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Scotland in the United Kingdom: An enduring settlement

January 2015

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Preface

From the very beginning this Coalition Government has demonstrated its commitment to ensuring devolution works for our family of nations. The publication of these clauses represents the culmination of our devolution guarantees to the people of Scotland.

In September more than two million people voted for Scotland to remain a part of our family of nations, strengthened by the security that comes from our larger United Kingdom. We all welcomed that decision. But we have also been clear that the Scottish people did not vote for the status quo. They voted for more decisions to be taken in Scotland, as part of a fair and enduring constitutional settlement across the UK. And that is what a new Scotland Bill will achieve in the next Parliament.

The commitment to take forward the Smith Commission Agreement represents an extensive package of new powers for both the Scottish Parliament and the Scottish Government. For the first time, the majority of money spent by the Scottish Parliament will come from revenues raised in Scotland. This is an important breakthrough that will increase the responsibility and accountability of the Scottish Parliament to Scotland's citizens.

Crucially this package was agreed by all five of Scotland's main political parties. It was a landmark achievement by the Commission, chaired by Lord Smith of Kelvin to achieve such consensus. Between them, and with a multitude of submissions from the public and Scotland's civic institutions, political opponents set differences aside to reach an historic agreement designed to further empower the Scottish Parliament and provide a durable settlement for its future.

Having a more responsible and accountable Scottish Parliament inside a strong United Kingdom delivers the best of both worlds and is what people in Scotland voted for. The UK Government is committed to working with the Scottish Government to ensure these new powers are delivered in full. When implemented, a new Scotland Act will ensure that Scotland's future as part of the UK is both responsive and stable, with more decisions affecting Scotland made in Scotland. It is one we all welcome.

The Rt Hon David Cameron MP,
Prime Minister

The Rt Hon Nick Clegg MP,
Deputy Prime Minister

Foreword

The United Kingdom provides strength and security for each and every one of our citizens. For over 300 years we have worked, grown and succeeded together in the most successful family of nations the world has ever known.

On 18 September 2014, people in Scotland made a positive choice to remain part of that family and retain the advantages it brings. Our single currency and single market, our unified pensions system, our collective security in an uncertain world and the strength and stability of being part of the sixth largest economy are just a few of the things from which we will all continue to benefit.

Following the referendum, the Prime Minister made clear that the pre-referendum commitments made by the leaders of the three main pro-UK parties to deliver substantial further devolution of powers would be honoured.

That is why Lord Smith of Kelvin was asked to convene all five of Scotland's main political parties in discussions aimed at reaching an agreement on which additional powers should be devolved. The Smith Commission Agreement[1] provides a significant and cohesive package of new powers for the Scottish Parliament, which was welcomed by the UK Government. It is a blueprint for an already powerful Scottish Parliament to become further empowered and more accountable to those who elect it.

The clauses published in this paper will make it possible to quickly translate the Agreement into law at the beginning of the next Parliament and transfer powers to Scotland.

This is another significant milestone in Scotland's devolution journey within the UK. Scotland has always maintained its own distinctive identity and since 1999 the Scottish Parliament has enjoyed full decision making powers and responsibility over core areas such as the NHS and the education system. As part of the UK, successive Scottish Governments have used these powers to tailor services to suit specific Scottish circumstances and boost the Scottish economy. The powers agreed in this new package will build on the strength of that devolution settlement and on the executive borrowing and income tax powers already devolved through the Scotland Act 2012, and which will come into force in 2015 and 2016 respectively.

A new Scotland Bill will ensure that, for the first time, over 50 per cent of the money spent by the Scottish Parliament will be funded by revenues raised in Scotland. This will deliver greater accountability, allowing more decisions affecting Scotland to be made in Scotland. The Scottish Parliament will have one of the most extensive arrays of tax and spending powers of any devolved parliament in the developed world.

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[1] http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

The devolution of powers relating to disability and housing payments – and the ability to create new welfare payments – will deliver a Scottish welfare system with a starting value of around £2.5 billion a year.

Further powers over the Crown Estate, Scottish Parliament elections, energy efficiency and much more will also come.

As a first step, the UK Government has already taken measures to devolve powers to the Scottish Parliament to extend the franchise to 16 and 17 year olds in time for the 2016 Scottish Parliamentary elections, should the Scottish Parliament wish to do so.

The Smith Commission Agreement also makes non-legislative recommendations to strengthen the ways in which the UK and Scottish Governments work together in the best interests of both Scotland and the UK. Work to achieve this has already begun and will continue alongside the delivery of a new Scotland Bill.

Together we will build an enduring settlement that further empowers the Scottish Parliament, makes it more accountable to people in Scotland and strengthens Scotland's place in a strong and secure United Kingdom.

Alistair Carmichael.

The Rt Hon Alistair Carmichael MP,
Secretary of State for Scotland

Executive summary

Being part of the UK gives Scotland the best of both worlds – the strength and security of being part of a major global player; the ability to make its own decisions in its own Parliament about what happens in key public services like Scottish hospitals, schools and police stations. This was enshrined in the Scotland Act 1998 and the creation of the Scottish Parliament in 1999.

Our United Kingdom is a success story. And Scotland has played a crucial part in that and will continue to do so.

In September, the people of Scotland voted to remain part of a United Kingdom with a united future. On 19 September 2014 the Prime Minister invited Lord Smith of Kelvin to oversee and deliver cross-party agreement on the shape of improved and enhanced devolution for Scotland.

On 27 November 2014 Lord Smith delivered an agreement reached unanimously between all five main Scottish political parties on more powers for the Scottish Parliament. This was a significant achievement and honoured the three main UK parties' commitment for further devolution promised during the referendum campaign.

The draft clauses published in this document are the next stage in delivering that commitment.

There have been discussions with Scottish Government officials on the Smith Commission Agreement, and the draft clauses were shared with the Scottish Government ahead of publication. What is presented here by the UK Government shows how the measures included in the Agreement would look in law.

This paper also sets out the need for a fiscal framework, which will allow the Agreement to be successfully delivered as a unified and comprehensive package of powers to Scotland. That will then allow the next government to take the clauses forward in a Scotland Bill during the first session of the new Parliament.

Structure of the Paper

The paper is divided into a number of themed sections; each setting out the clauses according to the powers they will grant and explaining what the draft clauses mean in practice. These areas are divided into the following chapters: Constitutional Matters, Fiscal Framework, Tax, Welfare, Public Bodies, Executive Agencies and The Crown Estate, Civil Protections and Advice, Transport and Energy.

The draft clauses focus on delivering the legislative provisions needed to implement the Smith Commission Agreement. Further work will be required so that the clauses are ready for introduction into Parliament in a Scotland Bill. This is set out in the *Next Steps* chapter

and will include the production of the usual documents and material that accompany a Bill on introduction. Where powers are being transferred to the Scottish Parliament, the clauses deal with that substantive issue. The associated executive competence for Scottish Ministers, which will follow is not always dealt with explicitly. There will be further work on how best to deliver that transfer in the process of introducing the Bill in the next Parliament, as mentioned in the *Next Steps* chapter.

The Equality Act 2010 sets out a duty for public authorities to consider how their policies or decisions affect people who are protected under the Act – the Public Sector Equality Duty (PSED).[1] The clauses published here are draft constitutional legislation and will not cause any change in powers at this immediate point. These draft clauses will be brought forward as a Bill in the UK Parliament following the General Election in May 2015. The act of devolution itself – once legislation is complete – will not cause any equality change as the UK Government is transferring powers and functions to the Scottish Government intact.

In relation to this, the UK Government has also taken account of the following:

- at the point of devolution, the Scottish Government will be subject to the PSED in relation to these new powers;
- the Scottish Government has consistently shown due regard for equality in its activity;[2] and
- the overall reservation on the Equality Act 2010 means that Scottish Parliament will not be able to lower the protections found in the Equality Act.

