

# The Smith Commission

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Report of the Smith Commission  
for further devolution of powers  
to the Scottish Parliament

27 November 2014

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**To view or download this report:**

Visit: [www.smith-commission.scot](http://www.smith-commission.scot)

Write: The Smith Commission, 7th Floor,  
144 Morrison Street, Edinburgh, EH3 8EX

E-mail: [Secretariat@smith-commission.scot](mailto:Secretariat@smith-commission.scot)

**To enquire regarding this publication:**

E-mail: [Secretariat@smith-commission.scot](mailto:Secretariat@smith-commission.scot)

## Foreword by Lord Smith of Kelvin



On 18 September 2014 Scotland voted in a historic referendum which generated a level of political debate and engagement never before experienced in this country.

Scotland voted 'No', but it did so with each of the three main UK parties promising more powers for the Scottish Parliament.

I was asked to lead a Commission, working with the five parties represented in the Scottish Parliament, to agree what those new powers should be. In doing so, I sought to give a voice to the public and the various organisations that make up the fabric of Scottish life.

I took on the job in the knowledge that the three leaders of the main UK parties had committed to take the recommendations set out in the agreement and turn them into law – fulfilling their commitment to strengthen the powers of the Scottish Parliament within the UK.

This report sets out the agreement reached between all five of Scotland's main political parties: Conservative, Green, Labour, Liberal Democrat and the SNP.

This agreement is, in itself, an unprecedented achievement. It demanded compromise from all of the parties. In some cases that meant moving to devolve greater powers than they had previously committed to, while for other parties it meant accepting the outcome would fall short of their ultimate ambitions. It shows that, however difficult, our political leaders can come together, work together, and reach agreement with one another.

Taken together, these new powers will deliver three important overarching improvements to the devolution settlement, making it more responsive, durable and stable.

### **A stronger Parliament within the UK**

The recommendations are explicitly designed to create a coherent set of powers that strengthen the Scottish Parliament's ability to pursue its own vision, goals and objectives, whatever they might be at any particular time.

The recommendations set out in the agreement will result in the biggest transfer of power to the Scottish Parliament since its establishment.

### **A more accountable and responsible Parliament**

Complementing the expansion of its powers will be a corresponding increase in the Parliament's accountability and responsibility for the effects of its decisions and their resulting benefits or costs.

The composition of the Parliament's income will change markedly. Significantly more devolved spending in Scotland will now come from tax raised in Scotland with the remainder coming from the block grant provided by the UK Government.

To balance this increased financial responsibility, the Parliament will be given increased borrowing powers, to be agreed with the UK Government, to support capital investment and ensure budgetary stability.

The Barnett Formula will continue to be used to determine the remaining block grant. New rules to define how it will be adjusted at the point when powers are transferred and thereafter will be agreed by the Scottish and UK Governments and put in place prior to the powers coming into force. These rules will ensure that neither the Scottish nor UK Governments will lose or gain financially from the act of transferring a power.

## **A more autonomous Parliament**

The Scottish Parliament will be made permanent in UK legislation and given powers over how it is elected and run. The Scottish Government will similarly be made permanent.

The Parliament will also have the power to extend the vote to 16 and 17 year olds, allowing them to vote in the 2016 Scottish Parliament election.

These increased powers demand improvements in parliamentary scrutiny and strengthened collaboration between the Scottish and UK Governments. The agreement touches on some of these issues and I have included my own recommendations towards the end of my foreword.

Within these overarching improvements to the devolution settlement, the Parliament will also assume a range of new, important, individual powers in policy areas such as taxation, welfare, employability, transport, energy efficiency, fuel poverty, and onshore oil and gas extraction.

All of these new powers have been agreed between all the political parties. The agreement was informed by analysis from and discussions with civic institutions and the Scottish and UK Governments to ensure that they can be delivered and will work.

I would like to add four additional recommendations to those agreed by the political parties. Although these recommendations go beyond my initial terms of reference, I consider them to be an important complement to the agreement. They are all issues that emerged strongly from the civic engagement exercise and are supported by some or all of the parties.

## **Inter-governmental working**

Throughout the course of the Commission, the issue of weak inter-governmental working was repeatedly raised as a problem. That current situation coupled with what will be a stronger Scottish Parliament and a more complex devolution settlement means the problem needs to be fixed. Both Governments need to work together to create a more productive, robust, visible and transparent relationship. There also needs to be greater respect between them. I recommend that the Prime Minister of the UK and the First Minister of Scotland meet shortly after 25 January to agree details of how this will be achieved. I would encourage them to find solutions which will carry the confidence of the public and our civic institutions.

