

SCOTLAND'S FUTURE IN THE UNITED KINGDOM



SCOTLAND OFFICE



Scotland's Future in the United Kingdom

Building on ten years of Scottish devolution

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

November 2009

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PREFACE BY THE PRIME MINISTER



For more than 300 years the Union has brought together the people of this country in the most successful multi-national state the world has ever known.

Donald Dewar's devolution legislation in 1998, creating the Scottish Parliament, is one of this Government's most important achievements, and one of a number of constitutional changes which have strengthened the Union and our democracy for a new century.

The Government has decentralised power to local authorities in England, to the Mayor and Assembly in London, to the Welsh Assembly in Cardiff, and the Northern Ireland Assembly in Belfast.

So much has been achieved, but the process of placing power back where it belongs – in the hands of the people – is not yet complete. So we are coming forward with plans for greater local engagement in England, we are adding to the legislative powers of the Welsh Assembly, and we are working with the parties in Northern Ireland to seek the devolution of policing and justice.

This White Paper sets out the Government's plans for the next stage of devolution in Scotland, ten years on. In particular, it details how we will build a Britain of fairness and responsibility, with plans to strengthen the financial accountability of the Scottish Parliament to the Scottish people.

We live in an increasingly global world where countries are increasingly interlinked. As we saw in the recent global financial crisis, what happens in one country can affect every country – no one is immune. In the face of global trends we need a stronger union that can react to the challenges and opportunities of a global world. To choose isolationism or narrow nationalism would be precisely the wrong course.

It is clear today that we are stronger together than we ever would be apart. Scotland's union with the rest of the UK is bound by family and social ties, and a shared commitment to common values of decency, fairness and tolerance. The Government will always support that union, and these plans will strengthen it.

The Scottish Parliament and the other devolved legislatures are now firmly entrenched in the United Kingdom's constitution. They help to make that constitution one fit for the 21st century. But there is more reform and modernisation to come. The plans in this White Paper are an important part of that.

A handwritten signature in black ink that reads "Gordon Brown".

Rt Hon. Gordon Brown MP

FOREWORD BY THE SECRETARY OF STATE FOR SCOTLAND



As a Scot, I took pride more than ten years ago in campaigning for the creation of a Scottish Parliament. Now, as Secretary of State for Scotland, it gives me great pleasure to set out the Government's plans for building on the success of the Scottish Parliament's first ten years.

Ten years is a very short time when it comes to building new institutions. But the Scottish Parliament has already found its place in the hearts and minds of the people of Scotland.

Devolution is a great success: it brings government closer to the people, works well in practice, and secures a successful and abiding union for the people of the UK. But it faces two major challenges, both of which are addressed by the Government's plans.

The first is the challenge of meeting peoples' desire for further change which strengthens Scotland's Parliament. As a Scot and a patriot, I believe that a stronger United Kingdom, with Scotland at its heart, is the right objective. As a Government, we were clear that in supporting the Calman Commission, we were seeking to strengthen the Union and Scotland's role within it. In taking forward their recommendations, we do so because we believe that they are right for Scotland, and right for the UK as a whole.

The second challenge is about financial accountability. The Scottish Parliament needs to have stronger financial accountability to the people of Scotland, while still benefiting from the security and stability of sharing resources as part of the Union.

I am grateful to Sir Kenneth Calman, the members of his Commission, the Independent Expert Group on finance and all those who took the time to give their views to the Commission. One of the great strengths of the Commission's report is that it was based on a wealth of evidence. Their work is the firm foundation on which we build.

When I received the Commission's report in June, I promised consensus and momentum. I am pleased to be able, less than six months later, to present the Government's plans. I am confident that the proposals in this White Paper will create a stronger and more accountable Scottish Parliament within the United Kingdom.

A handwritten signature in black ink that reads "Jim Murphy". The signature is written in a cursive, flowing style.

Rt Hon. Jim Murphy MP

CHAPTER 1

INTRODUCTION

1.1 The first words of the Scotland Act are ‘There shall be a Scottish Parliament’. Ten years on from the establishment of the Scottish Parliament, the Government is putting forward proposals to refresh and reinvigorate devolution in Scotland.

Background

1.2 In July 1997, the Government published the White Paper ‘Scotland’s Parliament’. In September 1997, the Scottish people voted in favour of the Government’s proposals, which were given effect in the Scotland Act 1998. The new Scottish Parliament held its first meeting in July 1999.

1.3 Over the following ten years, the Scottish Parliament established itself firmly within the governance of Scotland and the UK. The majority of people in Scotland support devolution, respect the Scottish Parliament and value Scotland’s place as part of the United Kingdom. And people elsewhere in the UK also agree that Scotland should have a Parliament of its own to deal with Scottish issues.

The Commission on Scottish Devolution

1.4 The Commission on Scottish Devolution was set up following a vote in the Scottish Parliament, and was supported by the United Kingdom Government. The Commission was chaired by Professor Sir Kenneth Calman, and its members were all senior figures from across Scottish society. The Commission reported to the Scottish Parliament and UK Government, but it came to its recommendations independently of them.

1.5 The Commission’s remit was:

‘To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom’.

1.6 The Commission gathered evidence through engagement events, consultation papers, and public evidence sessions across the country.

1.7 On 15 June 2009, the Commission published its final and unanimous report. It has been widely acknowledged as a serious and thorough analysis of Scotland’s position within the United Kingdom, drawing on empirical evidence and detailed, serious contributions.

1.8 The Commission’s first conclusion was that the Scottish Parliament has been a real success, commanding popular support and bringing government closer to the people. The Commission found that the division of responsibilities under the Scotland Act works well in practice.

1.9 The Commission also concluded that Scotland’s place in the United Kingdom, as part of a political, economic and social union, continues to benefit the people of Scotland. The UK Parliament and Government’s continuing role in Scotland’s governance, in areas like foreign affairs, defence, the economy, welfare, national security, immigration and broadcasting, works well for Scotland in the UK.

1.10 The Commission looked at four areas in which devolution could be strengthened, to serve the people of Scotland better:

- Strengthening accountability in finance

- Strengthening cooperation
- Strengthening the devolution settlement
- Strengthening the Scottish Parliament

*Cross-party
consensus*

1.11 The creation of the Calman Commission was supported by the parties which support devolution within the framework of the Union – Labour, Conservative and Liberal Democrat.

1.12 The Secretary of State for Scotland set up a steering group of senior figures from each of the three parties, representing Westminster and Holyrood, to help the Government and the Scottish Parliament to take forward the Commission's recommendations and deliver stronger devolution within the United Kingdom.

1.13 The Government began a programme of work to assess the recommendations in detail. This work is now complete, and this White Paper sets out the Government's plans. The Government is committed to engaging widely as we take our plans forward.

CHAPTER 2

DEVOLUTION – TEN YEARS ON

2.1 Devolution in Scotland has been ‘a remarkable and substantial success’. This was the verdict of the Commission on Scottish Devolution. The Commission was entirely right. Delivering this change to the people of Scotland is something of which this Government is very proud. Ten years on from the establishment of the Scottish Parliament, the new institutions of Scottish governance work well and are an accepted part of Scottish life. No-one seriously suggests going back to the pre-devolution arrangements. Support for devolution in Scotland remains strong. And so does support for the United Kingdom, which the majority of people in Scotland agree continues to bring benefits to Scotland.

2.2 The Government remains very firmly committed to Scotland’s place in the United Kingdom. The Government believes that it brings benefits to all of the people of the UK. Together the nations in the United Kingdom are stronger. Working together, we are stronger internationally. Together we share resources and pool risks bringing benefits to all citizens, such as common standards of welfare. All the people of the UK benefit from this.

2.3 But unity is not uniformity. The different parts of the UK have different histories, distinctive cultures and differing aspirations. That is why the Government believes in devolution and decentralisation throughout the UK. In each part of the country that can and should take different forms. Devolution in the special circumstances of Northern Ireland differs in many important respects from devolution elsewhere in the United Kingdom. Within Great Britain the Government has ensured devolution of power and responsibility to local government in England, and to the Mayor and Assembly in London; it has provided for increasing devolution in Wales to the Assembly and Assembly Government. All of these are tailored to the circumstances of the different parts of Britain. But they share a common characteristic: devolution is firmly set within a wider British union. By giving expression to the diversity of the United Kingdom, and allowing decisions to be made which reflect the different priorities in those diverse parts, devolution strengthens the Union.

2.4 The Calman Commission’s recommendations were guided by an understanding of Scotland and its part in the union. The Government agrees with the Commission’s analysis of Scotland as part of a political, economic and social union. This is an important analysis; it helped to guide the Commission’s recommendations and informs the Government’s plans. Devolution within the Union allows people in Scotland to express their own political identity, and to take decisions on purely Scottish matters, while continuing their commitment to a wider political union. The Government entirely accepts this, and is wholly committed to devolution within the UK’s political union.

2.5 The benefits of the economic union have been evident during the global economic downturn. Businesses and people in Scotland and the rest of the UK have been protected from the effects of the worldwide recession by well-judged measures of fiscal stimulus. And steps have been taken by the UK Government, for all the people of the UK, to protect the poorest from the impact of the downturn. The economic union has been seen to be of clear benefit to the people of Scotland.

2.6 It is crucial, looking forward, that we maintain the ability of the union to provide economic and fiscal stability, and continue to protect the poorest in society. But the union is more than a port in a storm; it is also a place where Scotland can thrive in sunnier economic times. The

United Kingdom is emerging from the present global economic difficulties, and will continue to provide economic opportunities for Scots and Scottish businesses. The Scottish economy benefits hugely from the deeply integrated UK market in goods and services, in labour and in knowledge. This economic union is Scotland's greatest economic opportunity, and ensuring that it remains so is a keystone of the Government's policy.

2.7 The United Kingdom has also been described as a social union. People in these islands share family ties, and cultural, professional and business links, and they do so to a profound extent. This binds the countries of the United Kingdom together very deeply, and is of great importance. The Government will do nothing to undermine that. But, as the Calman Commission noted, there is another sense in which the UK is a social union. This has its most explicit expression in our social security system, which ensures that people across the UK have access to the same support in time of need. The Government is deeply committed to this. Fairness is a fundamental value for the UK. What this aspect of the social union means is that resources are pooled from taxation across the UK, so that wherever and whenever risks occur – risks like unemployment or the inability to work through ill health – help is there to meet them. This will continue to be a founding principle in our proposals for devolution.