In addition to the specific proposals set out in the Smith Commission Agreement, there were a number of topics that were recommended for further consideration. They include issues around health, immigration, asylum, human trafficking, food, fines and forfeitures and the operation of the Health and Safety Executive, outcomes that are being sought within a reserved legislative framework. Lord Smith himself heavily underlined the importance of improving the working relationship between Scotland's two Governments. He also emphasised the need for devolution from the Scottish Parliament, greater scrutiny of Scottish Government Ministers, and the necessity of making the public aware of the powers of both the UK and Scottish Parliaments. These issues are all addressed in the *Next Steps* chapter.

The referendum campaign demonstrated extraordinary participation and engagement throughout Scotland, both from civic groups and members of the public. The Smith Commission sought to extend this participation by engaging with people across Scotland and welcoming input from Scotland's organisations and communities, receiving over 18,000 submissions from the public and more than 400 from civic groups.

The UK Government is clear that this participation should continue and the *Next Steps* chapter provides information on how to engage with the UK Government on the delivery of the further powers agreed by the Smith Commission.

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[1] https://www.gov.uk/equality-act-2010-guidance

[2] In December 2013, the Scottish Government reaffirmed its commitment to put equality and fairness 'at the heart of the Scottish Government's ambition and business' as part of its proposals to enable the better performance of the PSED (http://www.scotland.gov.uk/Resource/0044/00440910.pdf). The Scottish Government further acknowledged that equality would be at the core of how they 'design and deliver public services in future' (http://www.scotland.gov.uk/Resource/0044/00440910.pdf).

Further information on the Scottish Government's equality commitments and activities can be found at: http://www.scotland.gov.uk/Topics/People/Equality.

During the preparation of the draft clauses, the UK Government set up a stakeholder group of representative bodies from across Scotland to help inform preparation of the draft clauses and to clarify the devolution settlement, raising awareness around the division of powers between Holyrood and Westminster. We believe that engagement should continue after the publication of the draft clauses. Whilst recognising that the Smith Commission Agreement marks the conclusions of Scotland's five main parties, organisations and individuals are invited to send their thoughts on the draft clauses to draftlegislationcomments@scotlandoffice.gsi.gov.uk.

The UK Government will organise a series of events and activities across Scotland to ensure that everyone has the opportunity to have their say and to enhance their understanding of the enduring devolution settlement as we move forward to delivery of further devolution for Scotland. You can read more about this in the *Next Steps* section.

Chapter 1: Constitutional Matters

1.1 Summary

1.1.1 The Scotland Act 1998 (the 1998 Act) established the Scottish Parliament with the following words: "There shall be a Scottish Parliament". From that time, the Scottish Parliament was given powers to make laws for Scotland in a wide range of areas that affect the lives of those living in Scotland on a daily basis including health, education and housing. And additional competence to make law in new areas has transferred to the Scottish Parliament over the last 16 years of devolution.

1.1.2 The United Kingdom (UK) Parliament and UK Government have respected the Scottish Parliament's competence to makes laws for those devolved matters by observing the Sewel Convention. This is the practice that the UK Parliament will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. This approach has allowed the Scottish Parliament to organise its own legislative programme and also take advantage of measures being taken forward by the UK Parliament by agreeing their extension to Scotland.

1.1.3 The Smith Commission Agreement recommends that the biggest transfer of powers to the Scottish Parliament and Scottish Ministers since the start of devolution should come with a greater flexibility for the Scottish Parliament and Scottish Government to manage their own arrangements and with statutory recognition of the enduring place of Scottish Parliament in the UK's constitutional arrangements.

1.1.4 The UK Government recognises the importance of these steps. In recognition of this and as set out in the foreword, the UK Government has already taken steps to transfer the power to the Scottish Parliament to enable it to extend the franchise to 16 and 17 year olds in time for the 2016 Scottish Parliament elections, as per paragraph 25 of the Smith Commission Agreement. This work is being progressed by the UK and Scottish Governments by laying an order in both Parliaments, under section 30 and section 63 of the 1998 Act. This will enable the Scottish Parliament to extend the franchise to 16 and 17 year olds in time for the 2016 Scottish Parliament elections and also in time for the 2017 local government elections in Scotland.

1.1.5 The clauses enacting the remaining recommendations are detailed in paragraphs 1.2 to 1.4 below alongside information clarifying their precise intent and effect.

1.2 Permanence of the Scottish Parliament and Government and the Sewel Convention

Paragraph	Smith Commission Agreement	Clause
21-22	UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions. The Sewel Convention will be put on a statutory footing.	1 2

1.2.1 Clause 1 delivers paragraph 21 of the Smith Commission Agreement, which calls for UK legislation to state that the Scottish Parliament and Government are permanent institutions. The statement that "There shall be a Scottish Parliament" set out in the original 1998 Act, is retained and it is recognised that a Scottish Parliament and a Scottish Government are permanent parts of the United Kingdom's constitutional arrangements.

1.2.2 Clause 2 relates to paragraph 22 of the Smith Commission Agreement, which calls for the Sewel Convention to be put on a statutory footing. The convention is that the UK Parliament will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. As explained, the UK Parliament and the UK Government have observed the convention since the start of devolution, and the clause reflects the wording of the convention. The clause maintains the current position whilst placing the convention on a statutory footing. It is expected that the practice developed under Devolution Guidance Note 10 (DGN10) will continue. DGN10 has no legal effect[1] but sets out how the UK Government departments legislating in Scotland will meet the terms of the Convention.

1.3 Operation of the Scottish Parliament and Scottish Government

Paragraph	Smith Commission Agreement	Clause
26	UK legislation will give the Scottish Parliament powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament and Scottish Government, including: (1) powers over the overall number of MSPs or the number of constituency and list MSPs. (2) powers over the disqualification of MSPs from membership and the circumstances in which a sitting MSP can be removed.	3

1.3.1 Clause 3 provides for the Scottish Parliament to have powers on matters relating to the operation of the Scottish Parliament and Scottish Government. It does this by amending paragraph 4 of Schedule 4 to the 1998 Act to add sections that relate to the operation of the Scottish Parliament and Scottish Government to the list of sections of the 1998 Act that the Scottish Parliament can modify.

1.3.2 This will provide the Scottish Parliament with a greater role in setting its own internal arrangements and those of the Scottish Government.

[1] Devolution guidance notes set out advice on working arrangements between the UK government and the devolved administrations. Further information can be found at https://www.gov.uk/government/publications/devolution-guidance-notes

1.4 Elections

Paragraph	Smith Commission Agreement	Clause
23-24	The Scottish Parliament will have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland (but not in relation to Westminster or European Parliament elections). This will include powers in relation to campaign spending limits and periods and party political broadcasts. The Scottish Parliament already has many of these powers in relation to local government elections in Scotland. Despite the provisions of paragraph 23: – The Scottish Parliament will have no powers over the regulation of political parties (including donations); – The Electoral Commission will continue to operate on a UK wide basis. The Scottish Parliament will have competence over the functions of the Electoral Commission in relation to Scottish Parliament elections and local government elections in Scotland. The Electoral Commission will report to the UK Parliament in relation to UK and European elections and to the Scottish Parliament in relation to Scottish Parliament and local government elections in Scotland; – The Boundary Commission for Scotland will continue to operate as a UK public body. It will report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament. UK Government powers in relation to Scottish Parliament boundaries will transfer to the Scottish Government; and – UK legislation will prevent the Scottish Parliament deciding that general elections should be held on the same day as general elections to the UK Parliament, European Parliament or local government elections in Scotland. To provide an adequate check on Scottish Parliament legislation changing the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament, UK legislation will require such legislation to be passed by a two-thirds majority of the Scottish Parliament	4 5 6 7 8 9

