HM Government

The parties' published proposals on further devolution for Scotland

October 2014

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Presented to Parliament
by the Secretary of State for Scotland
by Command of Her Majesty
October 2014

Cm 8946

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at:

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1 Horse Guards Road,
London
SW1A 2HQ

Print ISBN 9781474111119
Web ISBN 9781474111126

Printed in the UK by The Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID SDG006449 10/14

Printed on paper containing 75% recycled fibre content minimum.

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Introduction

The Edinburgh Agreement set out the process for a legal, fair and decisive referendum capable of producing an outcome respected by all sides on the question of Scottish independence. On 18 September 2014, the people of Scotland made a positive choice to remain part of the United Kingdom (UK). Looking towards a shared future together, the UK Government is committed to ensuring that institutional and constitutional structures continue to deliver for everyone across the UK.

On 19 September 2014 the Prime Minister said "we have delivered on devolution under this Government, and we will do so again in the next Parliament. The three pro-union parties have made commitments, clear commitments, on further powers for the Scottish Parliament. We will ensure that they are honoured in full".[1]

Right from the outset, the Coalition Government has demonstrated its commitment to further devolution of powers across the UK – from the Wales Bill to the City Deals agreed up and down the country. The UK Government recognised the desire for a greater degree of fiscal autonomy in Scotland and that has been delivered through the Scotland Act 2012.

The UK Government believes passionately in the UK and recognises the benefits it brings to all of its citizens. For over 300 years the UK has brought people together in the most successful multi-nation state the world has ever known. To ensure this continues into the future the UK Government must listen to proposals for change and challenge the way the Government and its institutions deliver for the public.

It is in this spirit that this Command Paper sets out the three main UK parties' published proposals on further devolution in Scotland. In doing so, the UK Government absolutely recognises that any changes to the relationship between the UK and Scottish Parliaments will have wider implications for the constitutional settlement across the UK, and that these will need to be considered in the round.

The proposals in this paper

During the course of the referendum campaign all three pro-UK political parties committed to a timetable on agreeing further powers for the Scottish Parliament, concluding with the publication of draft clauses in January 2015.

That timetable committed the UK Government to the publication of a Command Paper by the end of October 2014 that would summarise the parties' individual proposals. This document fulfils that commitment.

[1] https://www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister

The Scottish National Party and the Scottish Green Party have agreed to join the cross-party talks. The Scottish Government published proposals for submission to the Smith Commission on 10 October 2014, and the Scottish National Party has endorsed those proposals. The Scottish Green Party published its proposals for submission to the Commission on 10 October 2014. The Commission will rightly assess and take all of these into account as part of a consensus-building process on agreeing proposals for more powers. This document is entirely without prejudice to that work.

Those proposals, and those made by the Conservative, Liberal Democrat and Labour parties, can be found at:

Scottish Conservative and Unionist Party: Commission on the Future Governance of Scotland

Scottish Liberal Democrats: Federalism: the best future for Scotland

Scottish Labour Party: Powers for a purpose – Strengthening Accountability and Empowering People

Scottish National Party: More powers for the Scottish Parliament

Scottish Green Party: Scottish Green Party submission to Smith Commission on Devolution

Chapter 1:
The commitment to deliver further devolution

On 19 September 2014 the Smith Commission, chaired by Lord Smith of Kelvin, was established as a fully independent body to facilitate talks on the devolution of further powers to the Scottish Parliament. The Smith Commission, whose Terms of Reference can be found at http://www.smith-commission.scot, will publish its Heads of Agreement in November this year. In parallel, the UK Government has agreed to:

- set out the range of proposals that have been made on further devolution;
- provide secretariat support to the parties' discussions and to wider consultation on those proposals; and
- respond to the Smith Commission's Heads of Agreement. The UK Government's response will take the shape of draft legislative proposals accompanied by an explanatory text in January 2015. These will form the basis of a Scotland Bill to be brought forward by the next UK Government in the new Parliament.

This Command Paper fulfils the first of those commitments by setting out the published proposals by the three main UK political parties that have already been put forward for further devolution.

Chapter 2:
Background: Devolution in Scotland

Devolution in Scotland is not a new creation – from the outset of the Union, a unique set of Scottish institutions and systems continued to exist and flourish within the UK including the Scottish education system, the Church of Scotland and Scots law and legal system. The principle of administrative devolution was established in Scotland in 1885 with the creation of the Scottish Office. A little over a hundred years later in 1989 the Scottish Constitutional Convention, made up of representatives from civic Scotland and some of the political parties, came into being. In 1995 the Convention drew up a detailed blueprint for devolution including proposals for a directly elected Scottish Parliament with wide legislative powers. This formed the basis of further proposals which were brought forward by the UK Government and received overwhelming support in a referendum on 11 September 1997. As a result the UK Government brought forward the Scotland Act 1998 that established the Scottish Executive (now Scottish Government) and Scottish Parliament in 1999.

This Government has continued to support devolution to Scotland through the Scotland Act 2012, which implements many of the recommendations of the Calman Commission.[1] During the passage of the Scotland Act 2012, the UK Government set out three devolution principles. These were that any proposal should:

1. have cross-party support;
2. be based on evidence; and
3. not be to the detriment of other parts of the UK.

The Scotland Act 2012 and previous devolution of powers on spending and taxation did not confer any systematic financial gain or loss to either Scotland or the rest of the UK. The Scotland Act 2012 provides the Scottish Parliament with increased responsibility for raising revenue, as well as making decisions about how it is spent. Together, these changes mean that the Scottish Parliament will be responsible for funding around a third of devolved spending – roughly double the amount it currently funds. These additional powers include a new Scottish rate of Income Tax, which will allow the Scottish Government to decide the rate of tax that people in Scotland pay. In addition, powers are on the way to enable the Scottish Government to issue its own bonds and borrow for capital investment.

[1] The Commission was established in 2008 by the UK Government in response to a motion passed by the Scottish Parliament. It was set up and supported by all three main parties at the UK Parliament (who formed the Opposition in the Scottish Parliament) in response to the establishment by the Scottish Government of a 'national conversation' about the future of Scotland.

Further information on devolution in Scotland and details of which powers are reserved and devolved can be found here: https://www.gov.uk/devolution-of-powers-to-scotland-wales-and-northern-ireland.

In the referendum on Scottish independence held on 18 September 2014, the Scottish people made a positive choice to remain in the UK. The UK Government is clear that the Scottish people did not vote to maintain the status quo and all the parties represented at the Scottish Parliament have agreed to enter into talks aimed at agreeing proposals for further devolution to Scotland.

The devolution settlements in the UK have evolved in different ways with each responding to the particular circumstances of time and place. That is not to say that the devolution of powers can or should be considered in isolation and any change, including forthcoming proposals for Scotland, will necessarily have a wider impact on the UK constitutional settlement.

Chapter 3:
Further devolution proposals

Prior to the referendum the Scottish Conservatives, the Scottish Liberal Democrats and Scottish Labour all published proposals for the devolution of further powers to Scotland. These three sets of proposals can be read here:

Scottish Conservatives and Unionist Party: Commission on the Future Governance of Scotland

Scottish Liberal Democrats: Federalism: the best future for Scotland

Scottish Labour Party: Powers for a purpose – Strengthening Accountability and Empowering People

In addition to the specific proposals already published in the reports above, the three main UK politcial parties are fully engaged with the Smith Commission to consider the range of proposals and to achieve cross-party agreement on recommendations for further devolution of powers to the Scottish Parliament. This Chapter covers the policy areas where all three of these parties have produced proposals. Some of these three parties have put forward additional proposals in a number of policy areas and these proposals are detailed in Chapter 4 of this paper. In some areas proposals have only been put forward by one (or two) of the three parties; however, at this stage silence on a specific area by one or more parties cannot be taken as indication of either agreement or disagreement with devolution in that area. Further responses and proposals are likely to emerge from these three parties, as well as the Scottish National Party and the Scottish Green party, as the Commission's work progresses.

As previous devolution settlements have shown, decisions in one area can have a direct, complex and intricate impact on many others. For example, increased tax-raising powers for the Scottish Parliament would impact upon macro-economic policies. The proposals gathered together here should be considered in light of the broader impact they may have on a broad range of diverse policy areas, for example across issues including the labour market, spending and regulation. Furthermore, the effect of implementing multiple changes, as proposed by all three parties, would be different and likely greater than the effect of implementing individual changes.

Any balanced package of measures to be devolved must consider the interaction between its elements and the associated impact on both the UK and Scottish Parliaments' ability to effectively discharge their duties. The UK Government believes that the devolution principles underpinning the Scotland Act 2012 continue to hold true and should be part of the considerations of the Chair of the Smith Commission and the parties. There are also valuable international lessons on fiscal and other devolution which can inform any work on further devolution and these will be an important part of any devolution considerations.

The UK Government believes in a fair and balanced settlement for Scotland. This means that – consistent with the process that underpinned the Scotland Act 2012 – it is anticipated that any further devolution of powers should not of itself confer any systematic financial gain or loss to either Scotland or the rest of the UK or the UK as a whole. This protects both Scotland and the rest of the UK.

The people of Scotland voted by a clear majority for Scotland to remain within the UK. Proposals to strengthen the Scottish Parliament provide an opportunity to reach a strong and lasting constitutional settlement across the UK.