2.8 These are fundamental aspects of the Union, and the Government will not undermine them. But in many other aspects of public life there is not merely scope for, but great benefit from, diversity and choice. That is why the Government devolved to the Scottish Parliament power over much of domestic policy in Scotland – health, education, justice, housing, planning and local government, the environment and so on. As the late Donald Dewar said, this provides the opportunity to craft 'Scottish solutions to Scottish problems'.

2.9 In devolving these responsibilities, the Government also devolved responsibility for managing a very substantial budget – the majority of public spending in Scotland. Within that budget, Scottish Ministers and the Scottish Parliament have virtually complete freedom to determine spending priorities. This is real devolution, and these are decisions which are of vital importance to people in Scotland; it is right that they are taken in Scotland.

2.10 Until now, however, the Scottish Parliament's budget has been funded to an overwhelming extent by grant from the United Kingdom Government. The amount of the grant is determined by the Barnett formula. This is financed from the general pool of UK taxes, including those collected in Scotland.

2.11 These arrangements were entirely appropriate at the start of devolution and have provided a stable funding system, broadly fair across the UK. As the Calman Commission noted this system has given devolution an excellent start. It does not however provide sufficient financial accountability to the Scottish Parliament. The Scottish Parliament is wholly responsible for spending decisions, but has only limited taxation powers. That is why the Government sought the advice of the Calman Commission on the options for improving the Scottish Parliament's financial accountability.

2.12 The Commission produced important and radical recommendations, which the Government welcomes. This paper now sets out the Government's plans to refresh devolution and, in particular, to strengthen the financial accountability of the Scottish Parliament, within the context of the security and influence provided by being part of the United Kingdom. This is the challenge for the next phase of devolution, ten years on.

CHAPTER 3

A FRAMEWORK FOR SUCCESSFUL COOPERATION

3.1 The establishment of the Scottish Parliament in 1999 was part of the Government's programme of constitutional reform, which also included devolution in Wales. Devolution meant that new institutions were created, so existing institutions such as the UK Parliament had to adapt, and new relationships had to be formed.

3.2 The Calman Commission commended the cooperation that takes place between institutions, noting that the Government and the Devolved Administrations 'can and do work together'.

3.3 But the Commission thought that there was room still to strengthen the relationships between the UK Parliament and the Scottish Parliament, and between the UK and the Scottish Governments (and collectively with the Welsh Assembly Government and Northern Ireland Executive). The Commission felt that these institutional relationships should be a core part of the constitution and should not depend simply on the political and personal connections between people. The Commission also found that people wanted the relationships between institutions to be more transparent.

3.4 The Government views this as an essential part of our plans for strengthening Scotland's position in the UK. Having established strong institutions, we need to ensure that relationships between them:

- Are based on mutual respect.
- Work to strengthen cooperation.
- Are transparent and open to scrutiny.

3.5 The Government's respect for the Scottish Parliament can be seen in a continuing commitment to the Sewel Convention. The Sewel Convention has been promoted by the Government as the way in which the UK Parliament respects the legislative competence of the Scottish Parliament. Since devolution has taken place, the UK Parliament has not legislated on devolved matters without the consent of the Scottish Parliament. In fact there has, with consent, been a considerable volume of legislation at Westminster on or affecting devolved matters, and this has shown how well the UK and devolved institutions can work together for the people of Scotland. The Government believes, as the Commission did, that the Sewel Convention is not simply a matter for Government. Each House of Parliament may wish to consider passing a resolution recognising the Convention.

Relations between Parliament and the Scottish Parliament

3.6 The Government agrees that a strong relationship between the UK Parliament and the Scottish Parliament is an essential part of a framework for cooperation within the UK. We recognise that there is already cooperation, through the British-Irish Parliamentary Assembly. We are pleased that the Speaker of the House of Commons, the Presiding Officer of the Scottish Parliament and the House of Lords Authorities have given their support to considering how to strengthen their relationships and the Government welcomes the work which they will now be doing to take this forward.

3.7 Parliament at Westminster is for many a symbol of the United Kingdom and continues to have great relevance to people in Scotland. The Commission recommended that Scottish MPs should see themselves as stewards of the constitution by way of regular scrutiny of the shape and operation of the devolution settlement. For our part, the Government is content to help enable this if Parliament so decides.

3.8 The Secretary of State for Scotland would be very willing to attend the Scottish Parliament if invited, as recommended by the Commission, to discuss the Government's legislative programme which has significant effects in Scotland.

3.9 The recommendations in Chapter 6 of the Commission's report relate to the Scottish Parliament's procedures. Some of the recommendations would require changes to the Scotland Act. Before coming to a final view on these changes, the Government will want to consider the views of the Scottish Parliament on them. The Government will then be pleased to consider taking forward proposals for change.

Regular and robust contact between the UK Government and the administrations of Scotland, Northern Ireland and Wales

3.10 The Government has already taken steps over the last 18 months to strengthen the Joint Ministerial Committee (JMC) and to work closely with the Devolved Administrations across the UK to tackle common challenges – such as those presented by the economic downturn and swine flu.

3.11 In the light of the Commission's recommendations we are in discussion with all three Devolved Administrations about how best to improve relations and the machinery for cooperation – a discussion that began at the plenary meeting of the JMC this September – and will seek to agree the following changes with the other members of the JMC:

- A longstanding timetable of meetings for the JMC, its sub-committees and the Finance Ministers' Quadrilateral to ensure greater regularity of contact between all four administrations.
- Greater support for this cooperation from officials via the creation of a JMC (Officials).
- Greater transparency around the JMC process, for example by publishing an annual report on the state of relations to be laid before each legislature.

Close cooperation on European issues

3.12 Scotland's voice in Europe is stronger as part of the UK. As one of the larger Member States of the European Union, the UK carries greater weight in EU discussions, and indeed on the wider international stage. A strong UK voice in the EU needs a single negotiating line that accurately takes account of the different needs of Scottish interests, as well as those of the other parts of the UK. So the UK Government will continue to seek to improve the way in which Scottish Ministers and officials, along with those from Wales and Northern Ireland, are brought into the development of a United Kingdom negotiating position. We agree with the Commission about the importance of early consultation, particularly where a devolved matter is under direct consideration. The Government will provide the Devolved Administrations with increased opportunities to register their interests, in correspondence and in direct contact with the lead Government Minister.

3.13 Devolved Ministers understandably seek the opportunity to participate directly in EU discussions that affect devolved matters. While this will not always be possible, as representing the UK as a Member State at EU meetings is the responsibility of UK Ministers, the Government agrees that there will be occasions when it will be appropriate. The Government is keen that UK Ministers make their decisions on whether or not it will be possible for a Devolved Administration to participate in a United Kingdom delegation on a timely basis, following clear guidance. The Cabinet Office will therefore draw up guidance, following consultation with the three Devolved Administrations, consolidating best practice and setting out the factors which need to be addressed when requesting attendance and when taking decisions on the membership of individual delegations.

3.14 The Government is also committed to using the JMC(Europe) strategically to discuss the priorities of the UK as a whole for each upcoming Presidency and any key developments affecting all four administrations, for example, the handling of possible infractions. The JMC(Europe) will of course continue to be used to prepare for each European Council meeting.

A unified civil service

3.15 The Commission found ‘overwhelming’ evidence in favour of a unified civil service. They highlighted the importance of shared values of integrity, honesty, objectivity and impartiality. They recommended that the Civil Service Codes should be amended to recognise the importance of cooperation and mutual respect; and that the responsibility for appointing, or approving the appointments of, senior civil servants to senior posts in the Scottish Government should be delegated by the Prime Minister to the Head of the Home Civil Service, acting on the advice of the UK Civil Service Commissioners.

3.16 The Government is committed to maintaining the unified civil service. The Government agrees that it is important for mutual respect and cooperation to be at the heart of working relations amongst civil servants working for the Devolved Administrations and for the Government. We will consider how best this point might be reflected in the Civil Service Code when the next edition is produced. The Government has consulted the Civil Service Unions and accepts the recommendation that the responsibility for approving the appointments of the most senior civil servants in the Scottish Government should be delegated to the Head of the Home Civil Service. The Government proposes to adopt a similar procedure for similar appointments in Wales.

CHAPTER 4

STRENGTHENING THE FINANCIAL ACCOUNTABILITY OF THE SCOTTISH PARLIAMENT

4.1 How the Scottish Parliament is funded is of critical importance. That funding supports most of the public services which people in Scotland use day-to-day. It is important that the funding system is stable, so that plans can be made for those services, and that the funding system is efficient, so that it does not produce large administrative costs, or economic distortions that will hit businesses. The system should also be fair to people in Scotland and across the United Kingdom, and it should help Scottish voters hold Scottish Ministers and MSPs to account for their financial decisions. The present funding system has operated since the creation of the Scottish Parliament in 1999, and was based closely on the arrangements which preceded it. It has many strengths, but has been criticised, especially for not providing strong direct financial accountability for the Scottish Parliament. That is why the Government, with the Scottish Parliament, asked the Calman Commission to look in particular at this aspect of the devolution settlement, ten years on.

4.2 At present, the Scottish Parliament is financed almost entirely by a block grant from the UK Government. Changes to the block budget are calculated by the 'Barnett formula' which relates changes in the Scottish budget to changes in comparable spending in England (or in some cases England and Wales). The same system is used to calculate the budgets of the Welsh Assembly and the Northern Ireland Assembly. Additionally, the Scottish Parliament has some limited tax powers. As well as influence over local taxation, the Scottish Parliament has power to vary the basic rate of income tax in Scotland by plus or minus 3 pence in the pound ('the Scottish Variable Rate'). If used to the full this could change the Scottish budget by a little over a £1 billion, compared with total spending of around £30 billion. The Scottish Parliament has not to date exercised this power.

4.3 The Calman Commission considered the funding system in great detail. They concluded that the present funding system has got the Scottish Parliament off to a good start. The stability and predictability of the budget, along with near complete autonomy of spending decisions for the Scottish Parliament, has been good for devolution in its early years. The Government endorses the Commission's view. The present system has many strengths. It has produced stable public finances for Scotland and results that are broadly fair across the UK. These are strengths which should be retained and on which to build.