1.4.1 Clause 5 relates to paragraphs 23 and 24(4) of the Smith Commission Agreement on the administration and conduct of Scottish Parliament and local government elections in Scotland. Whilst Scottish Ministers will already have executive competence in relation to many aspects of the conduct of elections to the Scottish Parliament when the relevant provisions of the Scotland Act 2012 (the 2012 Act) come into force, through this clause (other than limitations on the timing of elections provided for at paragraph 24(4)) full legislative and executive competence in relation to the conduct of Scottish Parliament elections will be devolved to the Scottish Government and Parliament, including:

- Timing of elections and therefore election terms, including date of poll (subject to the limitations at paragraph 24(4) of the Smith Commission Agreement);
- The voting system to be used at a poll;
- Combination of polls (to the extent possible given paragraph 24(4) of the Smith Commission Agreement);
- Party political broadcasts;

- Requirements for candidates (eligibility to stand, nominations process);
- Appointment of electoral agents;
- Disqualification of candidates;
- Candidates' spending limits;
- Expenditure by third parties to promote a candidate (local campaigns);
- Notice and conduct of poll;
- Electoral offences;
- Method of voting (voting in polling stations, absent voting etc);
- Polling places;
- Design of ballot paper and other forms (poll cards etc) used by voters;
- Funding of polls (Returning Officers' fees and expenses etc);
- Counting of votes, declaration of result and conduct after result;
- Process for challenging an election;
- What should happen on any vacation of office; and
- Scottish Parliamentary and local by-elections.

1.4.2 This is additional to the Scottish Parliament's existing legislative and the Scottish Government's executive competence in relation to the conduct of local government elections in Scotland.

1.4.3 This devolution is effected by amending paragraph 4 of Schedule 4 and paragraph B3 of Part II of Schedule 5 to the 1998 Act to devolve legislative competence to the Scottish Parliament.

1.4.4 In accordance with paragraph 24(4) of the Smith Commission Agreement, clause 5 inserts a new subsection (2A) into section 2 of the 1998 Act to ensure that elections to the Scottish Parliament cannot be held on the same day as general elections to the UK Parliament, European Parliament or local government elections in Scotland. To ensure that preparations for these three elections also do not overlap the new subsection provides that the polls should be two to six months apart. Additionally, subsection (3) of clause 5 provides which polls can be combined.

1.4.5 Clause 6 provides for legislative competence in relation to the franchise for elections to the Scottish Parliament and local government elections in Scotland to be devolved. The registration of electors remains a reserved matter except that registration for elections to the Scottish Parliament and local government form an exception. The Scottish Government will be able to make provision in regulations in relation to the national registration digital service with the agreement of a UK Minister.

1.4.6 In keeping with the recommendations in the Agreement, UK Parliamentary and European Parliamentary elections remain within the exclusive competence of the UK Government and Parliament. The UK constitution also remains reserved.

1.4.7 Clause 7 relates to paragraphs 23 and 24(1) of the Smith Commission Agreement as they relate to the regulation of political parties and campaign spending. Through this clause the legislative competence of the Scottish Parliament will be extended to include campaign expenditure and controlled expenditure in relation to elections to the Scottish Parliament, except in relation to certain combinations of elections. This is effected through changes to B3 of Part II of Schedule 5 to the 1998 Act and the amendment of section 155 of the Political Parties, Elections and Referendums Act 2000. Once the

provision is law, this clause will mean that the Scottish Parliament will be able to amend the rules for campaigning by political parties and non-party campaigners in the run up to Scottish Parliament elections.

1.4.8 The Scottish Parliament already has legislative competence in relation to campaign expenditure as it relates to local government elections in Scotland. The regulation of political parties, including donations to political parties, remains reserved as set out in the Agreement.

1.4.9 Paragraph 23 of the Smith Commission Agreement also refers to party political broadcasts (PPBs). The amendments to the Scotland Act that concern the conduct of elections to the Scottish Parliament mean that the Scottish Parliament will have the legislative competence in relation to PPBs in relation to elections to the Scottish Parliament. The Scottish Parliament already has legislative competence for local government elections in Scotland. Scottish Ministers will already have executive competence in relation to many aspects of the conduct of elections to the Scottish Parliament when the relevant provisions of the 2012 Act come into force, so this clause serves to match the legislative competence to that executive competence. Broadcasting itself remains a reserved matter.

1.4.10 Clause 9 relates to paragraphs 24(3) of the Smith Commission Agreement and provides for the Scottish Parliament to have legislative competence in relation to functions of the Boundary Commission for Scotland so far as they relate to Scottish Parliament boundaries. The Boundary Commission for Scotland will continue to have functions in relation to UK Parliament constituency boundaries irrespective of its role in relation to Scottish parliamentary boundaries. The draft clause amends the 1998 Act so the Boundary Commission for Scotland reports to Scottish Ministers for Scottish Parliament elections, rather than the Secretary of State for Scotland. Those Ministers would, in turn, be obliged to address the Scottish Parliament rather than the UK Parliament. These changes will be without prejudice to the Scottish Parliament's ability to make such further changes as it might in future wish.

1.4.11 Clause 8 delivers paragraph 24(2) of the Smith Commission Agreement on the Electoral Commission. Through an insertion to paragraph B3 of Part II to Schedule 5 to the 1998 Act, legislative competence over the functions of the Electoral Commission with respect to elections to the Scottish Parliament is devolved to the Scottish Parliament. This means that Scottish Parliament will be able to change the role to the Electoral Commission plays at Scottish Parliament elections for example on the reports it provides after those elections.

1.4.12 Clause 4 relates to paragraph 27 of the Smith Commission agreement. It requires certain types of electoral legislation to be passed by a two-thirds majority of the Scottish Parliament. This applies to legislation amending the franchise, the electoral system or the number of constituency and regional members for the Scottish Parliament.

1.4.13 The UK Government will work with the Scottish Parliament and Scottish Government to ensure that the implementation of the clause fully takes into account the procedures of the Scottish Parliament.

Chapter 2: Fiscal framework

2.1 Summary

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

2.1.1 The United Kingdom (UK) has a strong and successful economy because currency and monetary policy, taxation, spending and financial stability policies are coordinated across the UK. If one part of the UK faces an economic challenge – from a fall in tax revenues, pressure on public services or a temporary increase in unemployment – the impact and the cost is shared across all parts of the UK. This is achieved by the UK Government pooling and redistributing tax revenues across the UK to ensure sustainable and secure levels of spending on public services. The implementation of the Smith Commission Agreement, including an updated fiscal framework, must therefore underpin Scotland's devolution settlement while retaining the existing benefits of the UK.

2.1.2 This chapter:

- Explains the purpose and key elements of the fiscal framework;
- Provides an overview of the current UK fiscal framework and how this supports the existing devolution settlement in Scotland; and
- Explains how an updated Scottish fiscal framework will incorporate the key features agreed by the Smith Commission, consistent with the UK Government's continuing responsibility for UK-wide fiscal policy.

2.1.3 As the fiscal framework needs to be agreed between the UK and Scottish Governments, based on a shared understanding of how it will operate, this section is intended as the start of a process to develop a suitably robust and coherent framework.

2.2 Purpose of the fiscal framework

2.2.1 The annual gap between public spending and tax receipts creates a deficit (where more is spent than is raised in tax) or a surplus (where more is raised in taxes than is spent). The nature and size of these gaps in the public finances can be driven by economic factors (for example, in a recession, tax receipts fall and demand for unemployment benefits increases) or by policy choices (for example spending a higher amount on public services or investment for an intended social or economic benefit).