## **Devolution from the Scottish Parliament**

There is a strong desire to see the principle of devolution extended further, with the transfer of powers from Holyrood to local communities. This is an issue that will require significant further thought and discussion and I welcome the enthusiasm of all parties for greater empowerment of our communities. The Scottish Government should work with the Parliament, civic Scotland and local authorities to set out ways in which local areas can benefit from the powers of the Scottish Parliament.

## **Parliamentary and independent oversight**

This agreement will increase substantially the powers of the Parliament in general and around its financial accountability in particular. The addition of new responsibilities over taxes, welfare and borrowing means that the Parliament's oversight of Government will need to be strengthened. I recommend that the Scottish Parliament's Presiding Officer continues to build on her work on parliamentary reform by undertaking an inclusive review which will produce recommendations to run alongside the timetable for the transfer of powers.

## **Public awareness of the powers of the Parliament**

A challenge facing both Parliaments is the relatively weak understanding of the current devolution settlement. This is not surprising given what is a complex balance of powers. With the enhancement of these powers, improved understanding is all the more critical to sustaining the trust and engagement of the public. I recommend that the Scottish Parliament's Presiding Officer and Speaker of the House of Commons meet shortly after 25 January to agree on action to improve public understanding of Scotland's constitutional settlement.

I know that everyone who voted on 18 September will have a view about the result of this process. Some will believe it has gone too far, others not far enough.

My role in this Commission has been to broker the best possible agreement based on strong, clear principles. I have never sought to influence the nature of the outcome and I will not be offering a personal opinion on it. I entered this process without a political affiliation or publicly stated view on the constitution and I intend to leave it that way.

The publication of this report marks the end of my role and the Commission. Responsibility for the next steps passes now to the UK and Scottish Governments. I have no intention of continuing to play an active role although I will be taking a keen interest in seeing these recommendations taken forward in full.

2014 has been a hugely important year for Scotland. I believe the country has changed as a result of it. My unique perspective while performing this role has given me great hope for our future. Scots have always been an ambitious people, restlessly and noisily seeking out a better life and better society. A redoubling of that ambition coupled with greater confidence must be the legacy of this historic year.

Through this process I have worked closely with people who can argue passionately with one another while sharing an equal concern and love for their country. I would like to thank them all for their input, challenge and support. I hope that, in the end, they can work together, maintain their energy and use it to create a Scotland which is even stronger and even better.

A handwritten signature in black ink, appearing to read 'Robert Smith', written in a cursive style.

**Lord Smith of Kelvin KT**  
27 November 2014

## Chapter 1

# The work of The Smith Commission

1. On the morning of 19 September, once the result of the referendum had become clear, the Prime Minister, David Cameron, announced that Lord Smith of Kelvin had agreed to oversee a set of cross-party talks with the purpose of agreeing a package of powers to be devolved to strengthen the Scottish Parliament within the UK.
2. The Terms of Reference for Lord Smith's Commission were published on 23 September:

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

### Seeking representatives and policy proposals from the political parties

3. Lord Smith's first action was to visit the Scottish Parliament on 23 September to listen to the first debate in the chamber after the referendum. He also met that day with the Parliament's Presiding Officer and senior leaders from the five political parties represented there. He invited each of those parties to nominate two representatives to join cross-party talks.<sup>1</sup>
4. The representatives put forward by the parties were:
  - Annabel Goldie MSP, Scottish Conservative and Unionist Party
  - Adam Tomkins, Scottish Conservative and Unionist Party
  - Maggie Chapman, Scottish Green Party
  - Patrick Harvie MSP, Scottish Green Party
  - Gregg McClymont MP, Scottish Labour
  - Iain Gray MSP, Scottish Labour
  - Tavish Scott MSP, Scottish Liberal Democrats
  - Michael Moore MP, Scottish Liberal Democrats
  - John Swinney MSP, Scottish National Party
  - Linda Fabiani MSP, Scottish National Party

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<sup>1</sup> Press notices in relation to these plenary meetings can be found at: <https://www.smith-commission.scot/news>

5. Lord Smith also invited the parties to set out their views on which further powers should be devolved to the Scottish Parliament. Each of the parties submitted their views to the Commission by 10 October.<sup>2</sup> On 13 October the party representatives began a series of bilateral and plenary meetings.