3.1 Taxation, funding and borrowing

The UK currently has an integrated tax system, meaning the same taxes generally apply across the UK. This provides an effective base for collection of tax revenues across the UK. The Scottish Parliament is responsible for Council Tax and non-domestic (business) rates, which usually fund slightly more than ten per cent of the spending for which it is responsible (i.e. the spending by the Scottish Government and Scottish Local Authorities).

The core of the Scottish Government's funding is the 'block grant' allocated by the UK Government. Changes to the block grant allocations are largely determined by the Barnett Formula which provides a population-based share of changes in comparable spending by UK Government departments.

Through the Scotland Act 2012 the UK Government devolved certain tax powers to the Scottish Parliament. Stamp Duty Land Tax and Landfill Tax are being fully devolved from April 2015 and a Scottish rate of Income Tax is being created from April 2016.

Alongside these tax powers, the Act also provides the Scottish Government with commensurate capital borrowing powers to support further investment in infrastructure.

The UK Government announced in February 2014 that it is granting the Scottish Government the ability to issue its own bonds. This will broaden the sources of financing available to the Scottish Government for capital investment when borrowing powers are implemented in 2015-16.

Under the Scotland Act 2012, the Scottish Government is able to borrow up to a total of £2.2 billion for capital investment via the National Loans Fund and commercial loans. The power announced in February 2014 provides an additional source of borrowing within the same limits.

The Scotland Act 2012 tax and borrowing powers[1]

From Royal Assent (May 2012):

- existing UK-wide taxes can be devolved and/or new Scottish taxes can be created by order-making process in both the UK and Scottish Parliaments.

From April 2015:

- full devolution of Stamp Duty Land Tax and Landfill Tax;
- borrowing powers for capital spending set at an additional ten per cent of the Scottish Government's capital Departmental Expenditure Limits budget each year (which equates to capital borrowing of £296 million in 2015-16 as set out in the recent Spending Round) within an overall limit of £2.2 billion;
- the Scottish Government can utilise a cash reserve if devolved tax receipts are lower than forecast. In addition to using an element of devolved tax revenues to build up the reserve, the Scottish Government can also make discretionary payments from their existing budgets (from June 2011 to June 2016) in order to support the transition to the new system; and
- borrowing powers for current spending if devolved tax receipts are lower than forecast and there are insufficient funds in the cash reserve to cover the shortfall. This is limited to £200 million per year up to an overall limit of £500 million.

From April 2016:

- Income Tax will be partially devolved. Each of the UK rates (basic, higher and additional) is to be reduced by 10 pence in the pound for Scottish tax-payers, and will be replaced by a single Scottish rate of Income Tax applying to non-savings income set annually by the Scottish Parliament. There will be a two or three year transitional period during which the UK Government will retain the forecasting risk.

European Union rules

Under European Union (EU) rules, generally, a tax measure that only applies to one region will be considered a State aid. However, the devolution of taxes is not considered to be an aid if the regional authority demonstrates sufficient autonomy, known as the Azores Criteria.

This means that a devolved tax will not be an aid if the block grant is adjusted so that any tax cut is not supported by central government, and the authority has control over the tax. This does not necessarily require the devolution of entire control over the tax. The powers over tax that have already been devolved to Scotland are compliant with the Azores Criteria. Any further devolution of tax would also have to be compliant.

[1] *Scotland analysis: Macroeconomic and fiscal performance,* HM Government, September 2013

Tax devolution

The different elements of the tax system are interrelated, so tax devolution options need to be considered in the context of a particular fiscal framework.

On previous occasions where a revenue stream has been devolved (such as under the Scotland Act 2012) this has involved adjusting Scotland's block grant funding from the UK Government to account for the fact that they have new revenue raising powers and some tax has been foregone by the UK Government.

There are, in principle, a number of ways of devolving a particular tax:

- full devolution (i.e. taxpayers are required to register and file tax returns in each jurisdiction);
- tax base set at national level but rates can be varied sub-nationally;
- tax rates set at national level but bases can be varied sub-nationally (by varying reliefs and allowances); or
- no devolution of the tax base or tax rates but sharing of revenue between national and sub-national governments (sometimes referred to as 'revenue assignment').

At the individual tax level, there are a number of possible criteria that could be used when considering the merits of devolving a particular tax. For example, the Silk Commission[2] used:

- **Accountability**: Is the tax paid in the devolved territory; would devolving it strengthen accountability for raising revenue from that tax?
- **Economic efficiency**: Would devolution of a tax provide taxpayers with strong incentives to alter their behaviour just to reduce their tax burden?
- **Administrative efficiency**: Would devolution of a particular tax impose substantial additional administrative burdens on citizens or firms or increase the cost of collection unreasonably?
- **Policy relevance**: Would the tax be useful as a policy lever to change behaviour (e.g. environmental taxes)?
- **Legal constraints**: Would devolution of a tax be consistent with European law or other international agreements?
- **Impact on the UK tax base**: Would devolving the tax increase risks to the UK tax base?

Such criteria do not, of course, give a unique, objective answer as to which taxes should be devolved.

The three parties have set out individual proposals for further devolution of powers to the Scottish Parliament related to taxation, funding and borrowing. These cut across a range of policy areas with some overlap between the parties' proposals. The section below details the specific proposals alongside the current situation in each of these areas.

[2] The Commission on Devolution in Wales, also known as the Silk Commission, was launched in 2011. The independent Commission was established to review financial and constitutional arrangements in Wales. The Silk Commission's report on fiscal matters was published on 19 November 2012 and can be read here: http://commissionondevolutioninwales.independent.gov.uk

Income Tax

Current situation

Income Tax is charged on an individual's income above their personal allowance, at a series of rates which are determined by thresholds and the nature of the income.

The Scotland Act 1998 introduced the Scottish Variable Rate (SVR) which allows the Scottish Parliament to vary the basic rate of Income Tax by up to three percentage points from the UK rate. This applies to the non-savings income of Scottish taxpayers, but has never been used by the Scottish Parliament.

From April 2016, the SVR will be replaced by a new Scottish rate of Income Tax, as described above. The personal allowance, thresholds and the rates on non-savings income will remain at UK Government-set levels.

Published proposals

Conservative commission: '…the Scottish Parliament should be responsible for setting the rates and bands of personal income tax in Scotland…This does not mean that the United Kingdom Government would have no role as regards income tax paid by Scottish taxpayers. The definition of 'income' for the purposes of the Taxes Acts should remain consistent across the United Kingdom, for example. Likewise, income tax on investments, dividends and savings should remain a matter for UK Ministers, for practical reasons and in order to safeguard the integrity of the UK's single market in financial services. We also consider that allowances such as personal allowance – i.e. the threshold at which income becomes taxable – should continue to be set for the whole of the UK by the UK Government. But, beyond these fundamentals, the key decisions as to the rates at which the income of Scots should be taxed and income tax banding should be for the Scottish Parliament'.

Liberal Democrat commission: 'Income tax paid by Scottish taxpayers should be almost entirely the responsibility of the Scottish Parliament'. 'Income tax payable on savings and dividends should continue to be levied on a uniform basis across the UK, be deducted at source and a proportion of the UK receipts allocated to the Scottish Parliament'.

Labour commission: 'We will widen the variation in income tax in the Scotland Act by half from 10p to 15p. It will mean that three-quarters of the basic rate income tax in Scotland will be under the control of the Scottish Parliament. The Scotland Act enables the Scottish Parliament to increase or decrease income tax rates in Scotland. In addition to extending this power, we will also introduce new Scottish Progressive Rates of Income Tax, so that the Scottish Parliament can increase the rates of tax in the higher and additional bands. For the first time, the Scottish Parliament will be able to alter both the level of tax and the progressivity of the tax system, but without the risk that a Scottish Government could force tax competition within the UK by cutting only the top rates, to the detriment of public services. Labour in the Scottish Parliament would be able to use these powers if a UK Government did not set fair taxes at these levels'.

Inheritance Tax

Current situation

Inheritance Tax is charged on death and on certain lifetime transfers if the value of the estates or transfer is above a threshold or 'nil rate band'. Inheritance Tax is not devolved and is set by the UK Government.

There are also two schemes which operate under UK legislation with reference to Inheritance Tax. The Acceptance-in-Lieu Scheme enables taxpayers to transfer works of art and other heritage objects into public ownership in lieu of paying Inheritance Tax. The legislative provisions for this are set out in the National Heritage Act 1980 and the Inheritance Tax Act 1984. The Cultural Gifts Scheme allows individuals or companies to gift pre-eminent cultural objects to the nation in exchange for tax reductions. The legislative provision for this is set out in Schedule 14 to the Finance Act 2012.

Published proposals

Conservative commission: 'We do not recommend the devolution to the Scottish Parliament of Corporation Tax, Capital Gains Tax ('CGT') or Inheritance Tax ('IHT'). Each of these taxes should remain the responsibility of the United Kingdom'.

Liberal Democrat commission: 'Control of the Inheritance Tax should be allocated to the Scottish Parliament'.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

Capital Gains Tax

Current situation

The UK Parliament has the power to set Capital Gains Tax (CGT) rates. CGT is currently levied at 28 per cent for UK higher rate Income Tax payers and 18 per cent for UK basic rate tax payers, on gains above an Annual Exempt Amount of £11,000.

Primary residences are exempt from CGT through Private Residence Relief. In addition, Entrepreneurs' Relief offers investors and business owners a ten per cent CGT rate on up to £10 million of qualifying gains.

There are other reliefs and exemptions relating to disposals of certain business investments, employee share ownership and savings.

CGT is not devolved and is set by the UK Government.