4.4 The Commission was asked to consider in particular how to improve the financial accountability of the Scottish Parliament, and to do this they undertook a very full analysis of the options for funding the Scottish Parliament. They took evidence from a wide cross section of stakeholders, as well as experts and practitioners from overseas. They also sought the advice of an independent panel of experts, led by Professor Anton Muscatelli who is now Principal and Vice-Chancellor of Glasgow University.

4.5 The Commission's conclusion was that the system of funding for the Scottish Parliament had, most importantly, to support the constitutional relationship between Scotland and the rest of the UK. The Commission set out the basis for devolution within the union as the best constitutional arrangement for Scotland. They analysed the aspects of the union that were relevant to finance and concluded that the continuation and consolidation of the economic and social

unions between Scotland and the rest of the UK must therefore be at the heart of the way the Scottish Parliament is financed in future. This analysis underlies all their recommendations.

4.6 The Government strongly agrees that Scotland and the rest of the United Kingdom benefit greatly from having a single integrated economy, an economic union. In practice, this means that any change to the way the Scottish Parliament is funded needs to be consistent with the overall reservation of macroeconomic policy to the UK Government and maintenance of the integrity of the UK market within that union. Maintaining one common tax administration not only represents an administrative efficiency, it also ensures the trade of goods, services and capital between the rest of the UK and Scotland is entirely unimpeded. The alternative would involve the creation of a separate tax administration in Scotland, and any business operating across the border would thus have to comply with two separate tax systems.

4.7 The Government also remains firmly of the view that people in different parts of the UK should have access to broadly equitable levels of public services, notably those which secure our common social rights. Funding by block grant means that the budget available to the Scottish Parliament relates to overall levels of public expenditure across the UK. In effect, the block grant is financed by taxes pooled from across the UK, including from Scotland, meaning risks and resources are shared across all of the UK. In addition to this pooling of risks, the block grant gives national government the scope to ensure a broadly comparable level of public service provision in Scotland and the rest of the UK. The Government is committed to maintaining the broadly comparable welfare state – this is a fundamental element of the social union.

4.8 But the Government also accepts that the current arrangements have a fundamental shortcoming reflected in the very remit of the Commission. Because so much of the budget comes by grant from the UK Parliament, Scottish Ministers and MSPs are not accountable to the Scottish electorate for how much money is raised in the same way that they are accountable for how it is spent. At the same time, there is no obligation on the Scottish Parliament to make a tax decision. If the Scottish Parliament does nothing at all, it continues to receive the same annual budget from the UK Parliament. So, at a Scottish parliamentary election, the electorate need not be offered any choices which make a connection between the level of public service provision and the taxes paid.

4.9 The Commission's recommendations sought to reconcile these constraints and objectives and are set out in full in the annex. The principal recommendation was that part of the budget of the Scottish Parliament should now be found from devolved taxation under its control, rather than grant from the UK Parliament. The Scottish Parliament needs to be financially accountable to the people of Scotland, while still benefiting from the security and stability of sharing resources as part of the union.

4.10 They recommended that this should be achieved by replacing the Scottish Variable Rate of income tax with a new Scottish rate of income tax, which should apply to the basic and higher rates of income tax. To make this possible, the basic and higher rates of income tax levied should be reduced by ten pence in the pound and the block grant from the UK to the Scottish Parliament should be reduced accordingly.

4.11 In addition, they recommended that:

- Stamp Duty Land Tax, Aggregates Levy, Landfill Tax and Air Passenger Duty should be devolved to the Scottish Parliament, again with a corresponding reduction in the block grant.
- The Scottish Parliament should be given a power to legislate with the agreement of the UK Parliament to introduce specified new taxes that apply across Scotland.
- There should be strengthened inter-governmental arrangements to deal with finance.

- The block grant, as the means of financing most associated with equity, should continue to make up the remainder of the Scottish Parliament's budget, but it should be justified by need. Until such times as a proper assessment of relative spending need across the UK is carried out, the Barnett formula, should continue to be used as the basis for calculating the proportionately reduced block grant.
- Income tax on savings and distributions should not be devolved, but half of the proceeds from it should be assigned to the Scottish budget with a corresponding reduction in the block grant.
- The existing power for Scottish Ministers to borrow for short-term purposes should be used to manage cash flow when devolved taxes are used, with consideration given to increase the limit on it if need be.
- Scottish Ministers should be given an additional power to borrow to increase capital investment in any one year, subject to an overall limit, similar to the prudential regime for local authorities.

4.12 They also recommended various changes to the institutional structure for managing the financial system.

The Government's plans

4.13 The Government has given careful consideration to the Commission's recommendations on how to improve financial accountability. The Government accepts the Commission's basic analysis that accountability can be achieved by moving to a system where a greater proportion of the Scottish Parliament's budget comes from its own decisions. The Government's plans, following from the Commission's recommendations, are set out below.

4.14 Taken together, the proposals represent the most radical changes to the way in which Scotland is funded for a generation. For the first time, Scottish Ministers will be responsible for determining the size of their overall budget. And for the first time Scotland will have its own Scottish rate of income tax and a specific new power to borrow for capital investment.

Income tax

4.15 The Government will **replace the Scottish Variable Rate with a new Scottish rate of income tax, which the Scottish Parliament will have the power to set**. Part of the budget of the Scottish Parliament will be funded by the yield from the new Scottish rate of income tax, as recommended by the Commission.

4.16 To maximise accountability and transparency for Scottish taxpayers, the new Scottish rate of income tax will apply to both the basic and higher rate of income tax, though to protect the progressive nature of the income tax system across the whole of the UK they will need to move in tandem. The same principle will apply in relation to the new 50p rate being introduced in April 2010 across the UK.

4.17 This will mean that all income tax rates (except those on savings and investment income, as recommended by the Commission) will be reduced by ten pence for Scottish income tax payers with a corresponding reduction in the block grant to the Scottish Parliament. The Scottish Parliament will then levy its own, single, Scottish rate of income tax. The Scottish Parliament will be dependent on that tax for a substantial proportion of its budget. Its financial accountability to people in Scotland will be hugely strengthened as a result.

4.18 This is a major change, and it will, as the Commission recommended, need to be phased in carefully. This is especially true at a time of major fiscal adjustment and economic uncertainty, so the Government will take a staged approach to introducing the new system. Initially:

- **The adjustment to the block grant will be made for the period of each Spending Review**, instead of a one-off adjustment to the block grant.
- **The block grant adjustment will be based on forecast tax yield** instead of actual tax yield i.e. the UK Government will forecast tax receipts from Scottish taxpayers each year and a sum equivalent to a ten pence reduction in the rate of income tax will be deducted from the Scottish block grant.

4.19 These arrangements are transitional. Going beyond this, the **Government proposes to move to the full model proposed by the Calman Commission as soon as economic and fiscal circumstances permit.**

4.20 The Calman Commission recommended that half of the revenue raised by income tax on savings and distributions should be assigned to the Scottish Parliament with a corresponding reduction in block grant. The Government does not attach priority to the implementation of this recommendation, as it creates difficult operational complications without genuinely improving financial accountability, but will keep the situation under review.

Devolution of other taxes

4.21 The Government intends to **devolve stamp duty land tax, landfill tax and aggregates levy as they relate to Scotland**, with a corresponding reduction in the block grant. The detailed mechanism and timing of implementation for each will need to be carefully assessed in the light of state aid and competition issues, in consultation with the European Commission; and of the need to minimise any economic and delivery risks. Aggregates levy carries particular state aid issues, as well as scope for 'cross-border' market distortion of the aggregates market, which will need to be worked through in full before introduction.

4.22 The Government's assessment is that state aid rules, competition considerations and international aviation agreements restrict its ability to devolve **air passenger duty**. The Government does not therefore attach priority to the implementation of this recommendation although it will keep the position under review.

Power to introduce new taxes

4.23 The Government will carefully **consider any new taxes proposed by the Scottish Parliament that could be introduced alongside the proposals above** as part of the proposed package of devolved taxes, subject to European state aids clearance.

The Barnett formula

4.24 As recommended by the Commission, when greater tax devolution is introduced it will be necessary to reduce proportionately the increase to the Scottish budget which is determined by the Barnett formula. The Government has no plans to review the Barnett formula itself, which has proved robust and durable and has served Scotland, Wales and Northern Ireland well. However, the Government will continue to keep all aspects of public spending, including the Barnett formula, under review, and we will continue to keep the Barnett formula up to date.

Borrowing powers

4.25 Scottish Ministers currently have a power under the Scotland Act to borrow for short-term current spending, although this power has not yet been used. The Government proposes to **maintain the existing borrowing power** and keep the borrowing limit under review.

4.26 Furthermore, the Government considers that **when greater tax devolution is introduced, it will be appropriate to introduce a new capital borrowing power** to enable Scottish Ministers to borrow from the National Loans Fund at normal rates and terms to fund increases in agreed categories of capital investment. Such borrowing would be subject to limits set by the Treasury within the fiscal framework in place at the time, and would be self-financed, by increasing revenue from taxation in Scotland above the level of the rest of the UK. This will mean that Scottish Ministers will be able to allow more public investment in the Scottish economy. By the same token, they will be accountable through the system for the additional costs of repaying it. This will increase the power and responsibility of the Scottish Ministers and their accountability to Scottish taxpayers.

4.27 The total amount of borrowing available in any one year would be set in the Spending Review, in the light of the fiscal circumstances at the time. Treasury Ministers would take account of the levels of all borrowing, including borrowing by Scottish local authorities in setting an overall limit.

*Financial
governance
arrangements*

4.28 Currently Finance Ministers from the UK Government and the Devolved Administrations meet to discuss economic and financial issues in quadrilateral meetings and, in addition, such issues can also be discussed in JMC meetings and bilaterally. The Government is committed to ensuring that these arrangements are maintained.

4.29 The Government agrees with the Commission that it is not necessary to create new bodies to referee on disputes.

4.30 The Government also agrees that when greater tax devolution is introduced it will be necessary to review and update the existing arrangements for sharing of information between HMRC and Scottish Ministers.