### A principles-based approach to the negotiations

6. On 22 October Lord Smith and the political representatives agreed a set of principles intended to guide the work of the Commission and its conclusions.<sup>3</sup>
7. Those principles stated that the package of powers agreed through the Smith Commission process, when taken together, should:
  - (1) form a substantial and cohesive package of powers, enabling the delivery of outcomes that are meaningful to the people of Scotland.
  - (2) strengthen the Scottish devolution settlement and the Scottish Parliament within the UK (including the Parliament's levels of financial accountability).
  - (3) aim to bring about a durable but responsive democratic constitutional settlement, which maintains Scotland's place in the UK and enhances mutual cooperation and partnership working.
  - (4) not be conditional on the conclusion of other political negotiations elsewhere in the UK.
  - (5) not cause detriment to the UK as a whole nor to any of its constituent parts.
  - (6) cause neither the UK Government nor the Scottish Government to gain or lose financially simply as a consequence of devolving a specific power.
  - (7) be implementable; be compatible with Scotland's and the UK's international obligations, including EU law; and be agreed with a broad understanding of the potential associated costs.

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<sup>2</sup> Those submissions are available at: <https://www.smith-commission.scot/resources/>

<sup>3</sup> <http://www.smith-commission.scot/wp-content/uploads/2014/10/Press-Statement-First-Plenary.pdf>

## Involving the public and civic Scotland in the negotiations

8. Lord Smith was determined that the voices of civic institutions, organisations and groups and of the public would be heard and given the opportunity to influence the thinking of the political parties and their representatives.
9. By the end of the first full week of the Commission, Lord Smith had written to 129 intermediaries and networks<sup>4</sup> asking them to bring together proposals and views of their members and the people they represent.<sup>5</sup> By the end of the second week, the Commission published details of how the public could have their say with a deadline of 31 October.<sup>6</sup>
10. In the four week period leading up to the deadline for submissions, Lord Smith and the Commission secretariat attended 25 events across Scotland attended by over 215 organisations and groups<sup>7</sup> to listen to their views.
11. By the 31 October deadline, the Commission had received 407 submissions from civic institutions, organisations and groups, and 18,381 from members of the public. A key objective of the outreach programme was to share those views quickly with the parties and create the space for them to be discussed. The Commission shared submissions from civic institutions, organisations and groups on 4 November and submissions from the public (with substantive evidence) a week later with the political representatives. An interim report published that same week set out the broad suite of opinions and views held by the public.
12. The Commission held a public evidence session at the Scottish Parliament on 13 November<sup>8</sup> where the political representatives heard from 28 civic institutions and had the chance to question them on the arguments and analysis underpinning the submissions.<sup>9</sup> A final report was published on 22 November. The submissions, interim and final reports are all available to read at: [www.smith-commission.scot/resources](http://www.smith-commission.scot/resources).

## The role of the Commission Secretariat

13. Lord Smith and the political representatives were supported in their work by a Secretariat drawn from the Scottish Government, the Scottish Parliament and the UK Government. The role of the Secretariat was to work with the political representatives to ensure that the talks ran smoothly and were informed by evidence and analysis from the Scottish and UK Governments.

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4 <https://www.smith-commission.scot/wp-content/uploads/2014/11/Annex-A-Letters-Sent.pdf>

5 <https://www.smith-commission.scot/lord-smith-kelvins-letter-civic-leaders/>

6 <https://www.smith-commission.scot/news/say-submitting-ideas-views-proposals-commission-03-october-2014>

7 <https://www.smith-commission.scot/wp-content/uploads/2014/11/Annex-B-Events.pdf>

8 <http://www.smith-commission.scot/wp-content/uploads/2014/11/Press-Statement-Public-Plenary-2.pdf>

9 <https://www.smith-commission.scot/gallery>

### Reaching a final agreement

14. The political parties reached a final agreement on the package of new powers on 26 November after 9 plenary sessions of cross-party talks and a series of bilateral meetings with Lord Smith.

### Next steps

15. The UK Government has undertaken to produce draft clauses implementing the consensus set out in this report. It has stated that it will publish those clauses by 25 January 2015.