Published proposals

Conservative commission: 'We do not recommend the devolution to the Scottish Parliament of Corporation Tax, Capital Gains Tax ('CGT') or Inheritance Tax ('IHT'). Each of these taxes should remain the responsibility of the United Kingdom'.

Liberal Democrat commission: 'Powers over Capital Gains Tax should be allocated to the Scottish Parliament'.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

National Insurance Contributions

Current situation

National Insurance contributions (NICs) are charged on the earnings of employees, employers and the self-employed. Most NICs receipts are paid into the National Insurance Fund and this is used to fund contributory benefits such as the State Pension. The National Insurance Fund operates on a 'pay as you go' basis, i.e. this year's contributions pay for this year's benefits.

NICs are not devolved although Northern Ireland has its own National Insurance Fund.

Published proposals

Conservative commission: '…we do not consider that national insurance should be devolved'.

Liberal Democrat commission: 'Powers over the National Insurance system should be allocated to the UK, and subsequently federal level of government'.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

Air Passenger Duty

Current Situation

Air Passenger Duty (APD) is an excise duty which is levied on the carriage of chargeable passengers from a UK airport on chargeable aircraft. APD was extended to smaller aircraft including business jets in April 2013. This includes all flights on aircraft with an authorised take-off weight of 5.7 tonnes or more. The higher rate of APD applies to flights on aircraft of over 20 tonnes but with fewer than 19 seats.

APD is compliant with the UK's international legal obligations under the Chicago Convention on International Civil Aviation and the Treaty on the Functioning of the EU.

APD rates are set by the UK Government. However, the Finance Act 2012 devolved to the Northern Ireland Assembly (NIA) the power to set APD rates on direct long haul flights from Northern Ireland. With effect from 1 January 2013, the NIA legislated to set these devolved rates at £0. Northern Ireland's direct long-haul flight rate is administered on the Northern Ireland Executive's behalf by the UK's tax authority, HM Revenue and Customs (HMRC).

Published proposals

Conservative commission: '…we consider that Air Passenger Duty should be devolved…In our judgement there is no need for fresh legislation in order to allow this to occur'.

Liberal Democrat commission: 'Responsibility for Air Passenger Duty for flights from Scottish airports should be allocated to the Scottish Parliament, to complement existing powers on the environment, transport and economic development'.

Labour commission: 'Our interim report considered whether there was scope for devolution of air passenger duty, subject particularly to EU rules. We received a number of considered representations, and continue to note that departures from Highlands and Islands airports are already exempt from this tax. Given the pressure to reduce this tax from airlines and others and the risk of tax competition which would be created, we are not now convinced that devolution should be progressed until further consideration is given to the environmental impact and how else this tax might be reformed'.

Value Added Tax

Current Situation

Value Added Tax (VAT) must, as a requirement of EU law, be levied at a single rate for each particular good or service and that rate must apply across the territory of a Member State.[3] The power to set VAT rates therefore rests with the UK Parliament. The UK VAT standard rate is currently set at 20 per cent, with reduced rates (including a zero rate) for some goods and services (such as food and children's clothes). Whilst devolution of the tax is not possible a reassignment of VAT receipts could be achieved.

Published proposals

Conservative commission: 'Were it not illegal under EU law, we would have been inclined to recommend that VAT be devolved to the Scottish Parliament. However we recommend that, as an alternative, there should be serious examination of the case for a share of VAT receipts raised in Scotland being assigned to the Scottish Parliament'.

Liberal Democrat commission: 'VAT and customs and excise duties on alcohol and tobacco should naturally remain the responsibility of the UK Parliament'.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

Corporation Tax

Current Situation

Corporation Tax policy – including rates, allowances and reliefs – is currently set by the UK Government and is not devolved.

The Prime Minister has publicly committed to deciding by Autumn Statement 2014 whether the power to set the Corporation Tax rate in Northern Ireland should be devolved to the Northern Ireland Assembly.

Published proposals

Conservative commission: 'We do not recommend the devolution to the Scottish Parliament of Corporation Tax, Capital Gains Tax ('CGT') or Inheritance Tax ('IHT'). Each of these taxes should remain the responsibility of the United Kingdom'.

Liberal Democrat commission: 'Corporation Tax should continue to be operated and collected at the UK level, but the proceeds raised in Scotland should be assigned to the Scottish Parliament'.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

[3] *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*

Excise Duties

Current Situation

EU law determines the structure of and sets minimum rates for alcohol, tobacco and fuel duties and for some elements of vehicle excise duty. Member States have freedom to determine their excise duty system subject to these constraints. The power currently rests with the UK Parliament.

EU law permits regional rates via specific derogations. However, certain criteria would need to be met and the structure and rates would still need to comply with EU law.

Published proposals

Conservative commission: 'Air Passenger Duty; Climate Change Levy; Excise, Fuel and Vehicle Duties, etc…These are relatively minor taxes, responsible between them for raising less than 10 per cent of tax revenues in the UK. Even if they were devolved in their entirety this would make only a modest contribution to the task of closing the 'fiscal gap'. Some of these taxes and duties relate to activity that is highly mobile (e.g. fuel duty and betting duties) and are for this reason unsuitable for devolution. The devolution of alcohol and tobacco duty, leading to the possibility of differential rates in different parts of the UK, could trigger an increase in illicit trafficking'.

Liberal Democrat commission: 'VAT and customs and excise duties on alcohol and tobacco should naturally remain the responsibility of the UK Parliament'. Fuel duty and vehicle excise duty are not specifically referenced.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

3.2 Constitutional affairs

The Scottish Parliament was established by the Scotland Act 1998, which also sets out its structure and rules – including aspects such as membership, methods of election and the need for a Presiding Officer. Under devolution, the Scottish Parliament has responsibility for matters that are not explicitly reserved to the UK Parliament.

While the UK Parliament retains the power to legislate in all areas, the UK Parliament does not normally legislate in relation to devolved matters except with the consent of the Scottish Parliament. This is known as the Sewel Convention – this Convention has been upheld since the Scottish Parliament was established fifteen years ago.

As the constitution of the UK is generally a reserved matter under the 1998 Act, the Scottish Parliament itself is unable to make fundamental changes (for example introducing a second chamber) to its own structure. The Scotland Act 1998 does however allow that the Scottish Parliaments' proceedings be regulated by standing orders for which it has responsibility.

Orders under the 1998 Act play an important part of the working of governance in Scotland. For example, they have often been used to ensure that Scottish Parliament legislation can be given full effect by making changes to legislation for other parts of the UK or in reserved areas. However, many of the processes underpinning devolution are not set out in legislation. The Sewel Convention, for example, is one of the most important of these.

The three parties have set out their proposals for constitutional changes under further devolution proposals. The section below details the specific proposals alongside the current situation in each of these areas.

Civil Service

Current Situation

The Civil Service is reserved in England, Scotland and Wales and devolved in Northern Ireland.

Senior Civil Servants are encouraged to seek experience of working within different departments.

HMRC is a non-ministerial Department established by the Commissioners for Revenue and Customs Act 2005 (CRCA), replacing the Inland Revenue and Customs and Excise. CRCA vests responsibility for the collection of revenue and the administration of the tax system in Commissioners appointed by Her Majesty the Queen. The Commissioners are members of the Department's Executive Committee. HMRC reports to the UK Parliament at Accounting Officer level though the Permanent Secretary, and through HM Treasury Ministers as one of the Chancellor's Departments. As part of the implementation of the Scotland Act 2012 HMRC has appointed an Accounting Officer with responsibility for the operation of the Scottish rate of Income Tax who reports regularly to the Scottish Parliament. HMRC has no specific or protected constitutional status.

The Secretary of State for Scotland is a full member of the Cabinet of the UK Government and attends all meetings of Cabinet. There are no plans to review the role of the Scotland Office.

Published proposals

Conservative commission: 'We believe that the Scottish Government and Parliament should be able to call upon the best and brightest from across the Civil Service UK wide. We also believe that the rest of the UK would benefit from a Scottish view and accordingly recommend that civil servants who expect to reach the higher echelons of their profession in Scotland should spend a part of their career development in other parts of the UK. The Civil Service should operate a scheme to ensure that not only is this possible but attractive for Scots to spend time in Departments of State outside Scotland'.

Liberal Democrat commission: 'The status and functions of certain UK-wide institutions – notably Her Majesty's Revenue and Customs – should be given a protected and more independent constitutional position in recognition of the fact that they will be expected to serve all parliaments and jurisdictions within the UK. The role of the Scotland Office should be reviewed as the United Kingdom moves towards a federal union. Until the move to a federal state is well underway the Scotland Office should remain as Scotland will need the safeguard of a Secretary of State in Cabinet to look after its interests during the transition'.

Labour commission: 'The following matters should remain reserved as they are key to the maintenance of the union…The civil service should remain'.

Parliaments/Assemblies: relationships and powers

Current Situation

The UK and Scottish Governments are committed to the principles of working together on matters of mutual interest, and to good communication and mutual respect. They work together long before a bill enters Parliament or in routine policy issues where no legislation is required. These principles are set out in the Memorandum of Understanding between the UK Government and the devolved administrations first published in 1999, and regularly updated.[4]

There is currently no committee which considers the developing role of the UK, its Parliaments and Assemblies. It is a matter for the Parliaments and Assemblies as to whether one should be established.

There are three legal jurisdictions in the UK: the Scottish legal system is separate to the jurisdiction of England and Wales and that of Northern Ireland.