4.31 The Government is committed to providing improved transparency wherever possible, and will ensure that appropriate information is made available when greater tax devolution is introduced; and is committed to ongoing discussion with Scottish Ministers on all financial issues within the existing frameworks, and in particular the Ministerial Finance Quadrilaterals. However, the Government sees no need to rename these meetings as a Joint Ministerial Committee. We note that many of the issues which will have to be discussed with Scottish Ministers as the new financing system for Scottish devolution is brought into effect will relate to Scotland only, and not to the other Devolved Administrations. It may therefore be best for these to be discussed bilaterally rather than in fora involving all the Devolved Administrations.

4.32 The Government does not see a strong case for changing the current arrangements for appointing HMRC Commissioners.

4.33 Devolved tax policy matters are for the Scottish Ministers to determine, and as such HMRC would not play a role in these matters.

4.34 The Government notes that the National Audit Office is already responsible for auditing the spending of the Scotland Office. It sees no need to extend this role.

Implementation

4.35 These plans will require legislation in the United Kingdom Parliament. The Government envisages introducing the necessary legislation as soon as possible during the next Parliament, and will undertake further detailed work to establish viable timings.

4.36 Before implementing any of the above proposals, the UK Government will need to consult the European Commission to confirm its detailed plans are compatible with EU state aid rules. The state aid regime sets down strict criteria for the extent of devolution of taxes within the EU. However, the Government is confident that its proposals are consistent with these criteria.

4.37 HMRC will implement and administer Scottish taxes on behalf of Scottish Ministers, who will have policy responsibility for the devolved taxes. Implementing and running the system will have an operational cost, which will be borne by the Scottish Parliament within its existing provision, as under the current SVR arrangements.

4.38 In order to introduce these proposals in the most effective way, the Government is committed to working with Scottish Ministers, and the officials who support them.

4.39 These proposals will be a major improvement to the way in which Scottish devolution is funded. Based on the thorough and detailed analysis of the Calman Commission, the Government's plans will strengthen the accountability of the Scottish Parliament, while securing Scotland's place within the economic and social union that is the United Kingdom.

CHAPTER 5

THE POWERS AND FUNCTIONS OF THE SCOTTISH PARLIAMENT

5.1 The Scottish Parliament can make law over a wide range of issues which affect the daily lives of people in Scotland. It holds to account Scottish Ministers, who are responsible for the public services that people use every day.

5.2 The Scottish Parliament and the Scottish Ministers are responsible in Scotland for health and education, for crime and justice, housing, transport and economic development, the environment, agriculture and fisheries. On matters such as these it is right that decisions are taken as close as possible to the people affected, and that there can be different policies to reflect Scotland's needs and priorities.

5.3 The UK Parliament is responsible for vital issues like foreign affairs, defence, the constitution, welfare, immigration, energy and broadcasting. On these issues, the UK Government makes policy for the whole of the UK and the Secretary of State for Scotland represents the interests of Scotland. There are benefits to Scotland in being part of the UK for these matters. Together they form part of the economic, social and cultural union which binds us together as a state.

5.4 The Calman Commission concluded that:

'The evidence we have had is that the division of responsibilities in the Scotland Act was well thought through, and works well in practice.'

5.5 The Government agrees with this analysis. The package of powers devolved to the Scottish Parliament in 1999 covered the majority of Scottish public spending, and many domestic public services. A substantial exception was social security benefits, and the Government entirely agrees with the Commission that this aspect of policy is an aspect of the social union, and should remain uniform throughout it. This means that risks and resources are shared across the country, to the benefit of all – and recent economic events have shown how important that is to people in Scotland.

5.6 The Commission recommended that there should be some changes to the wider devolution settlement. The Government has considered their recommendations carefully as a package.

5.7 In the light of the Commission's recommendations, the Government will:

- Devolve new powers to the Scottish Parliament and Scottish Ministers
- Seek closer working relationships between UK and Scottish Ministers
- Legislate at the UK Parliament where appropriate to ensure a consistent approach
- Ensure that UK policy and institutions continue to serve Scotland's needs

Devolution of new powers to the Scottish Parliament and Scottish Ministers

5.8 The powers of the Scottish Parliament and Scottish Ministers under the Scotland Act are substantial. The Scottish Parliament can make law on anything that is not reserved to the UK Parliament. Devolved powers have been expanded since 1999. The Commission examined a number of areas where there appeared to be pressure for change to the settlement, and made recommendations based on the evidence that they found.

5.9 In the light of their recommendations, we have reviewed the position and agree to devolve further powers. These changes will require legislation, and the consent of the Scottish Parliament in line with the Sewel Convention.

5.10 The Government accepts in principle the recommendation to **devolve the power to regulate air weapons to the Scottish Parliament**. The Scotland Act reserves the subject-matter of the Firearms Acts 1968 to 1997. The Commission examined carefully the arguments for this reservation. The Commission was not persuaded that there was a general problem with firearms in Scotland that is any worse than, or different to, that facing other parts of the UK. The Commission found that there are advantages in having the same criminal offences relating to the misuse of firearms across Great Britain and that there could be serious disadvantages in having different, uncoordinated policies. The Government agrees with that analysis and strongly supports the maintenance of a common regime for firearms in general.

5.11 The Commission did, however, recommend that there was a case for the regulation of airguns to be devolved to the Scottish Parliament. The Government has considered this recommendation carefully. The Government has always kept controls on air weapons under close scrutiny and has taken positive action to secure public safety on several recent occasions, through significant new legal measures, introduced after full consultation with Scottish Ministers. There is now a range of strict laws against the misuse of air weapons, including a prohibition on the sale of air weapons to under-18s and controls on their possession in public. Businesses which sell them must now register with the police as dealers and complete sales on a face-to-face basis.

5.12 There are encouraging signs that recent changes are having some effect. In 2007/8, the number of air weapon offences in Scotland fell by 17% and the number of serious injuries caused by air weapons fell by 35%. There were corresponding reductions in England and Wales and this trend is expected to continue as the new measures bed down further.

5.13 But there may be scope for further reductions in specific areas and the Government accepts in principle the recommendation to devolve the regulation of air weapons to the Scottish Parliament. Careful consideration will need to be given to ensure that an appropriate definition of 'air-weapon' is established in order to avoid unhelpful differences in power levels. Consideration will also need to be given to the requirements of visitors, particularly from England and Wales and the EU, bearing in mind the limited nature of the European Firearms Pass. Any costs incurred by England and Wales police forces as a result of a decision by the Scottish Parliament to create a different regulatory system for air weapons would be funded in line with the Statement of Funding Policy. Agreement to devolve is subject to resolution of these issues.

5.14 The Government will devolve **the power to set the prescribed alcohol limit for driving**. The subject-matter of the Road Traffic Act 1998 is reserved to the UK Parliament, with only minor exceptions, by the Scotland Act. Under section 5 of the Act, an offence is committed if a person drives or attempts to drive, or is in charge of, a motor vehicle after consuming so much alcohol as to exceed the prescribed limit. The limit, in section 11, can be changed by regulations made by the Secretary of State.

5.15 The Commission argued that devolution of the power to set drink-drive limits would be consistent with the devolved responsibility for the criminal justice system, and other responsibilities in relation to alcohol.

5.16 The Government has carefully weighed up the arguments. Our view is that there are benefits in having a single drink-drive limit in place across Great Britain and we agree with the Commission that any change under devolved powers would require education on both sides of the border and other practical measures. However we accept that there is no overwhelming reason why the Scottish Parliament and Scottish Ministers should not have the power to set a prescribed limit.

5.17 The Government will **ensure that Scottish Ministers have the powers they need to determine the national speed limit in Scotland**. The subject-matter of Part VI of the Road Traffic Regulation Act 1984 (RTRA 1984), which relates to speed limits, is a reserved matter under the Scotland Act. However, a number of executive functions under RTRA 1984 have been transferred to Scottish Ministers, giving them broad powers to determine speed limits.

5.18 The Commission argued that Scottish Ministers should have all the powers needed to determine local speed limits and the national speed limit. The Government accepts this recommendation. Responsibility for determining local speed limits in Scotland is already a matter for Local Authorities or for Transport Scotland. The Government believes, furthermore, that Scottish Ministers have existing powers that enable them to alter the level of the national speed limit on motorways and roads in rural areas in Scotland; however the Government will keep under review the existing regulatory powers to determine whether further changes may be required.

5.19 Schedule 5 to the Scotland Act reserves to the UK Parliament 'elections for membership of the House of Commons, the European Parliament and the Scottish Parliament'. The Secretary of State for Scotland has a range of executive responsibilities under the Scotland Act to put the framework in place for Scottish Parliamentary elections. The Commission received evidence and representations in favour of devolution of the administration of elections to the Scottish Parliament. The Government accepts the Commission's argument that to devolve the administration of elections would demonstrate the maturity of the Scottish Parliament and of the devolution settlement. There are, however, a number of aspects of the conduct of elections where there are clear benefits for voters, candidates and electoral administrators from consistency of practice, and this needs to be taken into account in settling any new arrangements. We will **consider carefully how certain aspects of executive responsibility for putting in place the framework for the administration of the Scottish Parliament elections might be devolved, whilst ensuring the efficient and effective conduct of elections**.

5.20 In addition, the Government will **keep under review the effectiveness of the agreement on marine planning reached by the UK and Scottish Governments, and will consider devolution of nature conservation in the light of that review**. The marine legislation recently enacted across the UK is ground-breaking. The Government agrees with the Commission that as the UK Marine Bill has only recently received Royal Assent and the Scottish Marine Bill continues its parliamentary passage, it will be vital that both pieces of legislation are allowed to embed successfully before any changes to the newly created framework can be considered, in the light of experience.

Seek closer working relationships with Scottish Ministers

5.21 In areas which are reserved to the UK Parliament, but where there is an interaction with devolved responsibilities there can be a case for Scottish Ministers being consulted or otherwise involved. The Commission made a number of recommendations for closer working between Scottish Ministers and the UK Government.

5.22 The Government agrees in principle that **the responsibility for the appointment of the Scottish member of the BBC Trust should be exercised by Scottish Ministers**, subject to the normal public appointment process and subject to further consideration of the consequences. The subject-matter of the Broadcasting Act 1990 and the Broadcasting Act 1996, and the BBC, are reserved. The Commission recommended no change to that position. We agree with the Commission that it would be appropriate for the appointment of the Scottish member of the BBC Trust to be exercised by Scottish Ministers. We agree with the Commission that the appointment should continue to be subject to the public appointments process.