## Chapter 2

# Heads of Agreement: Introduction

16. The five political parties have agreed that new powers will be devolved to the Scottish Parliament and to Scottish Ministers. They have agreed to refer to this package of powers as ‘the Smith Commission Agreement.’ These powers are arranged within these heads of agreement according to three ‘pillars’. These pillars are:
  - pillar 1: providing a durable but responsive constitutional settlement for the governance of Scotland
  - pillar 2: delivering prosperity, a healthy economy, jobs, and social justice
  - pillar 3: strengthening the financial responsibility of the Scottish Parliament
17. The parties believe that Scotland’s devolution settlement should be durable but responsive to the changing needs and aspirations of the people of Scotland within the United Kingdom. As a result, it may be appropriate to devolve further powers beyond those set out in the heads of agreement where doing so would aid the implementation of the consensus reached by the parties in this report.
18. It is agreed that nothing in this report prevents Scotland becoming an independent country in the future should the people of Scotland so choose.
19. Where the agreement provides that powers or competence in relation to a matter will be devolved, this is intended to mean a transfer of full legislative competence to the Scottish Parliament along with that of the associated executive competence to the Scottish Government. Where the agreement states that administrative powers should be devolved, only executive competence is intended to be transferred.

# Heads of Agreement: Pillar 1

## Providing for a durable but responsive constitutional settlement for the governance of Scotland

### General

20. Reflecting the sovereign right of the people of Scotland to determine the form of government best suited to their needs, as expressed in the referendum on 18 September 2014, and in the context of Scotland remaining within the UK, an enhanced devolution settlement for Scotland will be durable, responsive and democratic.

### Permanence of the Scottish Parliament

21. UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions.

### Scottish Parliament consent to the UK Parliament making law in devolved areas

22. The Sewel Convention will be put on a statutory footing.

### Elections

23. The Scottish Parliament will have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland (but not in relation to Westminster or European elections). This will include powers in relation to campaign spending limits and periods and party political broadcasts. The Scottish Parliament already has many of these powers in relation to local government elections in Scotland.
24. Despite the provisions of paragraph 23:
  - (1) the Scottish Parliament will have no powers over the regulation of political parties (including donations).
  - (2) the Electoral Commission will continue to operate on a UK-wide basis. The Scottish Parliament will have competence over the functions of the Electoral Commission in relation to Scottish Parliament elections and local government elections in Scotland. The Electoral Commission will report to the UK Parliament in relation to UK and European elections and to the Scottish Parliament in relation to Scottish Parliament and local government elections in Scotland.
  - (3) the Boundary Commission for Scotland will continue to operate as a UK public body. It will report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament. UK Government powers in relation to Scottish Parliament boundaries will transfer to the Scottish Government.

- (4) UK legislation will prevent the Scottish Parliament deciding that general elections should be held on the same day as general elections to the UK Parliament, European Parliament or local government elections in Scotland.
25. The parties call on the UK Parliament to devolve the relevant powers in sufficient time to allow the Scottish Parliament to extend the franchise to 16 and 17 year olds for the 2016 Scottish Parliamentary elections, should the Scottish Parliament wish to do so.

### **Powers over the operation of the Scottish Parliament and the Scottish Administration**

26. UK legislation will give the Scottish Parliament powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government, including:
- (1) powers over the overall number of MSPs or the number of constituency and list MSPs.
  - (2) powers over the the disqualification of MSPs from membership and the circumstances in which a sitting MSP can be removed.

### **Super-majority for legislation on Scottish Parliament franchise, electoral system and membership**

27. To provide an adequate check on Scottish Parliament legislation changing the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament, UK legislation will require such legislation to be passed by a two-thirds majority of the Scottish Parliament.

### **Inter-governmental machinery**

28. The parties believe that the current inter-governmental machinery between the Scottish and UK Governments, including the Joint Ministerial Committee (JMC) structures, must be reformed as a matter of urgency and scaled up significantly to reflect the scope of the agreement arrived at by the parties. The views of the other devolved administrations will need to be taken fully into account in the design of the quadrilateral elements of that revised machinery.
29. In parallel, formal processes should be developed for the Scottish Parliament and UK Parliament to collaborate more regularly in areas of joint interest in holding respective Governments to account.

30. Those reformed inter-governmental arrangements will:

- (1) include the development of a new and overarching Memorandum of Understanding (MoU) between the UK Government and devolved administrations. In addition to the subjects included in the current MoU, the revised MoU would:
  - (a) lay out details of the new bilateral governance arrangements which will be required to oversee the implementation and operation of the tax and welfare powers to be devolved by way of this agreement. Those revised arrangements will also need to be consistent with the fiscal framework to be developed further to paragraph 95 of this agreement.
  - (b) provide for additional sub-committees within the strengthened JMC structure beyond the current sub-committees. New sub-committees could include, but need not be limited to, policy areas such as home affairs; rural policy, agriculture & fisheries; or social security/welfare.
- (2) be underpinned by much stronger and more transparent parliamentary scrutiny, including:
  - (a) the laying of reports before respective Parliaments on the implementation and effective operation of the revised MoU.
  - (b) the pro-active reporting to respective Parliaments of, for example, the conclusions of Joint Ministerial Committee, Joint Exchequer Committee and other inter-administration bilateral meetings established under the terms of this agreement.
- (3) provide for more effective and workable mechanisms to resolve inter-administration disputes in a timely and constructive fashion with a provision for well-functioning arbitration processes as a last resort.