2.2.2 Where deficits in the public finances exist, the gap between taxes and spending is bridged by borrowing. Borrowing creates an increased level of public debt, and interest on the borrowing becomes part of future obligations on public spending. The total amount of debt owed by a government (recorded on an internationally comparable basis as General Government Gross Debt) is also used by the International Monetary Fund (IMF), credit rating agencies and other international organisations to compare the credit worthiness of different countries. High levels of debt, particularly as a share of Gross Domestic Product (GDP), can lead to concerns about the ability of the government to repay its borrowings. Concerns about government debt can create higher government borrrowing costs, which reduces funding available for public services and feeds through into higher interest rates for households and businesses.

2.2.3 A fiscal framework is the set of rules and institutions that are used to set and coordinate sustainable fiscal policy. The rules can include short-term and medium-term targets for debt and for borrowing, as well as rules restricting borrowing or encouraging saving. It is critical for a fiscal framework to ensure that debt remains at sustainable levels, maintaining the confidence of financial markets that the government is able to repay its debts. The fiscal framework ensures that, by effectively managing the public finances, public spending can be sustainably funded through taxation and, when appropriate, the government is able to support the economy in the face of economic shocks.

2.2.4 To deliver this outcome, there are two key elements of the fiscal framework:

- **Fiscal rules** – these are designed to constrain fiscal policy, typically by setting limits on borrowing and/or debt over a defined period, in order to ensure fiscal responsibility and debt sustainability; and
- **Fiscal institutions** – these are non-governmental bodies responsible for overseeing fiscal policy decisions of the Government. In the UK this role is performed by the Office for Budget Responsibility (OBR), which also produces official economic and fiscal forecasts.

2.2.5 The UK Government is responsible for ensuring the sustainability of UK-wide public finances, and has a fiscal framework in place to support this. However, to work effectively, the fiscal framework should apply at all levels of government, including for Devolved Administrations, and would aim to take account of appropriate fiscal risks: in particular the presumption that the central government will always underwrite lower levels of government which could lead to unsustainable policy decisions; and that different administrations pursue contradictory policies that results in coordination failure and undesirable economic outcomes. International best practice points to wide adoption of fiscal rules and institutions at the national and sub-national level. In the context of Scottish devolution, the fiscal framework must ensure that Scotland contributes proportionally to the overall fiscal consolidation pursued by the UK Government. A framework that fails to deliver this outcome would result in the unequal treatment of citizens across the UK.

2.2.6 Scotland's fiscal position contributes to the overall UK fiscal position and has important consequences for UK fiscal policy. Where the UK Government has put in place a number of fiscal targets and limits (to ensure the public finances reach and remain at a sustainable position) fiscal decisions in Scotland would lead to trade-offs in the public finances for the rest of the UK. A relatively higher level of borrowing in Scotland would mean that borrowing in the rest of the UK would need to be lower in order to meet a particular borrowing target and maintain market confidence (and sustain a given level of interest rates). This would force a fiscal choice on the rest of the UK, either to lower spending or increase taxes.

2.2.7 An outcome which requires the citizens of one part of the UK to make a greater contribution to fiscal consolidation as a result of the actions of devolved government would be contrary to the 'no detriment' principles set out in the Smith Commission Agreement. Therefore the fiscal framework must require Scotland to contribute proportionally to fiscal consolidation at the pace set out by the UK Government across devolved and reserved areas.

2.2.8 A fiscal framework needs to be established so that actions across the authorities in the union will deliver the fiscal mandate set by the UK Government, while enabling the Scottish Government to exercise its devolved powers effectively.

2.2.9 Fiscal constraints are widely used across federal countries to control the fiscal policy of sub-central governments.[1] While financial markets can constrain fiscal policy by putting a higher price on borrowing to punish a lack of credibility, the impact of market discipline as an effective constraint on policy making is hard to quantify as it is unlikely to be apparent how the constraint works outside of a crisis. As a result, few countries rely exclusively on market discipline to control devolved borrowing or debt. Instead markets work most effectively to provide a view on the full fiscal position of a government, and therefore is an additional constraint to the more formal fiscal rules used in almost 90 per cent of OECD countries.

2.2.10 In addition to these fiscal constraints and suitable fiscal institutions, there are two further elements of Scotland's fiscal framework:

- **Funding from central government** – while the Smith Commission agreed the powers that should be devolved to the Scottish Parliament, it is the funding arrangements that largely determine the associated fiscal risks and benefits that are transferred. The funding model therefore needs to be designed consistent with the outcomes set out in paragraph 95 of the Smith Commission Agreement, which indicates that the UK Government should manage UK-wide risks while the Scottish Government should manage Scotland-specific risks in devolved areas; and

- **Tools to manage volatility** – the tax and spending powers of sub central governments varies considerably across OECD countries. The OECD average for sub-central government responsibilities is c30 per cent of spending and c20 per cent of tax, but this ranges from below 10 per cent to above 50 per cent.[2] As a result of the Smith Commission Agreement, the Scottish Parliament will control around 60 per cent of spending in Scotland and retain around 40 per cent of Scottish tax. This will therefore make the Scottish Government one of the most powerful sub-central governments in the OECD, just behind the Canadian provinces and Swiss cantons. Importantly, it will therefore give the Scottish Government substantial choices in

[1] Further information on the experiences of decentralisation in federal states can be found in *Designing a European Fiscal Union: Lessons from the Experience of Fiscal Federations* C.Cottarelli, M.Guerguil (2014)

[2] Government at a Glance (2013), OECD.

relation to levels of tax and spending in Scotland. The extent of further tools (such as a 'rainy day' fund or further borrowing powers) needed to manage volatility in its budget will depend on the scale of the risks that are transferred to the Scottish Government through the design of the funding model.

2.3 The existing UK and Scottish fiscal frameworks

United Kingdom

2.3.1 The UK's fiscal framework is set out in the Budget Responsibility and National Audit Act 2011 (the 2011 Act). This Act requires the Government to lay a Charter of Budget Responsibility before Parliament which sets out the Government's approach to fiscal policy, management of public debt and its objectives for fiscal policy. The Charter, which was most recently updated following the Autumn Statement 2014 and approved by Parliament in January 2015, includes a fiscal mandate against which the Government's progress is assessed by the independent OBR.

2.3.2 The UK Government's fiscal mandate, as set out in the Charter for Budget Responsibility, is specified as a forward looking aim to achieve a cyclically-adjusted current budget balance by the end of a rolling, three-year forecast period. This means that the UK Government's cyclically-adjusted plans for total public sector spending (less net spending on investment) must be no higher than total public sector receipts in three years' time (as forecast by the OBR). The fiscal mandate is supplemented by an aim for public sector net debt to be falling as a share of GDP by 2016-17.

2.3.3 The UK Government has introduced a number of reforms in this Parliament aimed at improving the transparency of UK fiscal policy. The 2011 Act also established the OBR, whose main duty is to examine and report on the state of the UK public finances. More specifically, the OBR's remit includes:

- Publishing five-year forecasts for the economy and public finances twice a year alongside the Budget and Autumn Statement;
- Assessing the Government's performance against the fiscal mandate, supplementary debt aim and welfare cap;
- Assessing how its forecasts have performed against published data in its annual Forecast Evaluation Report; and
- Publishing an annual assessment of the long-term sustainability of the public finances in its Fiscal Sustainability Report.

2.3.4 The current UK government inherited the largest deficit in post-war history, at 10.2 per cent of GDP, due to the Great Recession and unsustainable increases in public spending before the financial crisis. In 2010, the Government set out medium-term fiscal consolidation plans to return the public finances to a sustainable path. The UK Government is making significant progress in delivering its fiscal consolidation. Public sector net borrowing as a percentage of GDP is forecast to have fallen by a half from its peak by the end of 2014-15, and the Government is forecast to reach a small surplus on net borrowing in 2018-19.