The Supreme Court:

- is the final court of appeal for all UK civil cases, and criminal cases from England, Wales and Northern Ireland;
- hears appeals on arguable points of law of general public importance;
- concentrates on cases of the greatest public and constitutional importance; and
- maintains and develops the role of the highest court in the UK as a leader in the common law world.

As regards devolution issues, the Scotland Act 1998 (the 1998 Act) created a right of review for the Judicial Committee of the Privy Council in relation to 'devolution issues'. This jurisdiction was transferred to the Supreme Court upon the court's creation in 2009. The Lord Advocate, the Attorney General, the Advocate General for Scotland or the Advocate General for Northern Ireland may refer a devolution issue to the Supreme Court. 'Devolution issues' may arise in civil or criminal cases, though some of what were previously devolution issues in criminal cases have now become 'compatibility issues' under the 2012 Act. Compatibility issues may be referred to the High Court of Justiciary or the Supreme Court.

A party may appeal to the Supreme Court against a determination of a devolution issue by the Court of Session or the High Court of Justiciary sitting in their appellate capacities in civil and criminal cases respectively. Such an appeal requires permission from those courts, failing which, permission of the Supreme Court. The Court of Session or the High Court of Justiciary may also refer a devolution issue which arises in proceedings before them to the Supreme Court. Further, the Lord Advocate, the Attorney General, the Advocate General for Scotland or the Advocate General for Northern Ireland may require any court to refer to the Supreme Court any devolution issue which has arisen in proceedings before it to which they are a party.

Published proposals

Conservative commission: '…the Sewel Convention (Holyrood giving formal consent to Westminster legislation affecting Scotland) is a mechanism that is used frequently, but few other formalised relationships between the two Parliaments exist. The Calman Commission recommended a joint liaison committee be established and we believe this proposal should be re-examined after the General Election…As a final recommendation, we therefore call for the creation of a Committee of all the Parliaments and Assemblies of the UK'.

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

Liberal Democrat commission: 'The concept of mutual respect, already endorsed as the principle governing relationships between the UK and Scottish Governments, should be incorporated as a constitutional obligation on federal and state governments to respect and support each other's role'.

'Some functions of government should constitute a third category – additional to 'reserved' and 'devolved' powers – namely 'partnership powers', which require the co-operation of both home rule and federal governments'.

'In addition to a general constitutional obligation of mutual respect, policy functions in areas of 'partnership powers' should impose a legal duty on one government – more normally the federal government – to consult the other government on a partnership basis'.

'Each tier of government should have a formal 'power of initiation', enabling it to request the other tier to take some specific action to facilitate policy objectives in an area where the other government has the policy lead'.

'The Supreme Court should exercise jurisdiction in relation to dispute resolution, whilst maintaining that it is not the role of the court to determine substantive political disputes'.

'Rather than continue a seemingly endless process of revisiting the list of reserved matters, the future federal, United Kingdom should take seriously the recommendation of the Steel Commission to establish a new constitutional category for partnership-working'.

Labour commission: 'Partnership arrangements between Parliaments and Governments whose responsibilities will inevitably overlap should be established, so that they work together for the common good, safeguarding civil and political rights, and promoting social and economic rights such as welfare and full employment. There is a strong case for giving partnership arrangements a legal existence, in the form of statutory obligations on both administrations to co-operate in the public interest, or through the creation of a formal Intergovernmental Council or its equivalent with the duty to hold regular meetings'.

Chapter 4: Additional proposals

In addition to the proposals detailed above, some parties have also considered the devolution of further powers in other areas. The same considerations about the implications of any of these proposals on a wider range of policy areas should also be considered.

4.1 Taxation, funding and borrowing[1]

Aggregates Levy

Current Situation

The Aggregates Levy is a tax on commercial exploitation of virgin aggregate in the UK, and aims to internalise the environmental damage associated with the quarrying of rock, sand and gravel used in construction. The power to raise the Aggregates Levy and to set rates rests with the UK Parliament. The standard rate is currently set at £2 per tonne, with certain exemptions.

There is currently a legal challenge to the Aggregates Levy. As soon as the court proceedings in relation to this challenge are completed the UK Government has committed to consider devolution.

Published proposals

Liberal Democrat commission: 'Responsibility for the Aggregates Levy should be allocated to the Scottish Parliament, subject to the outcome of the current European Union dispute, complementing the existing powers on the environment and recycling'.

Business rates

Current Situation

Business rates (non-domestic rates) in Scotland are devolved. The Scottish Government sets the rate of the poundage (multiplier) and determines the nature and generosity of reliefs such as the Small Business Bonus Scheme. The Scottish Government has chosen to mirror recent changes to the business rates system in England and Wales, such as the two per cent inflation cap, and bringing the poundage in line with the multipliers in England and Wales, but retains the ability to pursue its own policy objectives. Northern Ireland has devolved responsibility for business rates.

[1] For background information on taxation, funding and borrowing see Section 3.1.

The Scottish Assessors, who are independent of both local and central government, are legally responsible for valuing all non-domestic property in Scotland. Local Authorities (LAs) currently administer and collect business rates in Scotland.

Business rates income is currently the single largest source of revenue under the control of the Scottish Government. Currently, each LA reports the rates it has collected (or expects to collect) to the Scottish Government to aggregate into a central pool. From this pool the Scottish Government reallocates each LA's 'distributable amount' to fund core local government services according to relative need.

Published proposals

Liberal Democrat commission: 'Local authorities should set the business rate poundage and retain the entire revenue from business rates in their areas…A mechanism should be established by which a community can bring forward a proposal for a burgh council to take over certain services provided by the principal local authority in the area. This could be funded by a precept on the council tax and/or business rates raised in the area, a proportion of the revenue support grant allocated to the existing local authority or by charges for the use of the services taken on by the burgh council. No new tax would be created'.

Funding and borrowing: additional borrowing powers

Current Situation

Under the Scotland Act 2012, from April 2015 borrowing by Scottish Ministers is allowed up to £2.2 billion for capital investment and up to £500 million to manage tax volatility (where tax is lower than forecast). This borrowing is from the National Loans Fund, essentially the UK Government's main borrowing and lending account.

The Scottish Government will also be able to borrow the £2.2 billion for capital investment via commercial loan and/or by issuing its own bonds from April 2015.

Published Proposals

Liberal Democrat commission: 'The borrowing limit available to the Scottish Government to cover cyclical variations in tax revenue should be extended to £1 billion to cover shocks to the proposed revenue base of around £20 billion. This money would continue to be borrowed from the Treasury, as under the Scotland Act provisions. A fiscal pact should be agreed between the Scottish Government and UK Government under home rule, or all home rule governments in a federal United Kingdom, to define limits on borrowing and fiscal action. Tax cuts and extra borrowing require to be paid for – there is no 'free ride'. Home rule all round should mean responsible government all round. The Scottish Government, and other home rule governments under a federal system, should be permitted to borrow for capital investment under the prudential regime'.

Funding and borrowing: direct funding from HM Treasury

Current Situation

The core of the Scottish Government's funding is the 'block grant' allocated by the UK Government. Changes to the Scottish Government's budget are largely determined by the Barnett Formula, which provides a population-based share of changes in comparable spending by UK Government departments.

Under the Scotland Act 2012, Stamp Duty Land Tax and Landfill Tax are being fully devolved from April 2015 and a Scottish rate of Income Tax is being created from April 2016. As a result, part of the Scottish Government's block grant is being replaced by tax revenues – the Scottish

Government's budget will therefore be determined by the Barnett-based block grant, less a block grant adjustment that reflects the tax revenues foregone by the UK Government, plus the tax revenues generated by the Scottish Government. Further details on the arrangements are set out in the Scotland Act Implementation Report.[2]

Published Proposals

Liberal Democrat commission: '…a continued block payment from the UK Treasury will continue to be necessary in a federal system… The remaining funds required to fund the Scottish Government's annual programme should come from an equalising payment from the UK Treasury as recommended by the Steel Commission. The UK should move to an independent, transparent, needs based formula to serve all parts of the UK well and allow fiscal federalism to be sustained in the long term, recognising that the Barnett Formula was only ever intended to be a temporary measure at the end of the 1970s. For transparency reasons, such a needs-based payment system should be based on recommendations by an independent fiscal agency separate from the UK Treasury'.

Liberal Democrat 2015 pre-manifesto: 'In Scotland we will…Take forward the recommendations of the Campbell Commission on fiscal federalism for Scotland, including powers to raise the majority of the money it spends, not least through control of the taxes on incomes and wealth, and assigning to Scotland corporation tax receipts from Scottish businesses…The Barnett Formula is the mechanism used to adjust spending allocations across the UK. In order to ensure reliable funding at this time, we will retain the Barnett Formula as the basis for future spending allocations for Scotland and Northern Ireland'.

Labour commission: 'Labour will give the Scottish Parliament the power to raise around £2 billion more in revenues beyond the recent Scotland Act, so that it raises about 40 per cent of its present budget from its own resources. The Barnett formula should remain as the funding mechanism for public services in Scotland. Under our policies, as is the case under the Scotland Act, the Barnett grant will be reduced to take account of the fact that the Scottish Parliament will have a revenue stream of its own. As a result the Scottish Parliament will be funded partly by grant calculated under the Barnett formula and partly by its own tax resources'.