### **Scottish Government representation of the UK to the European Union**

31. The parties recognise that foreign affairs will remain a reserved matter. They also recognise the need to reflect fully the views of the other devolved administrations when drawing up any revised governance arrangements in relation to Scottish Government representation of the UK to the EU. In that context, the parties agree that the implementation of the current *Concordat on the Co-ordination of European Union Policy Issues* should be improved. This should be achieved by:

- (1) ensuring that Scottish Ministers are fully involved in agreeing the UK position in EU negotiations relating to devolved policy matters. For example, it may be appropriate as part of this process for a UK Government Minister to chair a meeting of devolved administration Ministers where another UK Government Minister represents the position of England (or England and Wales in certain policy areas) while devolved administration Ministers represent their respective interests.
- (2) ensuring that Scottish Ministers are consulted and their views taken into account before final UK negotiating positions relating to devolved policy matters are agreed.
- (3) presuming that a devolved administration Minister can speak on behalf of the UK at a meeting of the Council of Ministers according to an agreed UK negotiating line where the devolved administration Minister holds the predominant policy interest across the UK and where the relevant lead UK Government Minister is unable to attend all or part of a meeting.

### Crown Estate

32. Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.
33. Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.
34. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole.
35. Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.

## Broadcasting

36. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in the process of reviewing the BBC's Charter. The BBC will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament in relation to matters relating to Scotland in the same way as it does in the UK Parliament.
37. The power to approve OFCOM appointments to the board of the MG Alba will rest solely with Scottish Ministers.

## Regulation of telecommunications and postal services

38. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for OFCOM with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a Scottish member to the OFCOM Board who is capable of representing the interests of Scotland. OFCOM will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

## Transport

39. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for the Maritime and Coastguard Agency (MCA) with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a Scottish member to the MCA's Advisory Board who is capable of representing the interests of Scotland. The MCA will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.
40. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for the Northern Lighthouse Board (NLB) with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a further Scottish Northern Lighthouse commissioner. The NLB will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

## Energy Market Regulation and Renewables

41. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which OFGEM must have due regard. OFGEM will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

## Heads of Agreement: Pillar 2

### Delivering prosperity, a healthy economy, jobs, and social justice

#### State Pension

42. All aspects of the state pension will remain shared across the United Kingdom and reserved to the UK Parliament. This includes the new single-tier pension, any entitlements to legacy state pensions whether in payment or deferred, pension credit and the rules on state pension age.

#### Universal Credit

43. Universal Credit (UC) will remain a reserved benefit administered and delivered by the Department for Work and Pensions (DWP). Within this framework, the Scottish Parliament will have the powers outlined in paragraphs 44 to 45 in relation to UC.
44. The Scottish Government will be given the administrative power to change the frequency of UC payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland.
45. The Scottish Parliament will have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents.
46. The power to vary the remaining elements of UC and the earnings taper will remain reserved. Conditionality and sanctions within UC will remain reserved.
47. Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 will be met by the Scottish Government.
48. Joint arrangements for the oversight of DWP development and delivery of UC, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments.

#### Benefits devolved outside Universal Credit

49. Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:
  - (1) Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance.
  - (2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment.

### (3) Discretionary Housing Payments.

50. New arrangements for how Motability will operate in Scotland for DLA/PIP claimants will be agreed between the Scottish and UK Governments.
51. The Scottish Parliament will have complete autonomy in determining the structure and value of the benefits at paragraph 49 or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.
52. In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied set out by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland will be transferred to the Scottish Government.

### Benefits reserved outside Universal Credit

53. Responsibility for the following benefits will remain reserved: Bereavement Allowance, Bereavement Payment, Child Benefit, Guardian's Allowance, Maternity Allowance, Statutory Maternity Pay, Statutory Sick Pay and Widowed Parent's Allowance.

### Powers to create new benefits and top-up reserved benefits

54. The Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility, in line with the funding principles set out in paragraph 95. The Scottish Parliament will also have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP. In addition it may seek agreement from DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government. All administration and programme costs directly associated with the exercise of this power (either as a result of changes to existing systems or the introduction of new systems) will be met by the Scottish Government in line with the funding principles set out in paragraph 95.
55. Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment.
56. The UK Government's Benefit Cap will also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides.

