SCPO Briefing Paper

The Scotland 2016 Act

April 2016

Background

18 September 2014	Scottish Independence Referendum
19 September 2014	The Smith Commission is established
27 November 2014	The Smith Commission report is published
28 May 2015	The Scotland Bill 2015-16 is published
23 February 2016	Scottish and UK Governments agree the Fiscal Framework
16 March 2016	The Scottish Government voted in favour of legislative consent for the Scotland Bill
23 March 2016	The Scotland 2015-2016 bill is given Royal Assent
5 May 2016	Elections to the Scottish Parliament with franchise extended to 16 and 17 year olds

Division of Power

Current Devolved Powers	**Current Reserved Powers**
Agriculture, Forestry and Fisheries	Broadcasting
Culture and Creative Industries	Constitution
Economic Development	Consumer protection
Education and Training	Defence and Security
Environment and Planning	Employment
Fire Services	Equal opportunities
Health and Social Services	Energy (excluding promotion of renewable energy generation and energy efficiency)
Housing	Economic and monetary policy (including the currency and interest rates)
Justice	Foreign policy
Local Government and Local Government Elections	Immigration
Social work	Social security
Sport	Telecommunications
Tourism	Trade and industry
Transport (excluding most power over aviation, shipping, road traffic law, and HGV and bus driver, vehicle and operating licensing)	

New Devolved Powers under the Scotland 2016 Act

Air Passenger Duty and Aggregates Levy
Partial assignment of VAT revenues
Income Tax (including setting rates and thresholds)
Consumer advocacy and advice
Crown Estate (management of, and revenues from, its economic assets in Scotland)
Proposal to introduce specific equality requirements for public bodies

SCPO, 121 George Street, Edinburgh, EH2 4YN
Tel: 0131 240 2276 Email: chloe@actsparl.org
Website: www.actsparl.org

Scottish Parliament elections and the local government franchise (includes regulation of campaign spending and controlled expenditure on SP elections)
Onshore oil and gas licensing
Additional health power (abortion)
Employment programmes (power to create employment schemes for those at risk of long-term unemployment and to help disabled people into work)
Gaming machine licensing powers (the powers apply specifically to controlling the number of Fixed-Odds betting terminals)
Energy efficiency and fuel poverty schemes
Transport (including road signs, speed limits and the functions of the British Transport Police)
Reserved Tribunals (except Special Immigration Appeals Commission and Prescribed Organisations Appeals Commission)
Welfare (including control over certain benefits outside of Universal Credit (UC) and the power to vary the housing element of UC and to vary UC payment arrangements)

Further detail

Tax Powers

Under the Scotland Act 1998, the Scottish Parliament had power over taxation that represented less than 10% of devolved expenditure in Scotland. This increased under the 2012 Act to around 21% of expenditure, and will further increase to around 36% when the Scotland 2016 Act comes into effect. If assigned revenue from VAT is included, Scotland will receive revenue equal to 48% of expenditure.

Income Tax

The Scottish Parliament will retain receipts from the income tax it is responsible for. This represents a significant devolution of powers, with Scotland retaining around £11 billion of income tax receipts, accounting for over 90% of income tax receipts collected in Scotland.
This gives Scotland greater fiscal autonomy, with incentives to increase employment and increase wage growth. There are no restrictions on this power and if the Scottish Parliament wanted an income tax system with a number of different rate bands, or indeed a zero rate of income tax, this is possible.

Welfare

There will be around £2.6 billion of devolved benefits (mainly DLA/PIP, Attendance Allowance, Carers Allowance and others) compared to £15 billion per year of reserved benefits. Around 14.8% of benefits will now be devolved to Scotland.
The Scottish Parliament will gain control over a range of welfare powers mainly disability-related benefits such as Disability Living Allowance, Carer's Allowance and Attendance Allowance, but will also include the Winter Fuel Payment and Discretionary Housing Grants. They will also have the power to create new benefits.

These new benefits must be within the areas of devolved responsibility, but the Scottish Parliament will also have the power to make top-up payments to reserved benefits.
The main employment schemes proposed for devolution are the Work Programme and Work Choice. The conditionality and sanctions regime which governs referrals to the Work Programme will remain reserved.

Most welfare benefits remain reserved to Westminster, including Pensions and Pension Credit; Child Benefit; Jobseekers Allowance; Employment and Support Allowance; Housing Benefit; Income Support; Tax Credits and Universal Credit (UC).

Both governments have reaffirmed that any new benefits or discretionary payments introduced by the Scottish Government must provide additional income for a recipient, and not result in an automatic offsetting reduction by the UK Government elsewhere in the benefits system. Any new benefits or discretionary payments introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit that is taxable such as Carer's Allowance.

The Crown Estate
The Scottish Government will take on responsibility for managing the Crown Estate assets in Scotland. The Crown Estate portfolio belongs to the monarch and is currently worth £261.5 million in Scotland.

It owns the rights to salmon fishing and gold mining as well as four estates covering 37,000 hectares of land, and properties in urban areas.

The CE has done deals with fish farming firms and offshore renewable developers working in its waters. Half the country's foreshore and 5000 licensed moorings are also owned by the CE.

Last year in Scotland, £14.6m in revenues were generated, mainly from coastal and energy-related business activity, with £7.7m investment made. UK-wide, the CE returned a total of £267m to the Treasury last year. This figure guides how much the Queen is paid for her duties and the running of the Royal Household – this amounted to around £35.7m last year.[1]

There will be reform of the CE in Scotland with powers over management and finance transferred to Scottish Ministers, who will become landlords of the assets. The move follows years of cross-party criticism that the Crown Estate Commission has not been accountable to a democratically electable body in Scotland, or the communities close to the land it owns.