Funding and borrowing: fiscal commissions

Current situation

The Office for Budget Responsibility (OBR) is an independent body responsible for producing UK-wide economic and fiscal forecasts which the UK Government adopts as official public finance forecasts. It has also been asked by the UK Government to forecast revenues from the taxes that have been devolved through the Scotland Act 2012 (plus Aggregates Levy, devolution of which is currently subject to legal challenge).

The Scottish Government is in the process of creating the Scottish Fiscal Commission. It is expected to scrutinise Scottish Government tax revenue forecasts, including Scottish Landfill Tax and the Land and Buildings Transaction Tax (which will replace Stamp Duty Land Tax in Scotland). Unless otherwise directed, the OBR would continue to make forecasts of UK-wide taxes, including of devolved tax revenues (including taxes devolved to both Wales and Scotland) as part of their responsibility for making official fiscal forecasts for the UK.

Published proposals

Conservative commission: '…the Finance Committee of the Scottish Parliament is examining the establishment of a Scottish Fiscal Commission (not to be confused with the Scottish

[2] https://www.gov.uk/government/publications/second-annual-report-on-scotland-act-2012-implementation

Government's advisory Fiscal Commission Working Group). The precise remit and operation of this body is still being decided, although we strongly agree with the Finance Committee's view that the Scottish Fiscal Commission must be independent from the Government and should be invited to provide official macro-economic and fiscal forecasts in Scotland. Consideration should be given to whether the Scottish Fiscal Commission could take responsibility for publishing the annual document, Government Expenditure and Revenue Scotland. Scotland's fiscal balance sheet should be clearly communicated to the public'.

Liberal Democrat commission: 'The remaining funds required to fund the Scottish Government's annual programme should come from an equalising payment from the UK Treasury as recommended by the Steel Commission. The UK should move to an independent, transparent, needs based formula to serve all parts of the UK well and allow fiscal federalism to be sustained in the long term, recognising that the Barnett Formula was only ever intended to be a temporary measure at the end of the 1970s. For transparency reasons, such a needs-based payment system should be based on recommendations by an independent fiscal agency separate from the UK Treasury'.

Oil and Gas

Current Situation

The UK taxes oil and gas revenues through the ring fence tax regime. The regime consists of three taxes which are levied on the commercial profits of companies producing oil and gas in the UK:

1. **Ring Fence Corporation Tax (RFCT) at 30 per cent**: Levied on profits generated from production. It is calculated in the same way as mainstream Corporation Tax, but with the addition of a 'ring fence'. This prevents taxable profits from oil/gas extraction being reduced by losses from other activities.
2. **Supplementary Charge (SC) at 32 per cent**: This is an additional charge on a company's profits.
3. **Petroleum Revenue Tax (PRT) at 50 per cent**: This is a field-based tax charged only on older fields. It is deductible as an expense in computing profits for RFCT and SC.

As a result, there is a marginal tax rate of 81 per cent on profits from PRT-paying fields and 62 per cent for others.

Oil and gas revenues collected by the UK Government are not earmarked for any specific fund.

Published proposals

Liberal Democrat commission: 'Oil and gas revenues should continue to be treated on a UK-wide basis, preserving the single taxation regime for the UK's North Sea sector. Consideration should be given to the establishment of an oil fund, when the deficit situation has been brought under control, allocating the proceeds to the benefit of Scotland, England, Wales and Northern Ireland on federal principles'.

Labour commission: 'We concluded that, for a variety of good reasons, VAT, national insurance contributions, corporation tax, alcohol, tobacco and fuel duties, climate change levy, insurance premium tax, vehicle excise duty, inheritance tax, capital gains tax and tax on oil receipts should remain reserved'.

Tax Statements

Current situation

From October 2014, HMRC will begin issuing personal tax statements to Income Tax payers. These will show how an individual's Income Tax and NICs have been calculated and an indicative breakdown of how government has spent this money.

Once the Scottish rate of Income Tax is introduced in April 2016, personal tax statements for Scottish taxpayers will be amended to show the amount of an individual's Income Tax that has been paid to the Scottish Government.

Published proposals

Conservative commission: 'Scottish versions of the Personal Tax Statements should be issued by HMRC, highlighting taxes under the control of the Scottish Parliament'.

4.2 Welfare

Over 30 million people in the UK – half the total population – receive income from at least one social security benefit or tax credit. In Scotland 2.8 million people receive payments – again around half the population. Social security expenditure in the UK represents the largest single element (around 31 per cent) of all UK Government spending. Spending on benefits, pensions and tax credits in the UK in 2012-13 was nearly £209 billion. This includes £17.7 billion in Scotland.[3]

Under current arrangements State Pension and welfare benefits are set at a single level across Great Britain (GB). The same rules, including eligibility and payments, apply wherever in GB the claimants live and with some exceptions, such as housing costs which take account of local factors, the same rates of payment are made. Local service providers currently deliver the Work Programme, and the Scottish Government holds responsibility for training and skills. Similarly, Housing Benefit, soon to become part of Universal Credit, for people who are under Pension Credit qualifying age, is administered nationally.[4] Claims for Attendance Allowance for the whole of GB are currently dealt with in the North West of England. Wider functions impacting welfare provision, such as housing and social care, are devolved to the Scottish Government.

When considering welfare devolution proposals, the following issues may be relevant:

- the complexity of the social security system and the extent to which it is interconnected means that decisions in one area can often have significant repercussions elsewhere in the system. In particular, ensuring that devolved or reserved power bears the full costs of the impact of its own decisions (including the cost to its counterpart) is complex and costly to achieve;
- the degree to which welfare benefits and services pool risk across economic cycles and regions of the UK, for example by acting as automatic stabilisers;
- the degree to which expenditure on benefits or services is volatile in that it is difficult to forecast accurately, and forecast variations impose costs elsewhere in the budget;
- the degree to which a service or benefit is linked to a local area; and

[3] *Scotland analysis: work and pensions*, HM Government, April 2014

[4] Pension credit is means-tested for people over women's State Pension age. Its principal components are: a safety net element to alleviate poverty (the Standard Minimum Guarantee); additional amounts for disability and care needs; support with mortgage interest; and an element (the Savings Credit) rewarding retirement provision.

- how a commensurate level of funding should be transferred to Scotland, both in the short and long term.

Another important consideration is the potential cost implications when building social security systems. For example, previous analysis by the Department for Work and Pensions (DWP) estimated that one-off IT costs to develop a new system for the delivery of social security in the event of an independent Scotland could be between £300 million and £400 million.[5] Based on DWP's experience of developing and introducing large and complex IT systems, building a new benefit system and supporting infrastructure would also be a major challenge, requiring expertise, substantial upfront investment and a lengthy lead-in time while the system is designed, built and tested.

There are several approaches to welfare devolution. For example three approaches could be:

1. devolving a portion of the expenditure relating to claimants in Scotland of a particular benefit, alongside the power to either vary the rate and rules or operate a separate benefit with a different rate and eligibility criteria, or alternatively to reallocate that funding to another area;
2. devolving a proportion of the expenditure on a specific welfare service that relates to claimants in Scotland, alongside a statutory responsibility to deliver that service in Scotland, and potentially further powers to either increase or scale back provision of that service; or
3. powers to 'top up' benefits above the level set by the UK Government.

The three parties have set out their proposals for further devolution of powers on the Work Programme, Housing Benefit and Attendance Allowance to the Scottish Parliament. The recommendations concerning Housing Benefit predate the national rollout of Universal Credit (UC). The section below details the specific proposals alongside the current situation in each of these areas.

Attendance Allowance

Current situation

Attendance Allowance is financial support provided across GB to people with disabilities who have personal care needs and where those needs arise after the age of 64. It is intended to provide a contribution towards the extra costs experienced by people with disabilities. The benefit is integrated within the social security system and provides links through to other benefits, principally to Carer's Allowance and to an additional amount in Pension Credit.

Attendance Allowance is administered by DWP and the two rates available are based on a claimant's long-term specific day and/or night needs. There are consistent rules across GB although there is a close association between Attendance Allowance and some social services personal care provision which is devolved.

Published proposals

Conservative commission: 'Social care is devolved, as is health. Given that attendance allowance is closely related to these devolved functions, it should be considered for devolution'.

Labour commission: 'Given the connection between Attendance Allowance and health and social care policies, we believe that it should be devolved in full to Scotland. The funding would be transferred to the Scottish Budget and appropriately updated in future'.

[5] *Scotland analysis: work and pensions*, HM Government, April 2014

Housing Benefit

Current situation

Housing Benefit is administered by LAs on behalf of DWP and provides financial support for people with their rent. Claimants live in either the private rented sector or the social rented sector (where accommodation is offered at sub-market rents by Housing Associations and LAs, for example). Payments take account of household need and local rents.

The Welfare Reform Act 2012 includes powers to abolish Housing Benefit and introduced a new housing element within UC, which is starting to be rolled out nationally for people who are under Pension Credit qualifying age.

As a result of providing support for housing within UC:

- claimants make one application to one organisation to get their benefit;
- claimants do not have multiple benefits being withdrawn at the same time;
- awards continue and adjust automatically when claimants move in and out of work; and
- the scope for fraud and error is reduced as benefits will not be based on multiple information sets held by multiple organisations.

For UC claimants the UK Government has set out a Universal Support framework to build local delivery partnerships, providing funding to cover incremental costs of supporting the transition to UC and to incentivise local partners.[6]

For those above Pension Credit qualifying age, Housing Benefit will continue until at least 2017-18 to allow for the introduction of the new State Pension in April 2016.