## Employment provision

57. The Scottish Parliament will have all powers over support for unemployed people through the employment programmes currently contracted by DWP (which are presently delivered mainly, but not exclusively, through the Work Programme and Work Choice) on expiry of the current commercial arrangements. The Scottish Parliament will have the power to decide how it operates these core employment support services. Funding for these services will be transferred from the UK Parliament in line with the principles set out in paragraph 95.

## Delivery and Administration

58. As the single face-to-face channel for citizens to access all benefits delivered by DWP, Jobcentre Plus will remain reserved. However, the UK and Scottish Government will identify ways to further link services through methods such as co-location wherever possible and establish more formal mechanisms to govern the Jobcentre Plus network in Scotland.

## National Minimum Wage

59. The National Minimum Wage will remain reserved.

## Equalities

60. The Equality Act 2010 will remain reserved. The powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland. The Scottish Parliament can legislate in relation to socio-economic rights in devolved areas.

## Health and social affairs

61. The parties are strongly of the view to recommend the devolution of abortion and regard it as an anomalous health reservation. They agree that further serious consideration should be given to its devolution and a process should be established immediately to consider the matter further.
62. The devolution of xenotransplantation; embryology, surrogacy and genetics; medicines, medical supplies and poisons; and welfare foods (i.e. matters reserved under Sections J2 to J5 of Head J – Health and Medicines, Schedule 5 to the Scotland Act 1998) should be the subject of further discussions between the UK and Scottish Governments. Those discussions are without prejudice to whether or not devolution takes place and in what form.

## Tribunals

63. All powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.
64. Despite paragraph 63, the laws providing for the underlying reserved substantive rights and duties will continue to remain reserved (although they may be applied by the newly devolved tribunals).

## Transport

65. The power will be devolved to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers.
66. Remaining powers to change speed limits will be devolved to the Scottish Parliament. Powers over all road traffic signs in Scotland will also be devolved.
67. The functions of the British Transport Police in Scotland will be a devolved matter.

## Energy Efficiency and Fuel Poverty

68. Powers to determine how supplier obligations in relation to energy efficiency and fuel poverty, such as the Energy Company Obligation and Warm Home Discount, are designed and implemented in Scotland will be devolved. Responsibility for setting the way the money is raised (the scale, costs and apportionment of the obligations as well as the obligated parties) will remain reserved. This provision will be implemented in a way that is not to the detriment of the rest of the UK or to the UK's international obligations and commitments on energy efficiency and climate change.

## Onshore Oil and Gas Extraction

69. The licensing of onshore oil and gas extraction underlying Scotland will be devolved to the Scottish Parliament. The licensing of offshore oil and gas extraction will remain reserved.
70. Responsibility for mineral access rights for underground onshore extraction of oil and gas in Scotland will be devolved to the Scottish Parliament.

### **Competition policy**

71. Scottish Ministers already have the ability to request that a UK regulatory body carry out a market study of their area of responsibility to examine particular competition issues arising in Scotland. Scottish Ministers will also have the power to require the Competition and Markets Authority to carry out a full second phase investigation (in the same way as UK Ministers), after such an initial study has been completed, in relation to particular competition issues arising in Scotland.

### **Consumer Protection**

72. Consumer advocacy and advice will be devolved to the Scottish Parliament.
73. The Scottish Parliament will have the power to prevent the proliferation of Payday Loan shops.

### **Betting, Gaming and Lotteries**

74. The Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals.

## Heads of Agreement: Pillar 3

### Strengthening the financial responsibility of the Scottish Parliament

#### Taxation

##### Income Tax

75. Income Tax will remain a shared tax and both the UK and Scottish Parliaments will share control of Income Tax. MPs representing constituencies across the whole of the UK will continue to decide the UK's Budget, including Income Tax.
76. Within this framework, the Scottish Parliament will have the power to set the rates of Income Tax and the thresholds at which these are paid for the non-savings and non-dividend income of Scottish taxpayers (as defined by the Scotland Acts).
77. As part of this, there will be no restrictions on the thresholds or rates the Scottish Parliament can set. All other aspects of Income Tax will remain reserved to the UK Parliament, including the imposition of the annual charge to Income Tax, the personal allowance, the taxation of savings and dividend income, the ability to introduce and amend tax reliefs and the definition of income.
78. The Scottish Government will receive all Income Tax paid by Scottish taxpayers on their non-savings and non-dividend income with a corresponding adjustment in the block grant received from the UK Government, in line with the funding principles set out in paragraph 95.
79. Given that Income Tax will still apply on a UK-wide basis, albeit with different rates and thresholds in Scotland, it will continue to be collected and administered by HMRC. In line with the approach taken for the Scottish rate of Income Tax, the Scottish Government will reimburse the UK Government for additional costs arising as a result of the implementation and administration of the Income Tax powers described above.