2.3.5 Despite the progress to reduce the deficit, the high level of public debt increases the UK's vulnerability to future shocks and imposes a significant burden on public expenditure through high levels of gross debt interest payments (forecast at £48 billion in 2014-15). Sustained action will be needed to bring down debt, and as a result the UK public finances will continue to need careful management.

Scotland

2.3.6 The Scottish Parliament's fiscal framework sits within the wider UK fiscal framework. Under the Scotland Act 1998 (the 1998 Act), the Scottish Parliament is responsible for almost 60 per cent of public spending in Scotland (e.g. health, education, housing, policing, justice etc) but is responsible for only around 10 per cent of Scottish tax (council tax and non-domestic (business) rates). While the Scottish Government is also able to vary the basic rate of income tax in Scotland (by up to 3p) it has never used this power.

2.3.7 Under the 1998 Act, the fiscal framework comprises three elements:

- **Fiscal rules** – consistent with the approach taken in other OECD countries, the Scottish Government is required to run an annual balanced budget, whereby its spending must be fully funded each year;
- **Funding** – to fund its devolved spending responsibilities (e.g. health, education, housing, policing, justice etc) the Scottish Government receives a block grant from the UK Government and retains revenues from business rates in Scotland (with Scottish local authorities retaining revenues from council tax). The block grant is funded from tax revenues pooled across the UK and UK Government borrowing. Changes in the block grant are determined by the Barnett Formula, through which the Scottish Government receives a population share of changes in comparable UK Government spending; and
- **Tools to manage volatility** – the 1998 Act provided the Scottish Government with the power to borrow up to £500 million from the UK Government for cash management purposes, although this power has not yet been exercised.

2.3.8 The Scotland Act 2012 (the 2012 Act) devolves new tax and borrowing powers to the Scottish Parliament. These new powers are being implemented in two stages – stamp duty land tax and landfill tax are being devolved alongside new borrowing powers from April 2015, with the Scottish rate of income tax following from April 2016. The Scottish Government is also already able to operate a cash reserve, or 'rainy day' fund, so that it can build up reserves from existing budgets in advance of these new powers being implemented.

2.3.9 While the Scottish Government is already able to allocate its budget towards policies and priorities as it chooses, these new powers provide the Scottish Government with the ability to further vary the level of tax and spending in Scotland. The fiscal framework is therefore being updated to reflect these new powers and responsibilities, as set out below:

- **Fiscal rules** – the Scottish Government will be required to run an annual balanced budget (within the terms of its new borrowing powers) but it will have more control over the level of tax and spending in Scotland;

- **Funding** – the Scottish Government's Barnett-based block grant will be reduced to reflect the tax revenues that the UK Government will forego as a result of devolution. The Scottish Government will instead retain the revenues from the 2012 Act taxes alongside its existing business rates revenues. In addition to this, the Scottish Government will be able to borrow (from the National Loans Fund, commercial lenders or through issuing bonds) to fund capital expenditure. Within an overall £2.2bn cap, the Scottish Government can borrow up to an additional 10% of its capital budget each year – in 2015-16 the Scottish Government can borrow around £300m;
- **Tools to manage volatility** – the Scottish Government is now able to operate a cash reserve to help manage the fluctuations in tax receipts. Prior to the implementation of the 2012 Act, the Scottish Government can pay up to £125m into the reserve from existing budgets. From April 2015 onwards, if tax receipts are higher than forecast then the surplus can be saved in the reserve. The intention is that by giving the Scottish Government the ability to create a cash reserve, or rainy day fund, money can be released in years when receipts fall short of forecast. This provides an alternative to making in-year spending cuts or increasing taxation. The 2012 Act also extended the borrowing power in the 1998 Act so the Scottish Government has a further choice to borrow (up to £200m per year) when its tax revenues are lower than forecast and there are insufficient funds in the cash reserve (but the £500m overall current borrowing limit remains unchanged from the 1998 Act); and
- **Fiscal institutions** – the Scottish Government has created the Scottish Fiscal Commission to scrutinise the Scottish Government's forecasts for the two devolved taxes, as discussed further in relation to paragraph 95(7) of the Smith Commission Agreement.

2.4 Principles to underpin a new fiscal framework for Scotland

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

2.4.1 The Smith Commission Agreement recognises that the devolution of substantial further powers needs to be accompanied by corresponding changes to the fiscal framework. The following section provides an explanation of each of the outcomes that the Agreement requires the framework to deliver.

Paragraph	Smith Commission Agreement
95(1)	Barnett Formula: the block grant from the UK Government to Scotland will continue to be determined via the operation of the Barnett Formula.

2.4.2 Consistent with the commitment made by all three main UK-wide party leaders, the Barnett Formula will continue. As a result of further devolution, the Scottish Government's funding model will need to be updated so that it comprises the following elements:

- A block grant from the UK Government determined by:
  - The Barnett-based block grant;
  - Block grant deduction in relation to tax devolution/assignment;
  - Addition to the block grant in relation to welfare programmes that are being devolved;
  - Devolved/Assigned Scottish tax receipts;
  - Scottish Government cash reserve; and
  - Scottish Government borrowing.

2.4.3 The Scottish Government's aggregate spending will therefore be determined by UK Government funding plus Scottish Government tax receipts and borrowing (subject to the agreed borrowing limits).

Paragraph	Smith Commission Agreement
95(2)	Economic Responsibility: the revised funding framework should result in the devolved Scottish budget benefiting in full from policy decisions by the Scottish Government that increase revenues or reduce expenditure, and the devolved Scottish budget bearing the full costs of policy decisions that reduce revenues or increase expenditure.

2.4.4 As set out by the Smith Commission Agreement, the Scottish Government should take responsibility for the positive or negative effects of its policies. This means that where its policies result in higher devolved tax receipts or more efficient public spending, it should keep the proceeds. Where policies instead result in lower devolved tax receipts, or less efficient public spending, the Scottish Government will need to take decisions to manage these consequences.

2.4.5 As discussed in relation to paragraph 95(3) below, this means that the Scottish Government's block grant needs to be adjusted to reflect the tax revenues foregone by the UK Government (and the spending no longer undertaken by the UK Government) rather than responding to offset the actual levels of tax and spending resulting from Scottish Government policies.

Paragraph	Smith Commission Agreement
95(3)	No detriment as a result of the decision to devolve further power: the Scottish and UK Governments' budgets should be no larger or smaller simply as a result of the initial transfer of tax and/or spending powers, before considering how these are used. (a) This means that the initial devolution and assignment of tax receipts should be accompanied by a reduction in the block grant equivalent to the revenue forgone by the UK Government, and that future growth in the reduction to the block grant should be indexed appropriately. (b) Likewise, the initial devolution of further spending powers should be accompanied by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government, including any identified administrative savings arising to the UK Government from no longer delivering the devolved activity, and a share of the associated implementation and running costs in the policy area being devolved, sufficient to support the functions being transferred, at the point of transfer. (c) The future growth in the addition to the block grant should be indexed appropriately.

2.4.6 Paragraph 95(3) sets out the first of the Smith Commission Agreement's two 'no detriment' principles. This indicates that the Scottish Government and UK Government budgets should be unchanged as a result of the decision to devolve further powers to the Scottish Parliament (distinct from the impact of policy decisions post-devolution, which is covered in paragraph 95(4) below).

2.4.7 In relation to tax devolution/assignment, this reflects that part of the Scottish Government's block grant is being replaced by Scottish tax revenues. For example, Scottish income tax revenues will be retained by the Scottish Government to be spent in Scotland rather than these taxes being pooled and redistributed by the UK Government to be spent across the whole UK. As set out in this paragraph of the Smith Commission Agreement, tax devolution/assignment will therefore need to be accompanied by a reduction in the Scottish Government's block grant equivalent to the revenue foregone by the UK Government both in year 1 and in subsequent years. The reduction in the block grant will therefore need to dynamically and mechanically reflect changes in tax foregone by the UK Government over time. The Smith Commission Agreement indicated that this would involve the adjustment being "indexed appropriately", but stopped short of suggesting what the index should be.