5.23 The Government agrees that **the appointment of the Scottish Crown Estate Commissioner should be made following formal consultation with Scottish Ministers**. The Government notes the measures taken recently by the Crown Estate to better engage with its stakeholders in Scotland. The Estate seeks to engage actively with the Scottish Parliament and

Ministers. It has established a Scottish Liaison Group to improve its understanding of the views of stakeholders across the whole of its interests in Scotland.

5.24 The Government notes the Commission's acceptance that legislative competence for the Crown Estate should not be devolved. The Commission recommended that the Secretary of State for Scotland should, in consultation with Scottish Ministers, more actively exercise his powers of direction under the Crown Estate Act 1961.

5.25 The Government recognises the case for proactive engagement with the Crown Estate in Scotland, and will continue to engage on important issues as they arise. The statutory power of direction in the 1961 Act, a reserve power for use in extreme circumstances never used, remains a sanction of last resort.

5.26 The Government will discuss with Scottish Ministers **any specific needs for changes to the Misuse of Drugs Regulations and their licensing arrangements**. The Scotland Act reserves the criminal law in relation to misuse of drugs and drug trafficking; and the licensing and control of controlled substances in relation to their use in the treatment of drug addiction. The Government strongly agrees with the Commission's conclusion that the reservation in relation to the criminal law should be maintained.

5.27 The Commission argued that there is, however, a case for Scottish Ministers having powers in relation to the licensing of drugs for the treatment of addiction, since this relates closely to devolved responsibilities for health. The Government is committed to consolidating the Misuse of Drugs Regulations 2001, which set out the regime of control around prescribing, supplying or administering, safe custody, dispensing, record keeping, and destruction or disposal of all controlled drugs. During that process we will discuss any specific needs for change to the existing regulations with Scottish Ministers.

5.28 The Commission identified a number of areas where devolution had led to an unhelpful divergence between the devolved law in Scotland and the law elsewhere in the United Kingdom. Policy divergence under devolution is healthy as it means that distinct Scottish needs can be met, but there may be instances in which it is unhelpful if divergence undermines the economic union, or causes difficulties for businesses, public sector and third sector bodies operating on both sides of the border. Where the Commission has identified evidence of such problems, the Government has considered their recommendations.

5.29 The Government will **reserve the regulation of all healthcare professions**. The Scotland Act already reserves the regulation of health professions. These are defined in the interpretation paragraph as those regulated by various (listed) enactments. These include doctors, dentists, dental auxiliaries, opticians, pharmacists, nurses, midwives, health visitors, chiropodists and veterinary surgeons amongst others. Since anything that is not listed in the Scotland Act as reserved is devolved, legislative and executive competence for regulation of any new profession in the health area is automatically devolved.

5.30 This means that currently, the regulation of professions which have emerged and been subject to regulation since 1998, such as operating department practitioners, dental nurses, dental technicians, clinical dental technicians and orthodontic therapists, is devolved, and this could increase as regulation is extended to further professions. The Government's evidence to the Commission explained that, in practice, there is agreement that regulation is best done on a UK-wide basis because of the mutual benefits and potential risks to free movement of workers. It outlined the practical difficulties involved in regulating for a common regime in that framework. The Government did not actively seek change, however, noting in the evidence that the Department of Health is committed to finding pragmatic solutions.

5.31 The Commission received evidence from the Royal College of Physicians and Surgeons of Glasgow and the Royal College of Physicians of Edinburgh arguing that the regulation of healthcare professions should not be devolved because a potential fragmentation of standards is not in the interests of patients.

Legislate at the UK Parliament where appropriate to ensure a consistent approach

5.32 The Government strongly agrees with the Commission that there should be a common framework for the regulation of healthcare professions and accepts their recommendation that it is in the public interest and the best interests of the people of Scotland for responsibility for legislation to regulate all health professions to return to the UK Parliament.

5.33 The Government will **work with the Scottish Government to ensure that rules applied by insolvency practitioners in liquidations north and south of the border are consistent** other than where fundamental differences between the two jurisdictions necessitate otherwise. Corporate law is generally reserved, and the Scotland Act achieves this by reserving 'business associations'. But company law interacts with other aspects of Scots law, including the procedures which are followed by insolvency practitioners and by the court when companies commence the liquidation process. The law relating to liquidation is currently partly reserved and partly devolved and the interaction between the reserved and devolved areas is complex.

5.34 The Government's evidence to the Commission explained that the Insolvency Service had received representations from the Scottish insolvency profession, to the effect that they were unhappy with the reserved/devolved split in liquidation law. They made similar representations to the Commission. For example, the Institute for Chartered Accountants in Scotland (ICAS) argued that it is unhelpful to have differences in the same insolvency procedure as applied in Scotland to that applied in the rest of Great Britain, in a field in which businesses operate across the UK, supported by lenders who also operate common policies across different jurisdictions.

5.35 The Government is clear that one of the benefits to Scotland of the UK is the economic union. The evidence from insolvency practitioners that the law as it stands is problematic for businesses operating on both sides of the border is a concern. The Government agrees that the UK Parliament should be responsible for the rules relating to liquidation across the whole of Great Britain and will work with the Scottish Government to achieve this.

5.36 The Government will **work with the Scottish Government to consider improvements to definitions and to the system of regulation for charities**. Charities regulation is covered in Scotland by the Charities and Trustee Investment (Scotland) Act 2005 and in England by several statutes, the most recent of which is the Charities Act 2006. The Commission noted that the regulatory regimes which apply in Scotland and England are different in material respects. The two principal differences are the definition of charity and the regulatory procedures which apply. The Commission received evidence of the burden this dual regulation causes, including concerns that it may deter or constrain the activities of some charities in Scotland.

5.37 The Commission concluded that there should be a single definition for all purposes, applicable throughout the UK. They recommended that there should be appropriate mechanisms for cooperation between regulators to ensure the effective regulation of charities in all parts of the UK.

5.38 The Government recognises the importance of ensuring charities can function effectively and simply across the whole of the UK. The Government is willing to work with the Devolved Administrations to consider improvements for the existing definitions. The Government agrees that charities should be able to conduct their charitable business across the whole of the UK, regardless of registration.

5.39 The legal framework for charities in England and Wales does not impose additional registration, reporting and accounting requirements on charities operating in England and Wales, but registered in another part of the UK. We will continue to work with the Devolved Administrations to consider improvements to the current system of regulation for charities that operate throughout the UK.

*Ensure that
UK policy and
institutions serve
Scotland's needs*

5.40 Where institutions or areas of policy are reserved to the UK Parliament, they must nonetheless continue to meet the needs of Scotland as well as other parts of the UK. The role of the Secretary of State for Scotland is to represent Scotland's interests within the UK Government and he ensures that Scotland's needs are met.

5.41 The Commission recommended some mechanisms for further strengthening the way in which Scotland's needs are represented, which the Government is willing to address.

5.42 The **Health and Safety Executive (HSE) will take steps to develop a closer relationship with the Scottish Parliament**. The subject-matter of Parts I and II of the Health and Safety at Work etc Act 1974 is reserved. The Health and Safety Executive is responsible for protecting the health and safety of people at work across Great Britain. The Health and Safety Executive is a non-departmental public body of the Department for Work and Pensions (DWP). The Commission recommended that, in recognition of the close interaction of the HSE's reserved functions with areas of devolved policy, a closer relationship between the HSE in Scotland and the Scottish Parliament should be developed.

5.43 The Government welcomes the recommendation. HSE already has a good working relationship with the Scottish Parliament and engages actively with MSPs and the Parliament, and is keen to develop this relationship further. The Government is developing options which will help to maintain, and build on, these existing mechanisms to establish closer links with the Scottish Parliament, whilst ensuring that the clear line of formal accountability of the HSE to the UK Parliament is retained.

5.44 The Government will continue to **ensure that the immigration system reflects the particular skills and demographic needs of Scotland**. The Government already responds sensitively to Scottish needs on skills shortages when implementing immigration policy. We worked closely with the Scottish Government on the Fresh Talent Initiative which has now been subsumed in the new 'Tier 1' within the UK's points based system for managed migration. The Government also established the independent Migration Advisory Committee to advise on certain migration issues. The Migration Advisory Committee has considered evidence on shortage occupations in Scotland and has produced a separate list for Scotland, in addition to the main UK list. The Government believes that these measures already ensure active consideration to local variation in Scotland when developing UK-wide immigration policies.

5.45 The Government fully recognises the responsibilities of the authorities in Scotland **for the well-being of children in Scotland** and we are sensitive to this role when carrying out UK Border Agency functions in Scotland. The Commission refer to the Dungavel Immigration Removal Centre in their report. The Government recognises the responsibility of South Lanarkshire Council for social work care when required. A Family Return project is currently running in Glasgow. It is being run by Glasgow City Council in partnership with UK Border Agency and the Scottish Government. The main aim of this project is to reduce the number of asylum seeker families with children that are detained by helping those not granted refugee status or humanitarian protection by the courts to return to their home nations voluntarily. In this action we are working closely with Scottish authorities and will continue to do so.

Welfare

5.46 Social security benefits and pensions are reserved to the UK Parliament. The Commission found strong practical arguments for maintaining a single, Great Britain-wide model for key parts of the welfare state. The Commission, like the Government, considered that the welfare system is a fundamental part of the social union.

5.47 The Commission recommended that Scottish Ministers should, however, have a stronger role in welfare benefits where they identified a link between benefits and devolved areas of policy. The Government agrees that there is an interaction between some benefits and devolved policy responsibilities, but does not agree that devolution should allow for different welfare benefits to be in place in Scotland, because of the importance of maintaining a single benefit system. The Government is not able, therefore, in this respect, to accept all of the Commission's recommendations.

5.48 The Government recognises the close linkage between housing and council tax benefits on the one hand and devolved responsibilities for housing policy on the other; accordingly, **DWP will continue to consult Scottish Ministers on any proposed changes to the Housing Benefit or Council Tax Benefit systems** and will also invite Scottish Ministers to suggest possible changes to the GB regime and consider these on their merits.

5.49 Further, the Government **accepts the recommendation that a formal consultation role should be built into DWP's commissioning process for those welfare to work programmes that are based in, or extend to, Scotland**. The Government will develop options to ensure that Scottish interests are taken into account by engaging with the Scottish Government, local authorities and wider stakeholders in Scotland.

