ HL Deb 28 March 2012, c1529

²⁹ HL Deb 28 March 2012, c1529

³⁰ HL Deb 28 March 2012, c1530

after three years, although the Secretary of State could hold it earlier if the circumstances so warranted.³¹

Amendment 51 provided for a 28 day time limit on appeals to the Supreme Court on devolution issues arising in criminal proceedings, although this could be varied with permission of the relevant court.³² The time limit is the same as for appeals on compatibility issues.

Amendment 38 provided that if the Supreme Court finds legislation of the Scottish Parliament to be outside competence, then the High Court will decide on any order to be made, under section 102 of the *Scotland Act 1998*, to remedy the effects of that legislation.

The remaining amendments were technical and/or consequential.

All these Government amendments were agreed without a vote.³³

4 Third reading

The Bill was read a third time in the Lords on 24 April 2012. A number of Government amendments were moved by Lord Wallace and agreed without a vote.

Amendments 1 and 2: the Scottish Government

Technical amendments to ensure the change of name from Scottish Executive to Scottish Government applies to all references in section 44 of the *Scotland Act 1998*.³⁴

Amendments 3, 4, 5, 6 and 7: speed limits

These changes were designed to implement the principles underlying amendments moved by Lord Forsyth in committee and on report, although they expanded on his approach. They gave Scottish Ministers the power to make speed limits for all classes of vehicles on all roads except those covered by the 30mph limit. This contrasted with the Bill as introduced, in which the power to set speed limits was devolved only to the extent of setting a national speed limit for cars, motorcycles and vans under 3.5 tonnes.³⁵

Amendments 8 and 9: ECHR rights and EU law in Scottish criminal cases

Further amendments were made to the provisions concerning references to the Supreme Court over alleged infringements of ECHR rights and EU law in Scottish criminal cases. Effectively, the amendments allow the law officers to ensure that compatibility issues of this type are referred to the Supreme Court, even if the High Court chooses to determine the matter itself or is considering it on appeal. Lord Wallace explained them as follows:

Amendment 9 ensures that if the High Court decides to determine the compatibility issue itself, then the law officers will have a right to appeal the compatibility issue to the Supreme Court once it has been determined by the High Court. In these circumstances, the law officers will not need the permission of the High Court or the Supreme Court to appeal.

[...]

³¹ HL Deb 28 March 2012, c1530

³² HL Deb 28 March 2012, c1531

³³ HL Deb 28 March 2012, cc1537-40

³⁴ HL Deb 24 April 2012, cc1684-5

³⁵ HL Deb 24 April 2012, cc1686-7

In addition the Bill already allows the High Court to refer a compatibility issue to the Supreme Court, where the compatibility issue has not been referred to it by a lower court and the High Court is considering the issue on an appeal. Amendment 8 extends this power, by allowing the law officers to require the High Court to refer the compatibility issue to the Supreme Court. Law officers can only do this if the compatibility issue has not been referred to the High Court by a lower court, and the High Court is considering the issue on an appeal. Referring the issue will enable the Supreme Court to decide on it earlier, which will be helpful where the compatibility issue will have implications for other cases.³⁶

5 Return to the Commons

The Scotland Bill returned to the House of Commons on 26 April 2012 for consideration of Lords amendments.³⁷ The Commons agreed to all the Lords amendments, so the Bill's passage through Parliament is complete.

³⁶ HL Deb 24 April 2012, c1688

³⁷ HC Deb 26 April 2012, cc1133-79