Published proposals

Conservative commission: 'Housing is devolved, and we can see the case in favour of the proposition that controlling housing benefit may play a role in the development of housing policy. A counter-consideration, however, is that under the Welfare Reform Act 2012, housing benefit is to become one component of the new Universal Credit ('UC'). It is likely to be administratively highly complex (and expensive) to disentangle the housing benefit element of UC for Scottish recipients in order to devolve responsibility for that one component of UC to the Scottish Parliament. None the less, if it can be done there is a case for devolving housing benefit.'

Labour commission: 'We take the view that Housing Benefit should be devolved to the Scottish Parliament. We will use this power to abolish the Bedroom Tax, ensure secure funding for the provision of social housing and reduce abuse by unscrupulous private landlords.'

Jobcentre Plus and the Work Programme

Current Situation

DWP is responsible for supporting people back to work. It does this, through its network of Jobcentres, contracted back to work services, the UC delivery model and related provision and services (including the job bank Universal Jobmatch), by:

- having a large high street presence and its Jobcentres providing the face to face channel for the administration of benefits and dealing with benefit enquiries;

[6] *Scotland analysis: work and pensions*, HM Government, April 2014

- ensuring that claimants meet the conditions of receiving benefit, including the labour market conditions;
- encouraging those not currently in work to develop/maintain their labour market attachment (by making out of work benefits conditional on active job seeking and/or other work-related activities) to help ensure a quick return to work;
- making work incentives as strong as possible whilst maintaining appropriate levels of income protection for the unemployed;
- providing help to improve the employability of individuals who face disadvantages in the labour market; and
- improving labour market information by making job opportunities more visible and the market easier to navigate.

There are a number of individual programmes which support harder to help claimants into work through an integrated package of training and work experience. The Work Programme is the main scheme among these programmes. Service providers in Scotland (*Working Links* and *Ingenus* who deliver services both directly and by sub-contracting to local providers) have freedom, within the bounds of their contracts with DWP, to decide how best to support Work Programme participants while meeting minimum standards and contractual requirements for delivering the service. The focus of the Work Programme is on the needs of the individual and the support they are provided with will take account of those areas where the person needs to improve their skills or experience and opportunities in the local labour market. The Work Programme is based on payment by results, meaning service providers are incentivised to get people into work.

Published proposals

Liberal Democrat commission: 'The Scottish Government should act as the agent for the UK Government in Scotland on much of the work of JobCentre Plus and the Work Programme'.

Labour commission: 'Responsibility for delivery of the DWP Work Programme to be devolved to local authorities to better reflect local labour market conditions, with the Scottish Parliament playing a partnership role and providing strategic oversight. We are conscious of the need to ensure a link between the benefits system and income from work and for the need for local agencies to work in collaboration with local authorities and the third sector'.

Supplement UK Benefits

Current situation

Social security benefits are set at a level that applies across GB. The same rules apply wherever in GB the claimant lives and with some exceptions, such as housing costs which take account of local factors, the same rates of payment are made.

There is a degree of flexibility in meeting individual needs through supplementary welfare provision across GB. For example, Discretionary Housing Payments can be used by LAs to make additional payments to people for their housing costs and shortfalls in rent which are not already covered by Housing Benefit. Earlier in 2014, the UK Government agreed to devolve the cap on how much Scottish LAs can spend through Discretionary Housing Payments to the Scottish Government. This will give Scottish LAs the flexibility to add more of their own resources in order to support people who need extra help with their housing costs. Legislation to enable this is currently before the UK and Scottish Parliaments.

Published proposals

Conservative commission: 'There is a case for devolving housing benefit and attendance allowance; additionally there is a case for conferring on the Scottish Parliament the power to supplement welfare benefits legislated for at UK level'.

Liberal Democrat commission: 'The strategic planning of welfare services should be considered for joint working combined with a constitutional duty to tackle poverty through efforts at every level of government. Social protection, pensions and welfare payments should be allocated to the UK (and subsequently federal) level'.

4.3 Regulation

Every business is subject to a set of rules and regulations, for example rules on starting up a business, competition, hiring workers, health and safety and protecting consumers. These rules help to protect employees and consumers and, if done well, ensure a competitive business framework.[7]

Regulation of business, employment and finance remain broadly reserved. The three parties all recognise the importance of maintaining a single UK market for enterprise and jobs, but the published proposals cover a wide ranging selection of issues from competition to consumers.

Scotland retains a separate legal jurisdiction with separate courts and laws from those in England and Wales and those in Northern Ireland.

Enhanced powers for the Scottish Government and Parliament have been recommended around the enforcement, procedure and administration of these regulatory processes. Some proposals have advocated the creation of separate Scottish models and bodies to deal with consumer advocacy and advice, and health and safety. The section below details the specific proposals alongside the current situation in each of these areas.

Competition

Current Situation

In April 2014 a new Competition and Markets Authority (CMA) began operations as the single, independent competition authority for the UK, replacing the Office of Fair Trading and the Competition Commission.[8] In some areas UK Government Ministers have powers to refer a market to the CMA for a full investigation.

The UK's competition regime is independent from Ministers. Much of UK competition law stems from European law. However, in some specific areas UK Government Ministers do have powers – in particular in relation to market investigations and any public interest considerations arising from mergers.

Markets and Mergers

The Secretary of State has a reserve power to refer a market to the CMA for a full market investigation reference (MIR) in two specific circumstances. First, if the Secretary of State is not satisfied with a CMA decision not to make a reference. Second, if, having brought to the attention of the CMA information he considers relevant to its decision to make a reference, he is not satisfied that the CMA will decide to make a reference within a reasonable period. This power can also be exercised jointly by the Secretary of State and any other Minister of the Crown. There is a requirement to consult on any decision to refer a market.

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[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209891/13-635-scotland-analysis-business-and-microeconomic-framework.pdf p36

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209891/13-635-scotland-analysis-business-and-microeconomic-framework.pdf p 38

Since December 2010, those powers vested in the Secretary of State insofar as media and communications policy are concerned relate to the Secretary of State for Culture, Media and Sport rather than the Secretary of State for Business, Innovation and Skills. The Secretary of State also has the right to intervene where the Secretary of State believes there is a public interest consideration which is relevant to a potential MIR. At present the only public interest consideration specified is national security.

In respect of mergers the Secretary of State has the power to intervene in certain cases involving a public interest consideration (e.g. national security, media plurality, stability of the financial system) or the protection of legitimate interests as defined by Article 21(4) of the EU Merger Regulation.[9]

The Secretary of State may refer a merger case for more detailed investigation by the CMA if he believes it may be expected to operate against the public interest. Following such an investigation and subject to its findings, the Secretary of State is responsible for deciding whether or not to make an adverse public interest finding, and what, if any, remedies are appropriate.

Published proposals

Liberal Democrat commission: 'Competition law should remain a UK responsibility, but the Scottish Government should be empowered, after similar consultation to that currently required by the UK minister, to request the Competition and Markets Authority (as it will be in 2014) to investigate an issue of failing markets or potential monopolies within Scotland'.

Consumers

Current Situation

Consumer policy, advice and advocacy are reserved to the UK Government.

The Citizens Advice Service is responsible for delivering publically funded consumer advocacy and advice across GB. Citizens Advice Scotland (CAS), receives grant funding from the Department of Business, Innovation and Skills (BIS)[10] and is an entirely separate entity with its own legal powers, responsibilities, budgets and management structures, working in close partnership with Citizens Advice (CitA) to deliver a number of shared functions.

Since April 2013 CAS has been responsible for delivering advocacy on general consumer issues in Scotland. In April 2014, it also took on responsibility for delivering advocacy on the regulated gas, electricity, postal and water services markets in Scotland. CAS consults the UK and Scottish Governments on production of its work plan for its advocacy functions and works closely with both administrations where relevant.

CitA and CAS work in partnership to deliver the Consumer Service which is an online and telephone advice service for consumers across the UK.

In Scotland a contact centre in Stornoway provides advice on general consumer issues whilst other CitA contact centres across England and Wales, contracted out to *Agilisys,* provide guidance on general, energy and postal issues. All five contact centres operate as a single UK wide service for consumers who also have access to comprehensive online advice and information including a section tailored specifically for Scottish consumers.

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[9] Council Regulation (EC) No.139/2004.

[10] BIS to deliver general consumer advocacy and advocacy on gas, electricity and postal issues. CAS's advocacy on water issues is funded by the Scottish Government. Most of BIS's costs are recovered through a levy on industry though a small amount of funding is provided centrally for advocacy on issues that cut across the different regulated sectors.

Where a Scottish consumer has been disconnected from their energy service, CAS has a duty to provide specialist advice, a statutory obligation for which they have been allocated funding.[11]

Other consumer regulators exist in addition to CitA and CAS including Passenger Focus, the statutory body for rail and bus services.

Published proposals

Labour commission: 'We see the case for establishing a Scottish model for the delivery of consumer advocacy and advice, one that would secure and build upon the strengths of the current providers of consumer advice and consumer advocacy respectively'.

Equality

Current Situation

Enforcement of the Equality Act 2010 is devolved insofar as cases of non-employment in Scotland are taken to the Sheriff Court. However, employment discrimination cases are administered by the Employment Tribunal, which is not devolved. Part 9 of the Equality Act 2010 sets out the rules and remedies applicable in discrimination cases.