5.50 As part of any considerations on future reform of the Social Fund **the Government will consider options for the handling of the application of discretionary payments from the Fund in Scotland**.

CHAPTER 6

CONCLUSIONS AND NEXT STEPS

6.1 The Government sees these plans as part of a coherent package for refreshing devolution in Scotland. Changes to the powers and financial accountability of the Scottish Parliament will require legislation. The Government envisages introducing legislation as soon as possible in the next Parliament. The legislation will require the consent of the Scottish Parliament under the Sewel Convention.

6.2 Discussions on improving intergovernmental cooperation have already begun in the Joint Ministerial Committee. The Government will wish to undertake detailed work with Scottish Ministers on the introduction of the new financial system and to discuss budgetary implications with them in due course.

6.3 The Government welcomes the commitment of the UK Parliament and the Scottish Parliament to take forward work on those of the Calman Commission's recommendations which are for them, and will continue to be involved in those discussions where they consider it helpful for us to do so.

6.4 We believe that these changes, once implemented, will provide a strong foundation for building on the Scottish Parliament's successful first ten years, to refresh devolution and reinvigorate Scotland's place at the heart of the United Kingdom.

ANNEX

THE GOVERNMENT'S RESPONSE TO THE COMMISSION'S RECOMMENDATIONS

Part 2: Scotland's Place in the Union

2.1 The Scottish Parliament and UK Parliament should confirm that each agrees to the elements of those common social rights (and perhaps responsibilities) that shape the Union.

The Government is supportive of both Parliaments, and the other legislatures across the United Kingdom, giving consideration to and agreeing upon those elements of common social rights and responsibilities that make up the social union.

Part 3: Strengthening Accountability in Finance

3.1 Part of the Budget of the Scottish Parliament should now be found from devolved taxation under its control rather than from grant from the UK Parliament. The main means of achieving this should be by the UK and Scottish Parliaments sharing the yield of income tax.

- a. Therefore the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, collected by HMRC, which should apply to the basic and higher rates of income tax.
- b. To make this possible, the basic and higher rates of income tax levied by the UK Government in Scotland should be reduced by 10 pence in the pound and the block grant from the UK to the Scottish Parliament should be reduced accordingly.
- c. Income tax on savings and distributions should not be devolved to the Scottish Parliament, but half of the yield should be assigned to the Scottish Parliament's Budget, with a corresponding reduction in block grant.
- d. The structure of the income tax system, including the bands, allowances and thresholds should remain entirely the responsibility of the UK Parliament.

The Government accepts the recommendation that part of the budget should now be found from devolved taxation under its control rather than from grant from the UK Parliament. The Government's plans are detailed in Chapter 4. The Government does not attach priority to the implementation of recommendation (c) as it creates difficult operational complications without genuinely improving financial accountability, although it will keep the situation under review.

3.2 Stamp Duty Land Tax, Aggregates Levy, Landfill Tax and Air Passenger Duty should be devolved to the Scottish Parliament, again with a corresponding reduction in the block grant.

The Government's plans in relation to stamp duty land tax, aggregates levy and landfill tax are set out in Chapter 4 above. The Government does not attach priority to the implementation of the recommendation on air passenger duty, although it will keep the situation under review.

3.3 The Scottish Parliament should be given a power to legislate with the agreement of the UK Parliament to introduce specified new taxes that apply across Scotland. The new procedure we are recommending in Part 4 of our Report for the Scottish Parliament to legislate on reserved issues with the agreement of the UK Parliament could be used for this.

The Government will carefully consider any taxes proposed by the Scottish Parliament that could be introduced alongside the proposals above as part of the proposed package of devolved taxes, subject to European state aids clearance.

3.4 The block grant, as the means of financing most associated with equity, should continue to make up the remainder of the Scottish Parliament's Budget but it should be justified by need. Until such times as a proper assessment of relative spending need across the UK is carried out, the Barnett formula, should continue to be used as the basis for calculating the proportionately reduced block grant.

The Government agrees that a block grant should continue to make up a substantial proportion of the Scottish budget, and that the Barnett formula should continue to be used to determine it. The Government has no plans to review the Barnett formula itself, but will continue to keep all aspects of public spending including the Barnett formula under review, and it will continue to keep the Barnett formula up to date.

3.5 This system will require a strengthening of the intergovernmental arrangements to deal with finance.

- a. The present Finance Ministers Quadrilateral Meeting should become a Joint Ministerial Committee on Finance (JMC(F)), and should meet regularly on a transparent basis to discuss not just spending but taxation and macro-economic policy issues.
- b. HMRC should advise Scottish Ministers in relation to those devolved taxes it is tasked with collecting and their responsibilities in relation to income tax and should account to them for the operation of these Scottish taxes. Scottish Ministers should be consulted on the appointment of the Commissioners of HMRC.
- c. All the relevant spending or grant calculations done by HMRC and HM Treasury should be audited by the National Audit Office which should publish an annual report on the operation of the funding arrangements, including reporting to the new JMC(F) and to the Scottish Parliament.

The Government has no plans to change the current arrangements for appointing HMRC Commissioners.

The Government has no present plans to replace the finance ministers' quadrilateral by a Finance JMC on the basis that there is no compelling case for the creation of an additional forum, but we will keep the situation under review.

The Government notes that the National Audit Office is already responsible for auditing the spending of the Scotland Office, and sees no need to extend this role.

3.6 These changes should be introduced in a phased way, step by step, to manage the risks of instability in public finances and of windfall gains or adverse shocks to the Scottish Budget.

The Government agrees that implementation should be phased in for the reasons that the Commission sets out and has taken this into account in developing the plans set out in Chapter 4.

3.7 The Scottish Ministers should be given additional borrowing powers:

- a. The existing power for Scottish Ministers to borrow for short term purposes should be used to manage cash flow when devolved taxes are used. Consideration should be given to using the power in the Scotland Act to increase the limit on it if need be.
- b. Scottish Ministers should be given an additional power to borrow to increase capital investment in any one year. There should be an overall limit to such borrowing, similar to the Prudential regime for local authorities. The amount allowed should take account of capacity to repay debt based on future tax and other receipts. Borrowing should be from the National Loans Fund or Public Works Loans Board.

Scottish Ministers currently have a power under the Scotland Act to borrow for short-term current spending, although this power has not yet been used. The Government proposes to maintain the existing borrowing power and keep the borrowing limit under review.

Furthermore, the Government considers that when greater tax devolution is introduced, it will be appropriate to introduce a new capital borrowing power to enable Scottish Ministers to borrow from the National Loans Fund at normal rates and terms to fund increases in agreed categories of capital investment. Such borrowing would be subject to limits set by the Treasury within the fiscal framework in place at the time, and would be self-financed by increasing revenue from taxation in Scotland above the level of the rest of the UK. This will mean that the Scottish Ministers will be able to allow more public investment in the Scottish economy. By the same token, they will be accountable through the system for the additional costs of repaying it. This will increase the power and responsibility of the Scottish Ministers and their accountability to Scottish taxpayers.

The total amount of borrowing available in any one year would be set in the Spending Review, in the light of the fiscal circumstances at the time. Treasury Ministers would take account of the levels of all borrowing, including borrowing by Scottish local authorities, in setting the limit.

*Part 4:
Strengthening
cooperation
between
Governments and
Parliaments*

4.1 In all circumstances there should be mutual respect between the Parliaments and the Governments and this should be the guiding principle in their relations.

The Government strongly agrees that mutual respect should be the guiding principle in relations within the UK.

4.2 As a demonstration of respect for the legislative competence of the Scottish Parliament, the UK Parliament should strengthen the Sewel Convention by entrenching it in the standing orders of each House.

The Government will continue to respect and adhere to the Sewel Convention. Each House may wish to consider passing a resolution on the Convention. The recommendation is for each House to consider.

4.3 The UK Parliament and Scottish Parliament should have mechanisms to communicate with each other.

- a. There should be detailed communication about legislative consent motions (LCMs), and in particular if a Bill subject to an LCM is amended such that it is outside the scope of the LCM.
- b. A mechanism should exist for each Parliament to submit views to the other, perhaps by passing a motion where appropriate.

This is for each House of Parliament and the Scottish Parliament to consider.

4.4 The UK Parliament should end its self-denying ordinance of not debating devolved matters as they affect Scotland, and the House of Commons should establish a regular 'state of Scotland' debate.

The Government believes that it is timely for both Houses to re-examine the constraints on backbenchers proposing debates on devolved matters as they affect Scotland. The Government supports the current House of Commons resolution and House of Lords guidance that Ministers are not normally questioned on devolved matters. The Secretary of State will participate in a 'state of Scotland' debate if the House of Commons so requests.

4.5 A standing joint liaison committee of the UK and Scottish Parliaments should be established to oversee relations and to consider the establishment of subject specific ad hoc joint committees.

This is for each House of Parliament and the Scottish Parliament to consider.

4.6 Committees of the UK and Scottish Parliaments should be able to work together and any barriers should be removed:

- a. Any barriers to the invitation of members of committees of one Parliament joining a meeting of a committee of the other Parliament in a non-voting capacity in specified circumstances should be removed.
- b. Any barriers to committees in either Parliament being able to share information, or hold joint evidence sessions, on areas of mutual interest, should be removed.
- c. Mechanisms should be developed for committees of each Parliament to share between them evidence submitted to related inquiries.

The Government reiterates its agreement with the House of Commons Procedure Committee's 1999 report, The Procedural Consequences of Devolution, that there should be as few procedural barriers as possible where cooperation is desired. The recommendation is for each House of Parliament and the Scottish Parliament to consider.

4.7 To champion and recognise the importance of interaction between the Parliaments and Governments:

- a. UK and Scottish Government Ministers should commit to respond positively to requests to appear before committees of the others' Parliament.
- b. The UK Government Cabinet Minister with responsibility for Scotland should be invited to appear annually before a Scottish Parliament Committee comprised of all committee convenors, and the First Minister should be invited to appear annually before the House of Commons Scottish Affairs Committee.

Government Ministers have previously appeared before committees of the Scottish Parliament. The Government welcomes further such invitations as a practical way of demonstrating mutual respect. Otherwise the recommendation is for the Scottish Parliament, the Scottish Affairs Committee and Scottish Ministers to consider but for its part, the Government would welcome such a move.