2.4.8 While there are a range of indexation options, which the UK and Scottish governments have started to discuss, Box 1 below sets out the agreed arrangements for the Scottish rate of income tax (created by the 2012 Act).

Box 1: Block grant adjustment mechanism for the Scottish rate of income tax

While the UK and Scottish Governments will need to work together to develop a suitable indexation mechanism, the two Governments have previously agreed an approach for the Scottish rate of income tax (which was created in the Scotland Act 2012). This 'tax base indexation' mechanism involves two elements:

- Year 1 – the block grant is reduced by the amount of tax generated by 10p of income tax in Scotland; and
- Year 2 onwards – the adjustment is indexed against growth in the UK income tax base.[3]

This approach has a number of attractive features:

- The Scottish Government budget is larger (than under current arrangements) if it grows the Scottish income tax base faster than the UK average, but smaller if Scottish income tax base growth is slower; and
- The Scottish Government is therefore incentivised to grow the Scottish economy (using all of its tax and spending policy levers) as this has a direct impact on its budget, but it is shielded from UK-wide shocks that the UK Government is better placed to manage.

This therefore means that the Scottish Government holds the marginal risk that the Scottish income tax base performs differently from the UK average, while the UK Government holds the UK-wide risks (consistent with the proposals in paragraph 95(8) of the Smith Commission Agreement).

2.4.9 In relation to spending devolution, this 'no detriment' principle requires a slightly different interpretation than for tax. Specifically, rather than Scottish Government and UK Government budgets being unaffected, the key point is that the overall level of spending in Scotland and the rest of the UK should be unchanged. This reflects the need for the Scottish Government's budget to be increased where it is taking on responsibility for this spending from the UK Government (with the UK Government budget reduced by an offsetting amount). So while the Scottish Government and UK Government budgets will in fact change as a result of the decision to devolve further areas of spending, overall spending in Scotland and the rest of the UK should be unaffected (on an ongoing basis) by this decision to devolve further spending powers.

2.4.10 This will need to be delivered in different ways for spending on devolved public services and devolved welfare:

- For public services (i.e. where the corresponding UK Government spending falls within Departmental Expenditure Limits, such as most aspects of the Regulated Social Fund) funding will continue to be provided through the Barnett Formula. Consistent with the existing approach set out in the Statement of Funding Policy, this involves an increase in the year 1 block grant to reflect the spending (both on front line programmes and the associated administration costs) that the UK Government would have undertaken absent devolution, with subsequent changes in funding determined through the Barnett Formula; and

[3] The tax 'base' is the amount to which the relevant tax rate is applied. In relation to income tax, the tax base is therefore taxable income (after the personal allowance, reliefs etc are removed).

- For welfare, such as disability benefits, as this spending is outside Departmental Expenditure Limits it is therefore outside the scope of the Barnett Formula. While there will again be an increase in the block grant in year 1, reflecting the spending (both on front line programmes and the associated administration costs) that the UK Government will no longer undertake, the UK and Scottish Governments will need to work together to determine how this funding changes in subsequent years to dynamically and mechanically reflect changes in the welfare spending that would have been undertaken by the UK Government over time. While the Smith Commission Agreement indicated that the adjustment would need to be "indexed appropriately", as with tax devolution it stopped short of suggesting what the index should be.

2.4.11 In relation to the welfare cap, the UK government intends to remove welfare programmes devolved to the Scottish Parliament from the UK welfare cap, so that the Secretary of State for Work and Pensions would not be accountable to the UK Parliament for controlling Scottish Government expenditure on these devolved programmes.

2.4.12 The one further issue covered by the first 'no detriment' principle relates to the implementation costs of spending policy areas. The Devolved Administrations currently meet the costs of devolution as set out in the Statement of Funding Policy. However, the Smith Commission Agreement indicates in paragraph 95(3)(b) that a share of the costs involved in implementing spending devolution should be borne by the UK Government. The UK and Scottish Governments will need to consider how to share these costs, consistent with the broader 'no detriment' principle discussed above.

Paragraph	Smith Commission Agreement
95(4)	No detriment as a result of UK Government or Scottish Government policy decisions post-devolution. (a) Where either the UK or the Scottish Governments makes policy decisions that affect the tax receipts or expenditure of the other, the decision-making government will either reimburse the other if there is an additional cost, or receive a transfer from the other if there is a saving. There should be a shared understanding of the evidence to support any adjustments. (b) Changes to taxes in the rest of the UK, for which responsibility in Scotland has been devolved, should only affect public spending in the rest of the UK. Changes to devolved taxes in Scotland should only affect public spending in Scotland.

2.4.13 Paragraph 95(4) sets out the second of the Smith Commission Agreement's two 'no detriment' principles, which states that there should be 'no detriment' as a result of UK Government or Scottish Government policy decisions post-devolution. There are two parts to this covering government budgets and taxpayer fairness respectively.

2.4.14 In relation to taxpayer fairness, the Smith Commission Agreement identified a simple yet fundamental principle that changes in the taxes that only apply in the rest of the UK should only affect spending in the rest of the UK. And similarly that changes in taxes that only apply in Scotland should only affect spending in Scotland. The latter will be achieved by the Scottish Government retaining and spending tax revenues from taxes that only apply in Scotland. The former is more difficult to deliver due to the interaction between tax revenues and the Barnett Formula, which the two worked examples below are designed to explain. Specifically, the tax deduction mechanism will need to ensure that changes in 'rest of UK' tax only affect changes in 'rest of UK' spending.

i. **Decrease in 'rest of UK' income tax** – if the UK Government reduces spending on devolved areas (e.g. health, education, housing, policing, justice etc) to manage a decrease in 'rest of UK' income tax, then the Barnett Formula will lead to a population share of this spending reduction affecting Scotland through a decrease in the Scottish Government's block grant (despite the tax not applying in Scotland). If the UK Government instead reduces spending on reserved areas (such as pensions, benefits, defence, debt interest etc) then this spending reduction would again apply UK-wide, including in Scotland, despite the 'rest of UK' income tax not applying in Scotland. The tax deduction element of the funding model therefore needs to work alongside the Barnett Formula to ensure that decreases in 'rest of UK' tax do not lead to reductions in spending in Scotland.

ii. **Increase in 'rest of UK' income tax** – if the UK Government spends extra 'rest of UK' income tax on devolved areas (e.g. health, education, housing, policing, justice etc) then the Barnett Formula will lead to a population share of this extra funding being spent in Scotland through an increase in the Scottish Government's block grant (despite the tax not applying in Scotland). Similarly if the UK Government spends this extra funding on reserved areas (such as pensions, benefits, defence, debt interest etc) then this would be spent UK-wide, including in Scotland, despite the 'rest of UK' income tax not applying in Scotland. The tax deduction element of the funding model therefore needs to work alongside the Barnett Formula to ensure that increases in 'rest of UK' tax do not fund higher spending in Scotland.

2.4.15 Note that both examples are simplifications – in reality there will be a range of movements in tax and spending so, in the same way that the Barnett Formula looks at the final outcome of aggregate changes in UK Government spending, the tax deduction will need to look at the overall outcome for relevant taxes rather than trying to link each individual change in tax revenue to a change in spending.