##### National Insurance Contributions

80. All aspects of National Insurance Contributions will remain reserved.

##### Capital Taxes

81. All aspects of Inheritance Tax and Capital Gains Tax will remain reserved.

##### Corporate Taxes

82. All aspects of Corporation Tax will remain reserved.
83. All aspects of the taxation of oil and gas receipts will remain reserved.

### Value Added Tax

84. The receipts raised in Scotland by the first 10 percentage points of the standard rate of Value Added Tax (VAT) will be assigned to the Scottish Government's budget. These receipts should be calculated on a verified basis, to be agreed between the UK and Scottish Governments, with a corresponding adjustment to the block grant received from the UK Government in line with the principles set out in paragraph 95.
85. All other aspects of VAT will remain reserved.

### Air Passenger Duty

86. The power to charge tax on air passengers leaving Scottish airports will be devolved to the Scottish Parliament. The Scottish Government will be free to make its own arrangements with regard to the design and collection of any replacement tax, including consideration of the environmental impact.
87. In line with the approach taken in relation to the Scotland Act 2012, if such a tax is introduced by the Scottish Parliament to replace Air Passenger Duty (APD), the Scottish Government will reimburse the UK Government for any costs incurred in 'switching off' APD in Scotland.
88. A fair and equitable share of associated administrative costs will be transferred to the Scottish Government. The Scottish Government's block grant will be adjusted in line with the principles set out in paragraph 95 to accommodate the devolution of APD.

### Aggregates Levy

89. Once the current legal issues in relation to Aggregates Levy have been resolved, the power to charge tax on the commercial exploitation of aggregate in Scotland will be devolved to the Scottish Parliament. The Scottish Government will be free to make its own arrangements with regard to the design and collection of any replacement tax.
90. In line with the approach taken in relation to the Scotland Act 2012, if such a tax is introduced by the Scottish Parliament to replace Aggregates Levy, the Scottish Government will reimburse the UK Government for any costs incurred in 'switching off' Aggregates Levy in Scotland.
91. A fair and equitable share of associated administrative costs will be transferred to the Scottish Government. The Scottish Government's block grant will be adjusted in line with the principles set out in paragraph 95 to accommodate the devolution of Aggregates Levy.

### Fuel Duty and Excise Duties

92. All aspects of Fuel Duty and Excise Duties will remain reserved.

### Managing interactions between UK and Scottish taxes

93. The UK and Scottish Governments will work together to avoid double taxation and make administration as simple as possible for taxpayers.

### Scotland's Fiscal Framework

94. The devolution of further responsibility for taxation and public spending, including elements of the welfare system, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.

95. Scotland's fiscal framework encompasses a number of elements including the funding of the Scottish budget, planning, management and scrutiny of public revenues and spending, the manner in which the block grant is adjusted to accommodate further devolution, the operation of borrowing powers and cash reserve, fiscal rules, and independent fiscal institutions. The parties agree that the Scottish and UK Governments should incorporate the following aspects into Scotland's fiscal and funding framework.

- (1) Barnett Formula: the block grant from the UK Government to Scotland will continue to be determined via the operation of the Barnett Formula.
- (2) Economic Responsibility: the revised funding framework should result in the devolved Scottish budget benefiting in full from policy decisions by the Scottish Government that increase revenues or reduce expenditure, and the devolved Scottish budget bearing the full costs of policy decisions that reduce revenues or increase expenditure.
- (3) No detriment as a result of the decision to devolve further power: the Scottish and UK Governments' budgets should be no larger or smaller simply as a result of the initial transfer of tax and/or spending powers, before considering how these are used.
  - (a) This means that the initial devolution and assignment of tax receipts should be accompanied by a reduction in the block grant equivalent to the revenue forgone by the UK Government, and that future growth in the reduction to the block grant should be indexed appropriately.
  - (b) Likewise, the initial devolution of further spending powers should be accompanied by an increase in the block grant equivalent to the existing

level of Scottish expenditure by the UK Government, including any identified administrative savings arising to the UK Government from no longer delivering the devolved activity, and a share of the associated implementation and running costs in the policy area being devolved, sufficient to support the functions being transferred, at the point of transfer.