4.8 Shortly after the Queen's Speech the Secretary of State for Scotland should be invited to appear before the Scottish Parliament to discuss the legislative programme and respond to questions in a subsequent debate. Similarly, after the Scottish Government's legislative programme is announced, the First Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters.

The Secretary of State will, if invited to do so by the Scottish Parliament, appear annually to discuss the legislative programme at a mutually convenient time. The second part of the recommendation is for the Scottish Affairs Committee and the First Minister to consider, but for its part, the Government would welcome such a move.

4.9 Where legislation interacts with reserved and devolved matters there should be continued cooperation:

- a. For any UK Parliament Bill which engages the Sewel Convention on a matter of substance, consideration should be given to including one or more Scottish MPs on the Public Bill Committee, who should then be invited, as appropriate, to meet the Scottish Parliament committee scrutinising the legislative consent memorandum.
- b. A Scottish Minister should as appropriate be asked to give evidence to the UK Parliament Committee examining Orders made under the Scotland Act.

The Government will endeavour to secure the inclusion of Scottish MPs on Public Bill Committees for Bills subject to the Sewel Convention on a matter of substance. It is for the Scottish Parliament to consider whether to extend invites to any MPs. The second part of the recommendation is for each House to consider.

4.10 Either the Scottish Parliament or either House of the UK Parliament should be able, when it has considered an issue where its responsibilities interact with the other Parliament's, to pass a Motion seeking a response from the other Government. The relevant Government in each case should then be expected to respond as it would to a committee of its own Parliament.

This is for each House of Parliament and the Scottish Parliament to consider.

4.11 There should be a greater degree of practical recognition between the Parliaments recognising that it is a proper function of members of either Parliament to visit and attend meetings of relevance at the other; and their administrative arrangements should reflect this.

This is for each House of Parliament and the Scottish Parliament to consider.

4.12 The JMC machinery should be enhanced in the following ways:

- a. The primary focus should be on championing and ensuring close working and cooperation rather than dispute resolution (though it will be a forum to consider the latter as well).

- b. There should be an expanded range of areas for discussion to provide greater opportunities for cooperation and the development of joint interests.
- c. There should be scope to allow issues to be discussed at the appropriate level including the resolution of areas of disagreement at the lowest possible level.

The Government has taken steps over the last 18 months to enhance the JMC as set out in Chapter 3.

4.13 JMC should remain the top level, and meet in plenary at least annually, but most importantly to a longstanding timetable. In addition:

- a. JMC(D) and JMC(E) should continue in much the same form, but with more regular meetings and to a longstanding timetable. There should be an additional JMC(Finance) which subsumes the role of the Finance Quadrilateral.
- b. Sitting below the JMC(D), JMC(E) and JMC(F) meetings should be a senior officials meeting, JMC(O).

As set out in Chapter 3, the Government is in discussion with all three Devolved Administrations about how best to improve relations. The Government's position on JMC(F) is set out at 3.5, above.

4.14 Where inter-governmental ministerial meetings are held to discuss the overall UK position in relation to devolved policy areas, the relevant Secretary of State should generally chair these meetings on behalf of the overall UK interest, with another relevant UK Minister representing the policy interests of the UK Government in relation to those parts of the UK where the policy is not devolved.

As set out in Chapter 3, the Government is in discussion with all three Devolved Administrations about how best to improve relations.

4.15 A new legislative procedure should be established to allow the Scottish Parliament to seek the consent of the UK Parliament to legislate in reserved areas where there is an interaction with the exercise of devolved powers.

The Government is content with current arrangements whereby ad hoc adjustments to the legislative competence of the Scottish Parliament are made in Parliament through Scotland Act orders. The current arrangements work well; but the Government is interested in the views of the Scottish Parliament on this recommendation.

4.16 In development of the UK Government position in relation to the EU:

- a. Early and proactive engagement by the relevant UK Government department with its Scottish Government counterpart should be a matter of course.
- b. In addition, Scottish Ministers and the relevant Scottish Parliament committee should become more proactive in identifying EU issues of interest to Scotland at an early stage, and taking the initiative accordingly.
- c. The JMC(E) should continue to be used to determine the UK Government position on EU matters.

The Government's plans for strengthening the development of the UK Government position in relation to the EU are set out in Chapter 3.

4.17 To ensure that Scottish Ministers are visibly engaged with EU business affecting their interests:

- a. When a request is received there should be a presumption that Scottish Ministers are accepted as part of the UK delegation where EU matters which cover devolved areas are for discussion.

- b. When Scottish Ministers request to speak in support of the agreed UK Government line there should be a presumption that this is granted wherever practicable.

The Government is keen that Ministers make their decisions on whether a Devolved Administration may be able to participate in a United Kingdom delegation on a timely basis, following clear guidance. The Cabinet Office will therefore draw up guidance, following consultation with the three Devolved Administrations, consolidating best practice and setting out the factors which need to be addressed when requesting attendance and when taking decisions on individual delegations.

4.18 Closer involvement between Scottish MEPs and the Scottish Parliament is needed, and Scottish MEPs should be invited to attend, and should attend, the Scottish Parliament European and External Relations Committee regularly on a non-voting basis. The Committee should schedule its meetings to facilitate their regular attendance.

This is for Scottish MEPs and the Scottish Parliament to consider.

4.19 The JMC process should be subject to greater parliamentary scrutiny and have greater public transparency:

- a. Agendas and timelines should be published in advance of each JMC, JMC(E), JMC(D) or JMC(F) meeting, and a communiqué from each should be issued.
- b. After each full JMC meeting, the First Minister should make a statement to the Scottish Parliament, and the Prime Minister, or UK Government Cabinet Minister with responsibility for Scotland, should make a statement to the UK Parliament.
- c. An annual report of the JMC should be prepared, and laid by each Government before its Parliament, and it should be scrutinised by the new standing joint liaison committee of the UK Parliament and the Scottish Parliament.

The Government's plans to ensure greater transparency around the JMC process are set out in Chapter 3.

4.20 Scottish MPs should actively demonstrate appropriate oversight and stewardship of the constitution by way of regular scrutiny of the shape and operation of the devolution settlement

This is for Scottish MPs and the Scottish Affairs Committee to consider but for the Government's part we would support such a position.

4.21 The responsibility for appointing, or approving appointments of senior civil servants to senior posts in the Scottish Government should be delegated by the Prime Minister to the Head of the Home Civil Service, acting on the advice of the UK Civil Service Commissioners.

The Government is committed to maintaining the unified civil service, and accepts this recommendation.

4.22 The Commission has heard of a lack of understanding of devolution within some UK Government departments, and this should be addressed by reinvigorated training and awareness raising programmes.

The Government recognises the importance of ongoing training and awareness raising programmes and we are working with the Devolved Administrations to improve understanding of devolution and encourage good working relations at all levels of all the administrations.

4.23 The Civil Service Code should be amended to recognise the importance of cooperation and mutual respect.

The Government agrees that it is important that mutual respect and cooperation should be at the heart of working relations amongst civil servants working for the Devolved Administrations and for the Government. The Government will consider how best this point might be reflected in the Civil Service Code when the next edition is produced.

*Part 5:
Strengthening
the Devolution
Settlement*

5.1 The powers of the Secretary of State for Scotland relating to the administration of elections to the Scottish Parliament should be devolved.

The Government will consider carefully how certain aspects of executive responsibility for putting in place the framework for the administration of the Scottish Parliament elections might be devolved, whilst ensuring the efficient and effective conduct of elections.

5.2 There should be a single definition of the expressions ‘charity’ and ‘charitable purposes’ applicable for all purposes throughout the UK. This should be enacted by the UK Parliament with the consent of the Scottish Parliament.

The Government recognises the importance of ensuring charities can function effectively and simply across the whole of the UK. The Government is willing to work with the Devolved Administrations to consider improvements for the existing definitions.

5.3 A charity duly registered in one part of the United Kingdom should be able to conduct its charitable activities in another part of the UK without being required to register separately in the latter part and without being subject to the reporting and accounting requirements of the regulator in that part.

The Government agrees that charities should be able to conduct their charitable business across the whole of the UK, regardless of registration. The legal framework for charities in England and Wales does not impose additional registration, reporting and accounting requirements on charities operating in England and Wales, but registered in another part of the UK. We will continue to work with the Devolved Administrations to consider improvements to the current system of regulation for charities that operate throughout the UK.

5.4 The responsibility for the appointment of the Scottish member of the BBC Trust should be exercised by Scottish Ministers, subject to the normal public appointments process.

The Government accepts in principle that the role played by DCMS Ministers in the appointment of the Scottish member of the BBC Trust should be given to Scottish Ministers, subject to further consideration of the consequences of implementing the recommendation. As the recommendation notes, any appointment must be subject to the existing appointments process.

5.5 In recognition of the close interaction of the HSE’s reserved functions with areas of devolved policy, a closer relationship between the HSE in Scotland and the Scottish Parliament should be developed.

HSE already has a good working relationship with the Scottish Parliament and engages actively with MSPs and the Parliament and is keen to develop the relationship further. The Government is developing options which will help to maintain, and build on, these existing mechanisms to establish closer links with the Scottish Parliament, whilst ensuring that the clear line of formal accountability of the HSE to the UK Parliament is retained.

5.6 Whilst retaining the current reservation of immigration, active consideration (supported by intergovernmental machinery) should be given to agreeing sustainable local variations to reflect the particular skills and demographic needs of Scotland.

The Government already responds sensitively to Scottish needs on skills shortages when implementing immigration policy. We worked closely with the Scottish Government on the Fresh Talent Initiative which has now been subsumed in the new ‘Tier 1’ within the UK’s points based system for managed migration. The Government also established the independent Migration Advisory Committee to advise on certain migration issues. The Migration Advisory Committee has considered evidence on shortage occupations in Scotland and has produced a separate list for Scotland, in addition to the main UK list. We believe that these measures already ensure active consideration to local variation in Scotland when developing UK-wide immigration policies.