2.4.16 In relation to government budgets, the Smith Commission Agreement states that if decisions by one government affect the tax/spending of the other then the decision-making government will meet the cost (or retain the saving). There will need to be a shared understanding of this principle in order to deliver a workable outcome, but this builds on existing arrangements set out in the Statement of Funding Policy (paragraph 3.2.8) and will need to consider both direct and behavioural effects as explained in the examples below:

- **Benefits paid net of income tax** – some benefits are paid net of income tax, so if the Scottish Government changes income tax in Scotland, this will have a direct impact on the level of benefits that the UK Government will be liable to pay. Under this 'no detriment' principle, the Scottish Government would receive any savings from lower UK Government benefit spending or meet any costs of higher UK Government benefit spending.

- **Benefits used for passporting** – one government may change the eligibility criteria for a benefit that is used as a passport benefit by the other government. In this case the increased spend on the benefit passported to would be met by the government making the change (or they would receive any savings). For example, awards of the higher rate mobility component of Disability Living Allowance and the enhanced rate mobility component of Personal Independence Payment can serve as a 'passport' to entitlement to reductions in Vehicle Exercise Duty (VED) and VAT on long-term leases of vehicles and relevant equipment (and in some other areas). While DLA/PIP will be devolved in full to the Scottish Parliament, VED and VAT will remain reserved to the UK Parliament. If the Scottish Government changes eligibility criteria for disability

benefits, it will be responsible for the resulting impact on the UK Government's VED and VAT revenues.

- **Employment Programmes** – paragraph 57 of the Smith Commission Agreement sets out devolution of employment programmes. These programmes influence how quickly unemployed people get back to work, and therefore have an impact on the UK benefit bill. This is reflected in current funding arrangements whereby the Work Programme is funded by savings made in benefits spending – there is no set grant from HM Treasury to the Department for Work and Pensions each year as this is dependent on providers' performance. While future negotiations with Scotland need to be conducted, we must ensure that this aligns with the no detriment principle. Any funding arrangement must ensure that Scotland receives funding on an equivalent basis to the rest of the UK.

2.4.17 As the Smith Commission Agreement noted, it is important that there is a shared understanding of the evidence linking the policy decision (as opposed to other external factors) to the observed outcome.

Paragraph	Smith Commission Agreement
95(5)	Borrowing Powers: to reflect the additional economic risks, including volatility of tax revenues, that the Scottish Government will have to manage when further financial responsibilities are devolved, Scotland's fiscal framework should provide sufficient, additional borrowing powers to ensure budgetary stability and provide safeguards to smooth Scottish public spending in the event of economic shocks, consistent with a sustainable overall UK fiscal framework. The Scottish Government should also have sufficient borrowing powers to support capital investment, consistent with a sustainable overall UK fiscal framework. The Scottish and UK Governments should consider the merits of undertaking such capital borrowing via a prudential borrowing regime consistent with a sustainable overall UK framework. (a) The Scottish Government's borrowing powers should be agreed by the Scottish and UK Governments, and their operation should be kept under review in conjunction with agreement on the mechanism to adjust the block grant. (b) Borrowing powers should be set within an overall Scottish fiscal framework and subject to fiscal rules agreed by the Scottish and UK Governments based on clear economic principles, supporting evidence and thorough assessment of the relevant economic situation.

2.4.18 Borrowing by governments broadly falls into two categories. One is borrowing for current expenditure and the other is for capital expenditure. Current expenditure is day-to-day spending on public services such as the salaries of teachers and nurses. Capital expenditure is focused on investment in assets, such as the building of schools, hospitals and bridges. For reasons of inter-generational fairness, it is more common for governments (where they choose to borrow at all) to borrow to fund capital spending than current spending i.e. the assets funded by capital borrowing are paid for over the life of the asset by those who benefit from it, whereas current borrowing benefits people today but is paid for in the future.

2.4.19 Different reasons for borrowing will have different impacts on the debt position. Borrowing to finance expenditure to counteract a cyclical economic downturn would enable the government to smooth the impact of lower tax receipts in difficult times. Running an equivalent surplus in good times would offset this borrowing and lead to no long-term debt. On the other hand, running a persistent structural deficit would enable higher spending on public services (or lower taxation) but build up long-term debt.

Borrowing for current spending

2.4.20 A credible fiscal framework does not rely wholly on the provision or use of borrowing powers as there are other tools available to governments. A cash reserve or rainy day fund built up in good years when revenues are above forecast can be used to support the current budget where revenues are lower than forecast. Reprioritising spending can also reduce pressure on the overall budget, and taxes or other fees and charges levied by a government could be increased to address a shortfall in areas where there is less prospect of deepening a recession. Use of these tools instead of borrowing to fund current expenditure gives a government the means to ensure a sustainable fiscal position and support economic objectives particularly during a recession

2.4.21 The Scottish Parliament's borrowing powers for current spending (both the total amount of borrowing and the circumstances under which borrowing is permitted) following implementation of the Smith Commission Agreement will need to reflect the fiscal risks that the Scottish Parliament will be taking on in this devolution settlement. The precise risks will be determined by the funding model, which will need to be agreed with the Scottish Government, but the Smith Commission Agreement indicates that the UK Government should retain UK-wide risks (paragraph 95(8)) with the Scottish Government responsible for Scotland-specific risks in devolved areas.

2.4.22 The Scottish Government will not therefore be insulated from all risks, so will need tools to manage appropriate risks. If Scotland experiences an economic shock when the rest of the UK does not, the funding model would not provide the Scottish Government with additional funding to offset its lower tax receipts or higher spending pressures. The tools available to the Scottish Parliament (for example a 'rainy day' fund or appropriate borrowing powers) should therefore enable it to respond to such an event, meeting its spending obligations without increasing taxes significantly to balance the annual budget. Borrowing could be undertaken to respond to a shock, but a clear plan will be needed to repay the debt incurred in order to ensure a sustainable fiscal position. This could be in the same year in the case of small and one-off shocks, or over a longer period for deeper recessions.

2.4.23 The appropriate tools and powers of the Scottish Parliament will need to be calculated on the basis of the specific risks that it faces given the funding arrangements, and be consistent with economic principles. Depending on the funding model, the tools available to the Scottish Parliament should be sufficient to respond to its potential financial exposure, without the need for regular agreement between administrations based on specific economic developments.

Borrowing for capital spending

2.4.24 The Smith Commission Agreement recommended consideration of a prudential regime for Scottish Government capital borrowing, similar to that which has regulated local authority borrowing in England, Scotland and Wales since 2004.

2.4.25 The 2012 Act already provides the Scottish Parliament with specific powers for capital borrowing, as set out above. Increasing the Scottish Government's ability to borrow to fund capital expenditure would lead to offsetting reductions in spending in the rest of the UK to remain within the UK's overall fiscal rules (which are in place to keep the public finances sustainable).

2.4.26 The prudential regime is governed by a code set out by the Chartered Institute of Public Finance and Accountancy in the Prudential Code for Capital Finance in Local Authorities. In Scotland, local authorities are required by regulation to have regard to the Prudential Code under Part 7 of the Local Government in Scotland Act 2003. Its purpose is to provide a framework for local authorities to take capital investment decisions based on the revenues available to the authority to meet the costs of borrowing.

2.4.27 The Prudential Code was introduced to replace a system of credit approvals being sought by local authorities from central government, which in turn replaced an allocation of funds from central government for capital expenditure. It was not aimed at increasing the amount of capital expenditure rather the Code improved the efficiency and clarity of decision making by local authorities about investment decisions. The application of a similar regime for the Scottish Parliament will be considered as set out in the Smith Commission Agreement.

2.4.28 Meeting the Smith Commission Agreement on sufficient additional borrowing powers will therefore depend on a number of factors and will be subject to discussion between governments. However, it is clear from international best practice that a set of fiscal rules and robust institutional arrangements will need to be in place to ensure that the overall UK public finances remain sustainable.