(c) The future growth in the addition to the block grant should be indexed appropriately.

(4) No detriment as a result of UK Government or Scottish Government policy decisions post-devolution

(a) Where either the UK or the Scottish Governments makes policy decisions that affect the tax receipts or expenditure of the other, the decision-making government will either reimburse the other if there is an additional cost, or receive a transfer from the other if there is a saving. There should be a shared understanding of the evidence to support any adjustments.

(b) Changes to taxes in the rest of the UK, for which responsibility in Scotland has been devolved, should only affect public spending in the rest of the UK. Changes to devolved taxes in Scotland should only affect public spending in Scotland.

(5) Borrowing Powers: to reflect the additional economic risks, including volatility of tax revenues, that the Scottish Government will have to manage when further financial responsibilities are devolved, Scotland's fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework. The Scottish Government should also have sufficient borrowing powers to support capital investment, consistent with a sustainable overall UK fiscal framework. The Scottish and UK Governments should consider the merits of undertaking such capital borrowing via a prudential borrowing regime consistent with a sustainable overall UK framework.

(a) The Scottish Government's borrowing powers should be agreed by the Scottish and UK Governments, and their operation should be kept under review in conjunction with agreement on the mechanism to adjust the block grant to accommodate the transfer of taxation and spending powers.

- (b) Borrowing powers should be set within an overall Scottish fiscal framework and subject to fiscal rules agreed by the Scottish and UK Governments based on clear economic principles, supporting evidence and thorough assessment of the relevant economic situation.
- (6) Implementable and Sustainable: once a revised funding framework has been agreed, its effective operation should not require frequent ongoing negotiation. However, the arrangements should be reviewed periodically to ensure that they continue to be seen as fair, transparent and effective.
- (7) Independent Fiscal Scrutiny: the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland's public finances in recognition of the additional variability and uncertainty that further tax and spending devolution will introduce into the budgeting process.
- (8) UK Economic Shocks: the UK Government should continue to manage risks and economic shocks that affect the whole of the UK. The fiscal framework should therefore ensure that the UK Government retains the levers to do that, and that the automatic stabilisers continue to work across the UK. The UK Parliament would continue to have a reserved power to levy an additional UK-wide tax if it felt it was in the UK national interest.
- (9) Implementation: the Scottish and UK Governments should jointly work via the Joint Exchequer Committee to agree a revised fiscal and funding framework for Scotland based on the above principles. The two governments should provide updates to the Scottish and UK Parliaments, including through the laying of annual update reports, setting out the changes agreed to Scotland's fiscal framework.

## Additional issues for consideration

96. The parties have raised a number of additional policy matters which do not involve the devolution of a power to the Scottish Parliament. They have agreed that the Scottish and UK Governments should work together to:
- (1) seek, with respect to food labelling, to agree changes to the European country of origin rules so that a ‘made in Scotland’ brand is recognised under EU law.
  - (2) explore the possibility of introducing formal schemes to allow international higher education students graduating from Scottish further and higher education institutions to remain in Scotland and contribute to economic activity for a defined period of time.
  - (3) explore the possibility of extending the temporary right to remain in Scotland for someone who is identified as a victim of human trafficking, including in particular to enable the individual to participate in relevant legal proceedings.
  - (4) explore, with respect to asylum seekers, the possibility of:
    - (a) different powers being in place in Scotland for asylum seekers to access accommodation and financial support and advice.
    - (b) being able to lodge from within Scotland an asylum claim to the Home Office.
    - (c) MSPs being able to represent directly to UK Visas and Immigration and Immigration Enforcement their concerns with respect to devolved matters affecting their constituents.
  - (5) explore whether to revise the current legal and practical arrangements in respect of levy raising (for example, with respect to red meat and seafood) to ensure that Scotland is able to decide at any stage whether to opt into UK arrangements and, if so, receives an equitable share of any UK monies levied.
  - (6) ensure that fines, forfeitures, fixed penalties imposed by courts and tribunals in Scotland as well as sums recovered under Proceeds of Crime legislation are retained by the Scottish Government. The Scottish Government’s block grant would need to be adjusted in line with the funding principles set out in paragraph 95 to accommodate the retention of these sums.
  - (7) review the functions and operations of the Health and Safety Executive in Scotland and consider how the future requirements to best serve the people of Scotland could be delivered operationally whilst remaining within a reserved health and safety legislative framework.