5.7 In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the wellbeing of children in Scotland.

The Government fully recognises the responsibilities of the authorities in Scotland and we are sensitive to this role when carrying out UK Border Agency functions in Scotland. The Commission refer to the Dungavel Immigration Removal Centre in their report. The Government recognise the responsibility of South Lanarkshire Council for social work care when required. A Family Return project is currently running in Glasgow. It is being run by Glasgow City Council in partnership with UK Border Agency and the Scottish Government. The main aim of this project is to reduce the number of asylum seeker families with children that are detained by helping those not granted refugee status or humanitarian protection by the courts to return to their home nations voluntarily. In this action the Government is working closely with Scottish authorities and will continue to do so.

5.8 The Secretary of State for Scotland should, in consultation with Scottish Ministers, more actively exercise his powers of direction under the Crown Estate Act 1961 and, having consulted Scottish Ministers, should give consideration to whether such direction is required immediately.

The Government recognises the case for proactive engagement with the Crown Estate in Scotland, and the Secretary of State does and will continue to engage on important issues as they arise. The statutory power of direction in the 1961 Act, a reserve power for use in extreme circumstances never used, remains a sanction of last resort.

5.9 The appointment of a Scottish Crown Estate Commissioner should be made following formal consultation with Scottish Ministers

The Government agrees that the appointment of the Scottish Crown Estate Commissioner should be made following formal consultation with Scottish Ministers.

5.10 Funding for policy relating to animal health should be devolved whilst responsibility for funding exotic disease outbreaks should be retained at UK level.

The Government and Devolved Administrations in Northern Ireland, Scotland and Wales have established a cross-administration Project Board in relation to the devolution of the animal health budgets (Northern Ireland has observer status on the Board). This Project Board was set up prior to the publication of the Commission's Report and is considering all the animal health services that need to be held at the appropriate level (UK, GB or country) including the elements that comprise the budget, such as the handling of un-budgeted costs (exceptional and unforeseen occurrences). The Government believes it important for financial responsibility (including responsibility for financial risks) to be aligned with policy responsibility, which is already devolved. The Government will devolve the budget elements, as appropriate, taking account of the recommendations made by the cross-administration Project Board.

5.11 That the Scottish Parliament should not have the power to legislate on food content and labelling in so far as that legislation would cause a breach of the single market in the UK by placing a burden on the manufacturing, distribution and supply of foodstuffs to consumers, and Schedule 5 of the Scotland Act should be amended accordingly.

The Government shares the Commission's view that the single market within the UK should continue to operate freely and openly. It is our assessment that the existing European Directives that set the framework for legislation governing food content and labelling encourage a consistent approach to be taken across the UK, as has been the case to date. The Government will keep this issue under review and will take forward the recommendation should it be required in order to continue to protect the single market in the UK.

5.12 The regulation of all health professions, not just those specified in the Scotland Act, should be reserved.

The Government agrees with the recommendation which will ensure consistent regulation of all health professionals including those in professions established after the Royal Assent of the Scotland Act.

5.13 The regulation of airguns should be devolved to the Scottish Parliament.

The Government agrees in principle to devolve the power to regulate air weapons to the Scottish Parliament, as set out in Chapter 5.

5.14 Responsibility for those aspects of the licensing and control of controlled substances that relate to their use in the treatment of addiction should be transferred to Scottish Ministers.

The Government is committed to consolidating the Misuse of Drugs Regulations 2001 which set out the regime of control around prescribing, supplying or administering, safe custody, dispensing, record keeping, and destruction or disposal of all controlled drugs. During that process we will discuss any specific needs for change to the existing regulations with Scottish Ministers.

5.15 Regulation-making powers relating to drink driving limits should be transferred to Scottish Ministers.

The Government accepts this recommendation to give Scottish Ministers the power to set the prescribed alcohol limit for driving in Scotland.

5.16 The power to determine the level of the national speed limit in Scotland should be devolved.

The Government accepts this recommendation. Responsibility for determining local speed limits in Scotland is already a matter for Local Authorities or for Transport Scotland. The Government believes, furthermore, that Scottish Ministers have existing powers that enable them to alter the level of the national speed limit on motorways and roads in rural areas in Scotland; however the Government will keep under review the existing regulatory powers to determine whether further changes may be required.

5.17 The effectiveness of the agreement on marine planning reached by the UK and Scottish Governments should be kept under review by the inter-governmental machinery, and that nature conservation should be devolved to the Scottish Parliament at an appropriate opportunity, in a way that safeguards reserved interests having taken into account the experience of the regime set out in the respective Marine Bills.

The Marine legislation recently enacted across the UK is ground-breaking. The Government agrees with the Commission that as the UK Marine Bill has only recently received Royal Assent and the Scottish Marine Bill continues its parliamentary passage, it will be vital that both pieces of legislation are allowed to embed successfully before any changes to the newly created framework can be considered, in the light of experience.

5.18 Research Councils UK should re-examine its approach to funding so that Scottish institutions delivering a comparable function to institutions elsewhere in the UK have access to the same sources of research funding, with the aim of ensuring that the effective framework for research that has been established across the UK is not jeopardised.

This recommendation is for Research Councils UK rather than for the Government. Eligibility for Research Councils funding is subject to a set of published criteria set by them which is applied UK-wide. Since the report of the Calman Commission, the Scottish Agricultural College has become eligible under these criteria. Any future applications from other Scottish institutions will be considered by the Research Councils against their published criteria.

5.19 There should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing and Council Tax Benefit systems (as they apply in Scotland) when these are connected to devolved policy changes, and for the UK Government – if it agrees – to make them by suitable regulation.

The Government believes that the welfare system is a fundamental element of the social union. Changing the Housing and Council Tax Benefit systems for Scotland alone would undermine the social union as well as having negative practical consequences for the interaction between the welfare and wider taxation systems. The Government does not accept this recommendation. But we do recognise the close linkage between housing and council tax benefits on the one hand and devolved responsibilities for housing policy and council tax on the other; accordingly DWP will continue to consult Scottish Ministers on any proposed changes to the Housing Benefit or Council Tax Benefit systems and will also invite Scottish Ministers to suggest possible changes to the GB regime and consider these on their merits.

5.20 A formal consultation role should be built into DWP's commissioning process for those programmes that are based in, or extend to, Scotland so that the views of the Scottish Government on particular skills or other needs that require to be addressed in Scotland are properly taken into account.

The Government accepts this recommendation and will develop options to ensure that Scottish interests are taken into account by engaging with the Scottish Government, local authorities and wider stakeholders in Scotland.

5.21 The Deprived Areas Fund be devolved to Scotland given the geographic nature of the help it is designed to provide and the fit with the Scottish Government's wider responsibilities.

The Government believes that the welfare system is a fundamental element of the social union. Devolving the Deprived Areas Fund would undermine the social union. There is no compelling evidence that current arrangements create any difficulties in practice. The Government therefore does not accept this recommendation.

5.22 As part of its considerations as to future reform of the Social Fund, the UK Government should explore devolving the discretionary elements of the Fund to Scotland.

The Government believes that the welfare system is a fundamental element of the social union. However, as part of any considerations on future reform of the Social Fund, the Government will consider options for the handling of the application of the discretionary payments from the Fund in Scotland.

5.23 The UK Insolvency Service, with appropriate input from relevant departments of the Scottish Government, should be made responsible for laying down the rules to be applied by insolvency practitioners on both sides of the Border. This should be achieved by UK legislation.

The Government will work with the Scottish Government to ensure that rules applied by insolvency practitioners in liquidations north and south of the border are consistent, other than where fundamental differences between the two jurisdictions necessitate otherwise.

5.24 The definition of 'social security purposes' in the Scotland Act should be amended to make it clear that the exception refers to social security purposes of the type which are the responsibility of DWP.

The Government is clear that the definition of 'social security purposes' does not prevent the Scottish Parliament from creating schemes for legal advice and assistance, which are within devolved competence. An amendment to the Scotland Act is therefore not needed.

*Part 6:
Strengthening
the Scottish
Parliament*

6.1 In relation to the Parliament's committee system:

- a. The structure of dual-purpose committees established both to carry out investigative inquiries and to undertake the detailed scrutiny of legislation, should be maintained.
- b. The level of turnover of committee memberships during a session should be minimised, in order to enable committee members to build expertise.
- c. Committees should have the facility to establish sub-committees to address temporary problems of legislative overload, without this requiring the prior approval of the Parliament as a whole.

This is for the Scottish Parliament to consider.

6.2 The current three-stage Bill process should be changed to a four-stage process, with Stage 3 becoming limited to a second main amending stage, taken in the Chamber, while the final debate on whether to pass the Bill would become Stage 4.

This is for the Scottish Parliament to consider.

6.3 The Parliament should amend its rules so that any MSP has the right to propose, at the conclusions of the Stage 3 amendment proceedings, that parts of a Bill be referred back to committee for further Stage 2 consideration.

This is for the Scottish Parliament to consider.

6.4 The Presiding Officer should be able to identify in advance of Stage 3 amendments that (in his view) raise substantial issues not considered at earlier stages. If, at the end of the amendment proceedings, any such amendment has been agreed to, relevant provisions of the Bill should be referred back to committee for further Stage 2 consideration unless the Parliament decides otherwise (on a motion that may be moved only by the member in charge of the Bill).

This is for the Scottish Parliament to consider.

6.5 Section 31(1) of the Act should be amended to require any person introducing a Bill in the Parliament to make a statement that it is (in that person's opinion) within the Parliament's legislative competence.

This is for the Scottish Parliament to consider. The Government will consider taking forward any proposals for change to the Scotland Act made by the Scottish Parliament as a result of their consideration of this recommendation.

6.6 The Explanatory Notes published with a Bill should give a general account of the main considerations that informed the statement on legislative competence under section 31(1).

This is for the Scottish Parliament to consider.

6.7 Section 19(1) of the Scotland Act should be amended so as to loosen the requirement on the Parliament to appoint a Presiding Officer and deputies at the first meeting of a new session, and to enable additional deputies to be appointed if and when that becomes appropriate.

This is for the Scottish Parliament to consider. The Government will consider taking forward any proposals for change to the Scotland Act made by the Scottish Parliament as a result of their consideration of this recommendation.

6.8 There should be a review of all other provisions in the Act that constrain the Parliament in terms of its procedures or working arrangements to ensure they are proportionate, appropriate and effective.

This is for the Scottish Parliament to consider. The Government will consider taking forward any proposals for change to the Scotland Act made by the Scottish Parliament as a result of their consideration of this recommendation.



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