The Equality and Human Rights Commission (EHRC) exercises the same equalities functions in Scotland as in England and Wales. A separate Scottish Human Rights Commission (SHRC) exists with broadly similar human rights powers to the EHRC to promote human rights, provide information and guidance and encourage best practice in relation to human rights. Neither commission has regulatory powers in respect of human rights, although EHRC has some limited regulatory equalities functions. The SHRC has restricted powers of inquiry and can monitor the law, policies and practices and review and recommend changes to any area of the law of Scotland or any policies or practices of any Scottish public authorities.

The EHRC is required to have a decision making committee known as the Scotland Committee to advise it about the exercise of EHRC's functions so far as they affect Scotland. This Committee must be consulted before the EHRC exercises any function that is likely to affect people in Scotland. The Scotland Committee has the power to issue advice and information that pertains to Scotland, and the power to advise the Scottish Government about enactments and proposed changes to the law affecting only Scotland.

In its executive capacity and as an employer, the Scottish Government has the power to encourage the fair representation of women (as well as a duty to encourage and promote other forms of equality opportunity) but cannot currently legislate to achieve greater representation, for example by requiring that a certain percentage of positions on the boards of public bodies are filled by women. Scottish employers more generally can also use the positive action provisions in the Equality Act 2010.

Published proposals

Labour commission: 'Enforcement of equalities legislation should become a devolved matter. We also support any other transfer of power, should it be required, to ensure that women fairly represented on Scotland's public boards and in other public appointments'.

[11] Citizens Advice and CAS have a duty under Section 13 of the Consumers, Estate Agents and Redress Act 2007. This statutory obligation is fulfilled via the Extra Help Unit (EHU) which is delivered by CAS on behalf of the whole Citizens Advice Service. The cost of delivering the EHU is recovered by BIS through a levy on industry.

Fixed odds betting terminals

Current Situation

High stakes fixed odds betting terminals in betting offices (and casinos) are subject to provisions in and under the Gambling Act 2005 in relation to numbers of machines per shop and stake and prize limits. Bookmakers' shops are limited to four B2 machines by a combination of section 172(8) of the Gambling Act 2005 and regulation 6(3)(d) of the Categories of Gaming Machine Regulations 2007.[12]

The premises themselves are also subject to potential LA licence conditions which can impose specific constraints on operators. The imposition of a licence condition must be justified by evidence that the licensing objectives of the Gambling Act 2005 are being jeopardised. This can be difficult for LAs to impose, as evidence to justify the imposition of a licence condition requires evidence that the licensing objectives are being jeopardised and may leave them at risk of legal challenge from bookmakers.

As a part of its reforms to the planning system, the UK Government consulted on creating a wider 'retail' use class and removing the current permitted development rights for betting shops. This would require planning permission for the change of use to any new betting shop. The consultation closed on 26 September 2014. The UK Government's response will be published in due course and any changes will be implemented in the lifetime of this Parliament.

Published proposals

Labour commission: 'We will tackle the scourge of exploitative payday loans by giving local authorities the powers to prevent the proliferation of Payday Loan shops and Fixed Odds Betting Terminals. In relation to FOBTs, working within the framework of gaming and betting as reserved matters, we will extend the powers available to local authorities, in conjunction with the UK Government to address the licensing and technical constraints on Scottish local authorities'.

Health and Safety

Current Situation

The Health and Safety Executive (HSE) is the independent regulator for work-related health, safety and illness. It acts in the public interest to reduce work-related death and serious injury across GB's workplaces. HSE regulates higher risk sectors with LAs regulating lower risk sectors where they often have other regulatory and licensing responsibilities.

HSE receives grant-in-aid from DWP's settlement and raises income from charges and fees for aspects of its regulatory work. Some analogous functions are carried out by bodies other than the HSE – for example safety matters in the air transport and rail sectors rest with the Civil Aviation Authority and Office of Rail Regulation respectively.

Published proposals

Liberal Democrat commission: 'Health and safety legislation, competition laws and employment law should be allocated to the UK (and then federal) level'.

Labour commission: 'We believe in the need to establish a Scottish Health & Safety Executive to set enforcement priorities, goals and objectives in Scotland. This body would still be required to operate within the reserved health & safety framework and regulations and closely linked with the UK HSE, but it would be for the body – reporting to the Scottish Government, scrutinised by

[12] Gaming machines fall into categories depending on the maximum stake and prize available: http://www.gamblingcommission.gov.uk/gambling_sectors/gaming_machines/about_gaming_machines_fruit_m/gaming_machine_categories.aspx

the Scottish Parliament and accessing funding provided by that Parliament – to set and achieve the health & safety objectives of most relevance and importance to Scotland'.

Payday loans

Current Situation

As a part of its reforms to the planning system, the UK Government consulted on creating a wider 'retail' use class and removing the current permitted development rights for betting and payday loan shops i.e. the intention is that they will in future require planning permission. The consultation closed on 26 September 2014. The UK Government's response will be published in due course and any changes will be implemented in the lifetime of this Parliament.

Published proposals

Labour commission: 'We will tackle the scourge of exploitative payday loans by giving local authorities the powers to prevent the proliferation of Payday Loan shops and Fixed Odds Betting Terminals. In relation to FOBTs, working within the framework of gaming and betting as reserved matters, we will extend the powers available to local authorities, in conjunction with the UK Government to address the licensing and technical constraints on Scottish local authorities'.

Employment Tribunals

Current Situation

Employment law is devolved in Northern Ireland but not the rest of the UK. Therefore, the same employment law applies throughout GB with similar systems for Employment Tribunals (ETs) in Scotland as in England and Wales. The Employment Appeal Tribunal (EAT) operates under the same system across Scotland, England and Wales.

Responsibility for the policy framework for Employment Tribunals, including 'ownership' of the Employment Tribunal regulations and rules of procedure, rests with BIS. The rules of procedure cover the whole of GB.

Responsibility for the procedure rules for the Employment Appeal Tribunal rests with the Ministry of Justice (MoJ).

Responsibility for policy on charging arrangements for ET fees rests with the MoJ.

Responsibility for the administration of ETs rests with Her Majesty's Courts & Tribunals Service, a MoJ executive agency.

There is no devolution, but ETs in Scotland are defined in statute as having a separate territorial jurisdiction to ETs in England and Wales. There is a President of the ET in Scotland, and a President for England and Wales. The EAT has a President for the GB wide Tribunal. ETs in Scotland are administratively distinct from the ETs in England and Wales.

The Scottish Parliament currently has no powers relating to ETs or EATs. The Lord President in Scotland has a number of judicial responsibilities for the ET judiciary which are established in statute, alongside the broader judicial powers for reserved tribunals and judiciary set in statute for the Senior President of Tribunals.

Published proposals

Liberal Democrat commission: 'Health and safety legislation, competition laws and employment law should be allocated to the UK (and then federal) level'.

Labour commission: Responsibility for the administration of employment tribunals and the procedural rules associated with them, including charging arrangements, should be devolved.

4.4 Constitutional affairs

The Crown Estate

Current Situation

The Crown Estate is the property of the Monarch. It is administered by the Crown Estate Commissioners under the Crown Estate Act 1961. Under the Crown Estate Act 1961, the Crown Estate has to operate commercially 'to maintain and enhance its value and the return obtained from it'.

The assets that it is largely responsible for are mainly located in England – it is responsible for the UK Seabed which it manages as a UK asset. Four per cent of all of the Crown Estate's assets are in Scotland. Regarding the seabed, the Crown Estate operates under the Crown Estate Act 1961, under the Energy Act 2004 and the Energy Act 2008 and the Continental Shelf Act 1964.

Under the Crown Estate Act 1961, accountability is to the Chancellor of the Exchequer. Internal governance involves reporting into a Scottish Management Board, overseeing Scottish business.

Published proposals

Liberal Democrat commission: 'Crown Estate assets and harbour, pier, foreshore and similar rights should be transferred to the control and benefit of local authorities, protected and sustained as 'common good' assets that cannot be disposed of. Local authorities and burgh council should be entitled to petition the Scottish Parliament for the transfer of underused public land to their common good fund so that the land can be used for sustainable local uses'.

Labour commission: Local management agreements between local authorities and the Crown Estate, an example of best practice, should be applied as widely as possible, with the Crown Estate establishing appropriate mechanisms to facilitate maximum local authority and community engagement. The Crown Estate should adopt the approach that the default assumption is that the seabed and foreshore should be managed by local authorities or local communities, and should further develop leasing arrangements which make this possible. If this can be made to work, allowing the Crown Estate to take an interest in particular developments, we will support this. Thus, we propose to use the Crown Estate's expertise and capital as necessary, but allowing councils and communities to manage the seabed in other respects, in order to achieve real devolution to local areas while preserving the benefits of the wider Crown Estate resource. There should be a Memorandum of Understanding between the Scottish Government and the Crown Estate, which should be accountable to the Scottish Parliament, with devolution agreed in respect of their common objectives on the development and management of the seabed and foreshore, and those local authorities with an interest in this area should be fully consulted throughout as to its content'.

Entrenchment of the Scottish Parliament

Current Situation

The Scotland Act 1998 established the Scottish Parliament. The Scotland Act 2012 further increased the powers of the Scottish Parliament and Scottish Government. Whilst the UK Parliament remains sovereign under the current constitutional settlement, during the course of the original Scotland Bill, Lord Sewel made a commitment that the Government would 'not normally legislate in devolved areas without the consent of the Scottish Parliament', a commitment known as the Sewel Convention and upheld since the Scottish Parliament was established in 1999.