The CE Scottish property portfolio sits alongside some key policy areas in Scotland, including growth of renewables, sustainable rural communities and land reform.

Managers of Crown Estate assets in Scotland will continue to receive the same benefits as Crown Estate Commissioners, such as exemption from corporation tax, income tax, capital gains tax and other HMT finance rules.

Responsibility for the Coastal Communities Fund will be devolved to the Scottish Government, as well as the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

Following the transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas that seek such responsibilities.

Equality requirements for public bodies
The Smith Commission agreed that whilst the Equality Act 2010 will remain reserved, the powers of the Scottish Parliament would include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland.

Key dates for new powers

*April 2016 - the Scottish rate of Income Tax comes into effect and will operate for one transitional year until the full devolution of the Smith Income Tax powers.
*April 2017 - full devolution of income tax rates and thresholds for non-savings and non-dividend income will start.
*April 2017 - revenues from courts and tribunals in Scotland will be retained by the Scottish Government
*April 2018 - Air Passenger Duty will be devolved
*The Joint Exchequer Committee (JEC) will agree on a suitable point for the start of devolution of the Aggregates Levy once current state aid and other outstanding legal issues have been resolved.
*Implementation dates for welfare will be agreed by the Joint Ministerial Working Group on Welfare. The Joint Exchequer Committee will oversee the transfers of funding.

[1] http://www.scotsman.com/news/how-much-land-does-the-crown-own-in-scotland-1-4036390

Where will Scotland's money come from?

As set out in the Smith Agreement, changes in the Scottish Government's block grant will continue to be determined via the Barnett Formula.

Under the Barnett Formula, the Scottish Government's block grant in each financial year is equal to the block grant baseline, plus a population share of changes in UK Government spending on areas devolved to the Scottish Parliament.
In future, the Scottish Government will retain all devolved and assigned Scottish tax revenues.

The block grant to the Scottish Government will be adjusted to reflect the introduction of devolved and assigned revenues, and the transfer of responsibility for welfare.
In line with the Smith Commission recommendations, the UK government will transfer £200m to the Scottish Government to support implementation of the new powers. This will be a one-off transfer and supplement the block grant.
There will also be a £66 million baseline transfer for ongoing administration costs, associated with the new powers. This figure includes the savings by the UK Government as a result of no longer administering the newly devolved powers, plus a share of the Scottish Government's running costs.

Scottish Fiscal Commission Bill

The Scottish Fiscal Commission Bill was passed on 10 March 2016 and gives the Scottish Fiscal Commission a permanent basis in statute, and ensures its independence.
The Commission will prepare independent tax revenue forecasts that will inform the Scottish Budget. Scrutinising Scotland's devolved public finances and the operation of Scotland's new fiscal framework will be dependent on constructive working between the Scottish Fiscal Commission and the Office for Budget Responsibility (OBR).
A critical element associated with the Bill is the non-legislative fiscal framework, a five year plan agreed by the Scottish and the UK governments underpinning how the new financial and welfare powers will work in practice.

The Framework sets out how the current block grant that provides for the bulk of the Scottish Government's budget (around 80%) will be adjusted both initially and indexed over time, as the new taxation and social security powers come into effect.

The fiscal framework sets out the tools that a future Scottish Government will have for managing risk and volatility of revenues, and also covers what fiscal rules will be put in place between the two governments and how these are credible.

Scottish borrowing for capital expenditure will be increased to £3 billion, with an annual limit of 15% of the overall borrowing cap - this will be equivalent to £450 million per year.

The Scottish Government will see its resource borrowing powers increased to £600 million per year - up to a total limit of £1.75 billion. Borrowing powers will come into force in 2017-18. The Scottish Government will also have the power to issue bonds.

A new Scotland Reserve (cash reserve) will apply from 2017-18, capped in aggregate at £700 million, with annual drawdown limits of £250 million for resource expenditure and £100 million for capital.

Future Concerns

The Scottish Parliament's Devolution committee and others noted some reservations regarding the bill before it was passed.

It fell short on devolution of employment programmes and on welfare

Early on as part of the Smith Commission process, SCVO (Scottish Council for Voluntary Organisations) stated that many in the third sector would like to have seen the full range of welfare powers (except pensions) devolved to the Scottish Parliament to create a more empowering government. The new welfare powers have tight parameters in some cases which could limit policy options available to the Scottish Parliament. The new powers will also not allow the Scottish Parliament to mitigate against the sanctions regime, despite the ability to top up reserved benefits. How would further welfare cuts affect Scotland?

What happens after five years?
There was a lack of detail in the public domain on what happens at the end of the five-year deal, if both governments do not agree on the next steps. No assumptions have been made on the indexing method that follows 2021/22, except that it will deliver results consistent with the Smith Commission's recommendations, including the principles of no detriment, taxpayer fairness and economic responsibility. No change can be made to future arrangements without the joint agreement of both governments.

Gift Aid
Gift Aid (the UK-wide scheme enabling registered charities to reclaim tax on a donation made by a UK taxpayer) still needs to be addressed by the two governments, working co-operatively with the charity sector, with an aim to reach a resolution early in the next Parliamentary session. The impact of income tax devolution on Gift Aid is a concern due to the prospect of differing income tax rate in Scotland to the rest of the UK.