



Scottish Churches Parliamentary Office Briefing Paper

The Smith Commission Agreement

December 2014, Briefing 2014/13

The Smith Commission on the further devolution powers to the Scottish Parliament

Prior to the 18 September Referendum on Scottish Independence, the leaders of the three 'Better Together' parties, David Cameron, Nick Clegg and Ed Miliband published a joint commitment for a process for further devolution of powers to the Scottish Parliament in the event of a 'No' result.

The vow read:

The people of Scotland want to know that all three main parties will deliver change for Scotland.

WE ARE AGREED THAT:

The Scottish Parliament is permanent and extensive new powers for the Parliament will be delivered by the process and to the timetable agreed and announced by our three parties, starting on 19th September.

And it is our hope that the people of Scotland will be engaged directly as each party works to improve the way we are governed in the UK in the years ahead.

We agree that the UK Exists to ensure opportunity and security for all by sharing our resources equitably across all four nations to secure the defence, prosperity and welfare of every citizen.

And because of the continuation of the Barnett allocation for resources, and the powers of the Scottish Parliament to raise revenue, we can state categorically that the final say on how much is spent on the NHS will be a matter for the Scottish Parliament.

We believe that the arguments that so powerfully make the case for staying together in the UK should underpin our future as a country. We will honour those principles and values not only before the referendum but after.

People want to see change. A No vote will deliver faster, safer and better change than separation.

David Cameron Ed Miliband Nick Clegg

Once the 'No' result was delivered, on the morning of 19 September, Prime Minister David Cameron announced that a cross-party Commission would be established, chaired by Robert Smith (Lord Smith of Kelvin) to find consensus and common ground between the political parties. The five

parties which currently have representation in the Scottish Parliament took part in the Commission.¹ [The report of the Commission, known as the 'Heads of Agreement', was published on Thursday 27 November.](#)

This briefing paper covers some of the areas of interest to Scottish Churches in the proposals.

The SCPO has also published two additional briefings. One is on the [result and demographics of the referendum](#) result. The second is about the new First Minister's [Programme for Government 2014-15](#).

Process – consultation

The timescale for this Commission was unusually tight, perhaps given the political pressure the pro-UK parties would have felt had they failed to deliver. The terms of reference² required the publication of main areas of agreement before 30 November, with a Draft Bill being presented to the Westminster Parliament by 25 January 2015 and the three main UK wide parties have committed to introducing a Scotland Bill after the General Election.

The Commission embarked on a period of public consultation – 407 organisations and 18,381 individuals submitted views.

A number of Scottish Churches submitted their views to the Smith Commission, which you can read here:

- [Church of Scotland](#) – Church and Society Council (Interim Submission)
- [Church of Scotland](#) – Church and Society Council (Final Submission)
- [Religious Society of Friends \(Quakers\)](#) – General Meeting for Scotland (Covering Letter)
- [Religious Society of Friends \(Quakers\)](#) – General Meeting for Scotland (Submission)
- [Scottish Catholic Parliamentary Office](#) (an agency of the Bishops' Conference of Scotland)
- [Scottish Episcopal Church](#) – College of Bishops

Reaching Agreement

¹ Membership of the Commission:

- Annabel Goldie MSP, Scottish Conservative and Unionist Party
- Adam Tomkins, Scottish Conservative and Unionist Party
- Maggie Chapman, Scottish Green Party
- Patrick Harvie MSP, Scottish Green Party
- Gregg McClymont MP, Scottish Labour
- Iain Gray MSP, Scottish Labour
- Tavish Scott MSP, Scottish Liberal Democrats
- Michael Moore MP, Scottish Liberal Democrats
- John Swinney MSP, Scottish National Party
- Linda Fabiani MSP, Scottish National Party

² Terms of Reference: “to convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce, by 30 November 2014, Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. This process will be informed by a Command Paper to be published by 31 October and will result in the publication of draft clauses by 25 January. The recommendations will deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.”

It is important to understand that the Smith Commission Report is not what any one particular party would prefer in terms of recommendations for constitutional reform. This is an agreement and consensus between all five parties currently represented at Holyrood recognising the political reality they found themselves in. For some people, it goes too far. For others, it does not go far enough. But each of the five main political parties has signed off on the report and this is itself a remarkable thing. Lord Smith wrote in his foreword:

“This agreement is, in itself, an unprecedented achievement. It demanded compromise from all of the parties...It shows that, however difficult, our political leaders can come together, work together, and reach agreement with one another.”

Key issues

The Smith Commission Agreement covers those new areas of responsibility which will be devolved – the following list describes what is changing from the current arrangements. The list of already devolved powers are legislated for in the Scotland Acts of 1998 (which set up the Scottish Parliament) and 2012 (which implemented many of the recommendations of the Calman Commission) and are not included here.

The Claim of Right

The first paragraph of the Heads of Agreement section affirms the wording of the 1989 Claim of Right, acknowledging the **‘sovereign right of the people of Scotland to determine the form of government best suited to their needs’**.