Published proposals

Liberal Democrat commission: 'The UK Parliament should commit to a declaration that entrenches home rule and the Scottish Parliament in advance of a full federal settlement'.

Labour commission: 'Whilst it is inconceivable that the Scottish Parliament would be abolished, we believe the Scottish Parliament should become permanently entrenched in the constitution and indissoluble. We also recommend that the "Sewel convention" should be given a statutory basis'.

Scottish Members of Parliament

Current Situation

Scotland currently elects 59 Members of Parliament (MPs) to the House of Commons of the UK. The Parliamentary Voting System and Constituencies Act 2011 includes provision to reduce the number of MPs for the UK from 650 to 600. The Parliamentary boundary review proposals which followed the passing of the Act consequently included a reduction in the number of Scottish MPs to 52. These proposals were not implemented following a vote in the UK Parliament in early 2013.

Published proposals

Liberal Democrat commission: '…the present level of Scottish representation at Westminster should be retained until a federal structure for the UK has been delivered'.

Scottish Parliament elections and franchise

Current Situation

The system for electing members to the Scottish Parliament and franchise for Scottish Parliament elections are reserved to the UK Government.

Electoral administration and law is reserved, however the administration of Scottish local government elections is devolved to Scottish Ministers. In addition, Section 1 of the Scotland Act 2012 allows for the power to transfer responsibility for the administration of Scottish Parliament elections to Scottish Ministers. This section has still to be commenced but the intention is that Scottish Ministers will assume responsibility for the administration of the May 2016 Scottish Parliament elections.

Regulation and funding of political parties is reserved to the UK Government.

Published proposals

Liberal Democrat commission: 'Control over the Scottish Parliament's electoral system and franchise should be allocated to the Scottish Parliament to entrench its equality and authority within the UK. Electoral administration and law, together with the regulation of political parties and their funding should remain a matter for the UK Government'.

Labour commission: Responsibility for administration of Scottish Parliamentary elections should be devolved to the Scottish Parliament.

Scrutiny of legislation by the Scottish Parliament

Current Situation

The Scottish Parliament was established by the Scotland Act 1998, which also sets out its structure and rules – including aspects such as membership, methods of election and the need for a Presiding Officer.

As the Constitution of the UK is generally a reserved matter under the 1998 Act, the Scottish Parliament itself is unable to make fundamental changes (for example introducing a second chamber) to its own structure.

The Scotland Act 1998 does however allow that the Scottish Parliament proceedings be regulated by standing orders for which it has responsibility.

Published proposals

Conservative commission: 'Convenors of mandatory committees such as Finance and Public Audit should be elected by committee members from one of the opposition parties. In the selection of questions for the Parliamentary Oral Question Sessions, the principal opposition spokespersons should be guaranteed slots in the portfolio questions. General Questions should be allocated to parties on a basis proportionate to the size of the group. Where for good reasons, a questioner is unable to lodge a question, discretion should be given to the Presiding Officer to permit a colleague of the questioner to lodge a question. The Monday noon deadline for submission of questions to the First Minister on the following Thursday should be deferred to noon on Tuesday'.

4.5 Other proposals

In addition to the specific proposals made in relation to taxation, borrowing, welfare and constitutional arrangements, the three parties also made recommendations in a number of other areas. These propositions cover a range of individual areas from transport to health and broadcasting. The specific proposals are set out in the section below with details of the current situation set out in parallel.

Broadcasting

Current Situation

Ofcom is the UK-wide regulator for broadcasting, designated as such by the UK Parliament. No powers are devolved at administrative or executive level. There is no overlap with existing responsibilities of the Scottish Parliament. Ofcom is responsible for licensing all commercial UK broadcasters, including local stations and those based solely in Scotland such as Scottish TV and Grampian. Ofcom is required by statute to establish separate offices in each of the UK's nations and to appoint to its Content Board and Consumer Panel members who will represent the interests of people living in each of the nations. Ofcom is also required to establish Advisory Committees for each of the nations.

The licences issued to the Public Service Broadcasters (PSBs i.e. ITV network channels, C4 and C5) include quotas for regional/devolved nations spend and programming hours and for the ITV network there are also separate regional programming requirements.[13]

The BBC operates under a Royal Charter. The Charter provides that one of the BBC's public purposes is 'representing the UK, its nations, regions and communities'. Additionally, the Framework Agreement entered into by the BBC and DCMS stipulates BBC One and Two must have versions for Scotland, that dedicated radio stations must be provided for Scotland, and that quotas must be set for sufficient programming of 'regional interest'. The BBC's 2013-14 Annual Report notes that 10.9 per cent of its network TV production spend was in Scotland, exceeding its 2016 target of 8.6 per cent. BBC Scotland invests in the Scottish skills base in

[13] Channel 3 licences: at least 35 per cent of expenditure to be allocated to productions outside the M25, and at least 35 per cent of originated network programme hours to be made outside the M25 area. Channel 4 Licences: 3 per cent of its hours and expenditure on programmes for viewing in the UK shall be produced outside England (rising to 9 per cent in 2020). Channel 5 licences: at least 10 per cent of programmes to be made outside of the M25.

a number of ways including its apprenticeship scheme (launched April 2011), Drama Training Initiative, Series Producer Programme run by TRC Media, work experience placements and the BBC Scottish Symphony Orchestra.

MG ALBA receives £11.8 million per annum from the Scottish Government.[14] The BBC provides ALBA with programme funding worth £4 million per annum (including news) as well as distribution and in-kind support. In August 2014, the UK Government announced that it would be doubling its funding for ALBA for 2014-16, taking its commitment for the period to £2 million.

Published proposals

Liberal Democrat commission: 'Broadcasting should continue to be regulated at a UK level to reflect a single UK market, whilst encouraging steps to ensure equitable distribution of broadcasting and media jobs throughout the United Kingdom'.

Labour commission: For the United Kingdom to be an effective union, it is critical that certain core matters remain reserved to the UK Parliament. Those which are not should be devolved to the Scottish Parliament. Essential reserved matters include…Broadcasting'.

Foreign affairs (including international development)

Current Situation

Foreign policy is reserved to the UK Government. The power therefore rests with the UK Government and Parliament. There is no overlap with devolved Scottish responsibilities, except that Scottish Government ministers and officials may travel internationally or meet international representatives, in respect of devolved affairs in accordance with the relevant concordat and Memorandum of Understanding.

Published proposals

Liberal Democrat commission: 'On EU matters, protocols and practices should be revised to reflect the need to negotiate and act on an agreed UK position where devolved responsibilities such as fishing or agriculture are concerned – particularly at the Council of Ministers level. Scottish ministers should be fully involved, to make sure that an agreed UK position is established, sustained and represented at meetings'.

Labour commission: 'The following matters should remain reserved as they are key to the maintenance of the union…Foreign affairs (including international development) should remain the responsibility of the UK Government'.

Health

Current Situation

Health and social care are devolved in Scotland but some topics, such as the regulation of many health professions, the licensing of medicines, the regulation of human fertilisation and embryology, abortion, genetics and surrogacy are reserved.

[14] MG Alba is a body corporate established in statute, under the Broadcasting Act 1990 and subsequent statutes, and is the operating name of the Gaelic Media Service. It is regulated by Ofcom, and its remit is to ensure that high quality television programmes in Gaelic are made available to persons in Scotland. BBC Alba is the channel operated in partnership between MG Alba and the BBC, which broadcasts to the whole of the UK on satellite, cable and digital terrestrial TV, and is also available on BBC iPlayer.

Published proposals

Labour commission: 'Abortion, xenotransplantation, embryology, surrogacy arrangements, human genetics, matters relating to the regulation and control of medicines (for both humans and animals), medicinal products, poisons and biological substances, should remain reserved'.

Skills

Current Situation

Skills policy is a devolved matter for the Scottish Parliament.

Skills Development Scotland is the national agency for skills delivery in Scotland, created by the Scottish Government in 2008.

Published proposals

Labour commission: 'Skills Development Scotland's responsibilities to be devolved to local authorities in order that planning and provision of skills and training better matches local job markets'.

Transport

Current Situation

Scottish Ministers have substantial devolved powers in relation to the railways in Scotland, including acting as the franchising authority in relation to franchising in Scotland. However, the Scotland Act 1998 does not devolve to the Scottish Parliament the power to amend the Railways Act 1993 in relation to the provision and regulation of railway services.

Section 25 of the Railways Act 1993 expressly prohibits public sector operators from being franchisees.

With regard to passenger rail services that both start and end in Scotland – i.e. virtually all the current Scotrail franchise including the Caledonian Sleeper service – Scottish Ministers specify, procure, fund, manage and enforce the franchise agreement. This allows the Scottish Ministers to determine matters such as the level of service and fares policy.

Changing the current position to permit a public sector franchisee in Scotland would require either:

- an amendment to section 25 of the Railways Act 1993, which could only be made by the UK Parliament; or
- a change to the current devolution settlement to allow the Scottish Parliament the necessary legislative competence to amend section 25 of the Railways Act 1993 in relation to Scotland only. This could be achieved through either an amendment to the Scotland Act 1998 (to further transfer legislative competence), which can only be made by the UK Parliament, or via a 'section 30 Order in Council' which can only be passed with both the agreement of the UK Parliament and the Scottish Parliament.

Published proposals

Labour commission: 'We favour devolution of railway powers that could facilitate consideration of a "not for profit" option in terms of the Scotrail franchise. This will widen the powers of the Scottish Parliament over the rail system'.

ISBN 978-1-4741-1111-9