Permanence of Scottish Devolution

The **Scottish Parliament, Scottish Government and the Sewel Convention** (where the Scottish Parliament may consent to the UK Parliament making law in devolved areas) will be enshrined permanently in law.

Elections, Parliament and Government

The Scottish Parliament will have powers related to **elections to the Scottish Parliament** (but not UK or European elections) – this includes the power to **lower the voting age** for Scottish elections. The Scottish Parliament will have powers over the **number of MSPs** and powers over the disqualification and expulsion of MSPs. **Changing the franchise, voting system or MSP numbers will require a two-thirds majority vote in the Scottish Parliament**

There needs to be **reform of intergovernmental and inter-parliamentary machinery**, to improve effectiveness and joint scrutiny, including a new **Memorandum of Understanding** with shared obligations on both Governments to liaise and work together – including an arbitration process which could be used as a last resort if agreement cannot be reached.

At a **European Union** level, Scottish Ministers are to be fully involved in agreeing the UK position in EU negotiations relating to devolved policy areas.

Responsibility for the **Crown Estate** in Scotland will be transferred to the Scottish Parliament.

The **Electoral Commission** and **Boundary Commission for Scotland** will report to the Scottish Parliament in relation to Scottish and local authority elections and constituency boundaries. The Scottish Parliament and Government will have a formal consultative role in reviewing the **BBC Charter**, in priorities for the **Maritime and Coastguard Agency** and priorities for the **Northern Lighthouse Board**. There will also be a consultative role in designing **renewables incentives** and **OFGEM must have regard to the Scottish Government's Energy Strategy and Policy Statement**. All these bodies must lay reports to the Scottish Parliament and to appear before Parliamentary Committees.

Pensions, Social Security and Welfare

The State Pension and the Universal Credit (UC) benefit³ will remain reserved, including the power to vary the non-devolved elements of UC, the earnings taper, conditionality and sanctions.

The Scottish Government will be able to vary the housing cost elements of UC, including the **under-occupancy charge (bedroom tax) and local housing allowance rates, eligible rent and deductions for non-dependents**. It will also have the administrative power to change the frequency of UC payments, vary the existing plans for single household payments and **pay landlords direct for housing costs** in Scotland.

The **following non-UC benefits will be devolved to the Scottish Parliament, which will have complete autonomy in determining their structure and value**, and any new benefits or services which might replace them.

For carers, disabled people and those who are ill:

- Attendance Allowance
- Carer's Allowance
- Disability Living Allowance
- Personal Independence Payment
- Industrial Injuries Disablement Allowance
- Severe Disablement Allowance

Benefits currently part of the Regulated Social Fund:

- Cold Weather Payment
- Funeral Payment
- Sure Start Maternity Grant
- Winter Fuel Payment

And additionally:

- Discretionary Housing Payment

The **Scottish Parliament will have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from the Department for Work and Pensions**. Any new benefits or discretionary payments must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitled e to other benefits or post-tax earnings if in employment.

³ UC combines: Job Seekers Allowance, Housing Benefit, Working Tax Credit, Child Tax Credit, Employment and Support Allowance and Income Support.

A number of non-UC benefits will remain reserved.⁴

The UK Government's Benefit Cap will be adjusted to accommodate any additional Scottish benefit payments.

Tax Raising Powers

Income Tax will be under shared control. UK MPs will continue to decide the UK Budget. The tax free personal allowance will continue to be set at Westminster, but other rates and thresholds for Scottish income tax payers will be decided by the Scottish Parliament. Income tax will still be collected and administered by HMRC at a UK level.

The first 10 percentage points of the standard rate of **VAT** receipts raised in Scotland will be assigned to the Scottish budget. The current standard rate of VAT is 20%, so this would mean half of VAT from Scotland would be allocated to the Scottish Government.

Air Passenger Duty and the **Aggregates Levy** will also be devolved.

National Insurance, Capital Gains Tax, Inheritance Tax, Corporation Tax, Fuel Duty, Excise Duty and Oil and Gas taxes will remain reserved.

Fiscal Framework

The **block grant** from the UK Government to Scotland will be increased to reflect the increase in responsibility which the Scottish Parliament is to gain, and lowered to reflect the devolution of the tax raising powers outlined above. Once these calculations have been applied, the block grant will continue to be determined by the **Barnett Formula**.⁵ The Scottish and UK Government budgets should be no larger or smaller simply as a result of the initial transfer of tax and spending powers and the readjustment of the block grant.

The control of the Scottish budget by the Scottish Government means that they will be **responsible for fiscal decisions**, and if they take an action which reduces revenues or increases expenditure, they will have to bear the **costs**. Similarly, increase in revenue or reduction in expenditure will mean the **benefits** will be enjoyed by the Scottish Government.

It was agreed that the Scottish Government should have **additional borrowing powers** to mitigate against risk and financial cycles, and that these powers should be agreed jointly, along with agreed rules based on clear principles.

The Scottish Parliament should seek to strengthen its **ability to scrutinise public finances**.

Employment

⁴ Non-UC benefit reservations include: Bereavement Allowance, Bereavement Payment, Child Benefit, Guardian's Allowance, Maternity Allowance, Statutory Maternity Pay, Statutory Sick Pay and Widowed Parent's Allowance.

⁵ A calculation which divides the money between the nations of the UK; under the current arrangements all taxes raised are sent to the UK Treasury, which then applies the Barnett Formula (named for the Cabinet Minister who first devised it, Joel Barnett) to distribute accordingly the money which is allocated to the devolved administrations.

Support for unemployed people through employment programmes will be devolved. Jobcentre Plus will remain reserved but the UK and Scottish Governments will link services wherever possible.

The National Minimum Wage will remain reserved.

Equalities

The Equality Act 2010 will remain reserved. The Scottish Parliament's powers will include the introduction of **gender quotas for boards of public agencies**, and it will be able to **legislate in relation to socio-economic rights in devolved areas**.

Abortion, health and social affairs

It is recommended that **abortion be devolved** and that a process should be established immediately to consider the matter further. Other issues should be discussed without prejudice to whether or not devolution takes place: xenotransplantation, embryology, surrogacy and genetics, medicines, medical supplies and poisons, welfare foods (i.e. Sections J2-J5 of Schedule 5 to the Scotland Act 1998).

Tribunals

Powers relating to **all reserved tribunals shall be devolved**, except the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.

Transport

The Scottish Government will have the power to allow **public sector operators to bid for rail franchises**. Remaining powers to change highway **speed limits** will be devolved, as well as **traffic signs** and the functions of the **British Transport Police**.

Energy Efficiency and Fuel Poverty

There will be devolution of powers with regard to **the design and implementation of obligations on suppliers in relation to energy efficiency and fuel poverty**, such as the Energy Company Obligation and the Warm Home Discount. Responsibility for the way the money is raised will remain reserved.

Onshore Oil and Gas Extraction

Licensing and mineral access rights for onshore oil and gas extraction (including fracking) will be devolved. Offshore extraction will remain reserved.

Competition Policy

Scottish Ministers will have a new power to require the Competition and Markets Authority to carry out an investigation in relation to particular competition issues arising in Scotland.

Consumer Protection and Betting, Gaming and Lotteries

Consumer advocacy and advice will be devolved. The Scottish Parliament will have the power to **prevent the proliferation of Payday Loan shops and Fixed-Odds Betting Terminals**.

Additional Issues

The Smith Commission agreement included a number of issues which were about cross-Government working rather than the devolution of powers. These included:

- Seeking to amend European **food labelling country of origin rules**, so that ‘made in Scotland’ is recognised.
- Exploring whether **international university students graduating in Scotland can remain in Scotland** and contribute to economic activity for a defined period of time.
- Exploring whether **victims of human trafficking can have a temporary right to remain in Scotland** to be extended.
- Exploring the possibility of different powers to be in place in Scotland to **provide for asylum seekers’ access to accommodation, financial support and advice**, as well as the **right to lodge an asylum claim to the Home Office from within Scotland** and the powers of **MSPs to make representations to UK Visas and Immigration and Immigration Enforcement** with respect to devolved matters affecting their constituents.

Lord Smith also noted four additional issues which arose during the process:

- Intergovernmental working needs to be a productive, robust, visible and transparent relationship.
- There needs to be devolution from the Scottish Parliament to local communities
- The Scottish Parliament needs to be reformed to strengthen oversight processes
- Holyrood’s Presiding Officer and the House of Commons Speaker should act to improve public awareness of Scotland’s constitutional settlement.

What next?

The UK Government’s Scotland Office is now taking the lead in turning the political agreement into a Draft Bill. It is bringing together a stakeholder group of representatives from civic organisations to advise on this process. The Acting Scottish Churches Parliamentary Officer, David Bradwell, has been invited to take part in this group. The Draft Bill will be published by 25 January, and a Second Reading debate has been promised before 31 March 2015.

However, the Church of Scotland in particular has stressed the importance of not leaving important questions about Scotland’s future in the hands of politicians. Commenting on the publication of the Smith Commission Agreement, the Rev Dr Graham Blount, Secretary of the Church of Scotland’s Church and Society Council said:

“While the commission has fulfilled its remit by getting agreement among political parties, these ‘heads of agreement’ should be tested much more widely. The massive number of people who got involved in and beyond voting in the referendum deserve more than leaving it to the politicians. We will happily work with other civic partners to find the best way to provide a robust citizen-led process to test the Smith proposals – there are good examples from other countries who’ve done this. No legislation is likely to pass before next autumn; before the UK Parliament votes on this, the people of Scotland should have the chance to assess the proposals. We also believe that, despite the laudable aim of

"a durable but responsive constitutional settlement", it is unlikely that these (or any) proposals will prove a definitive final answer amid the inter-dependent powers. We therefore renew our call for a rolling five-year, citizen-led review to be built into any settlement."