Paragraph	Smith Commission Agreement
95(6)	Implementable and Sustainable: once a revised funding framework has been agreed, its effective operation should not require frequent ongoing negotiation. However, the arrangements should be reviewed periodically to ensure that they continue to be seen as fair, transparent and effective.

2.4.29 Like the Barnett Formula, the Smith Commission Agreement has determined that the Scottish Government's new funding model should be mechanical rather than requiring regular negotiations. It should also be predictable so that the Scottish Government can plan and operate its tax and spending policies.

2.4.30 Consistent with the block grant adjustment principles agreed by the UK Government and Scottish Government in relation to the 2012 Act, the fiscal framework needs to be reviewed periodically to ensure it remains fair, transparent and effective. The frequency of reviews needs to be considered carefully – they need to be frequent enough to avoid systemic issues building up, but not so frequent that the incentives are blunted.

Paragraph	Smith Commission Agreement
95(7)	Independent Fiscal Scrutiny: the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland's public finances in recognition of the additional variability and uncertainty that further tax and spending devolution will introduce into the budgeting process.

2.4.31 The UK Government agrees that independent fiscal scrutiny is an essential element of a sustainable and effective fiscal framework and looks forward to proposals from the Scottish Government on how to enhance existing arrangements.

2.4.32 Independent fiscal institutions have the potential to enhance fiscal discipline, promote greater budget transparency and accountability. They can also raise the quality of debate on fiscal policy. In the UK, the OBR was created in 2010 to provide independent economic and fiscal forecasts for the UK Government, to assess progress against the government's fiscal rules, and to provide further analysis of the current state and future sustainability of the public finances. The UK Government believes the OBR has performed a vital function in improving the credibility of fiscal forecasts, providing a realistic and independent assessment of policies required to secure sustainable public finances, while also delivering a high degree of transparency and accountability.

2.4.33 The current Scottish Fiscal Commission was created by the Scottish Parliament in June 2014 to scrutinise the Scottish Government's forecasts for the two devolved taxes (stamp duty land tax and landfill tax) in the 2012 Act. This followed a recommendation from the Scottish Parliament Finance Committee (in January 2014) to create a body in accordance with OECD Principles for Independent Fiscal Institutions.

2.4.34 The Smith Commission Agreement goes much further than the existing devolution settlement and, as a result, it will be crucial that the remit and capacity of the Scottish Fiscal Commission, as determined by the Scottish Parliament, fully reflects the expanded responsibilities. Given the increased importance of effective scrutiny as more responsibilities are transferred to the Scottish Parliament, independence, transparency and resources will be particular areas for further progress. While the Scottish Government has announced its intentions in this area, it is the UK Government's view that the Scottish Government should bring forward proposals fully consistent with the OECD principles, and reflecting the UK experience with the OBR, to enhance the Scottish Fiscal Commission as part of agreement to a new fiscal framework for Scotland.

Paragraph	Smith Commission Agreement
95(8)	UK Economic Shocks: the UK Government should continue to manage risks and economic shocks that affect the whole of the UK. The fiscal framework should therefore ensure that the UK Government retains the levers to do that, and that the automatic stabilisers continue to work across the UK. The UK Parliament would continue to have a reserved power to levy an additional UK-wide tax if it felt it was in the UK national interest.

2.4.35 As discussed at the start of this section, it is crucial that Scotland retains the benefits of the UK's fiscal union alongside its strengthened devolution settlement. In particular, the design of the fiscal framework (particularly the funding model) needs to ensure that risks and resources are still pooled across the UK. This will mean, as the Smith Commission agreed, that the UK Government will still manage UK-wide risks with the Scottish Government managing Scotland-specific risks in devolved areas.

2.4.36 Further, the Smith Commission Agreement determined that the fiscal framework should ensure that the automatic stabilisers can operate, for example through the block grant automatically increasing if appropriate, or through use of the cash reserve or borrowing within prescribed limits (repaid as the economy recovers). It will be important to clearly set out the level of support the Scottish Government could expect through the funding model during an economic downturn and where it would need to take advantage of its own powers to maintain its chosen fiscal policy objectives.

Paragraph	Smith Commission Agreement
95(9)	Implementation: the Scottish and UK Governments should jointly work via the Joint Exchequer Committee to agree a revised fiscal and funding framework for Scotland based on the above principles. The two governments should provide updates to the Scottish and UK Parliaments, including through the laying of annual update reports, setting out the changes agreed to Scotland's fiscal framework.

2.4.37 As the Smith Commission Agreement has set out, the new fiscal framework will be agreed and implemented jointly by the UK Government and Scottish Government through the Joint Exchequer Committee, with suitable engagement with both the UK and Scottish Parliaments. It will be necessary for the fiscal framework to be agreed alongside the introduction of legislation in the next Parliament, to ensure that proposals for Scotland's overall devolution settlement are completely clear at the outset. Further, similar to the reporting arrangements under the 2012 Act, the UK Government will continue to publish annual implementation reports in relation to the design and implementation of a new fiscal and funding framework.

Chapter 3: Tax

3.1 Summary

3.1.1 The Smith Commission Agreement includes further tax devolution. The clauses set out in this chapter demonstrate how the United Kingdom (UK) Government will give effect to the Smith Commission Agreement in respect of income tax, Value Added Tax (VAT), Air Passenger Duty (APD) and the Aggregates Levy.

3.1.2 The Scottish Parliament currently has a number of taxation powers, for example the Scotland Act 1998 (the 1998 Act) introduced the Scottish Variable Rate (SVR) which allows the Scottish Parliament to vary the basic rate of income tax by up to three percentage points from the UK rate. And, from April 2016, the SVR will be replaced by a new Scottish rate of income tax (SRIT). It is also introducing a land and buildings transaction tax to replace stamp duty land tax in Scotland from April 2015 and has powers over business rates. Similarly a Scottish Landfill Tax will be introduced from April 2015

3.1.3 Paragraph 93 of the Agreement covers joint working between the UK and Scottish Governments, specifically to avoid double taxation and to make administration as simple as possible for taxpayers. Double taxation occurs when two administrations levy a tax on the same income, capital gain or transaction. As set out at paragraph 3.1.2, there has already been devolution of taxation to the Scottish Parliament and this has not created any instances of double taxation. In enacting the Smith Commission Agreement on taxation, income tax will remain a single UK tax and, as with SRIT, individuals will be either a Scottish or UK taxpayer for a tax year, but not both. As such the changes will not lead to double taxation.

3.1.4 The UK Government will continue to work with the Scottish Government to ensure that the risk of double taxation is removed when devolving further taxes or introducing new ones. The Joint Exchequer Committee has agreed a process for approval of new taxes proposed by the Scottish Government under powers conferred by the Scotland Act 2012 (the 2012 Act), which will ensure that potential double taxation is identified.

3.1.5 Further, HM Revenue and Customs (HMRC) and HM Treasury already have significant joint working arrangements in place with the Scottish Government to ensure the tax powers devolved under the 2012 Act are implemented and then administered in a way that minimises compliance burdens on taxpayers and their employers. These arrangements are governed by published Memoranda of Understanding and overseen by the Joint Exchequer Committee and the official Intergovernmental Assurance Board. HMRC and HM Treasury will build on this relationship to work closely with the Scottish Government and ensure the tax powers outlined in these clauses are similarly delivered.

3.2 Income Tax

Paragraph	Smith Commission Agreement	Clause
75	Income Tax will remain a shared tax and both the UK and Scottish Parliaments will share control of Income Tax. MPs representing constituencies across the whole of the UK will continue to decide the UK's Budget, including Income Tax.	10 11 12
76	Within this framework, the Scottish Parliament will have the power to set the rates of Income Tax and the thresholds at which these are paid for the non-savings and non-dividend income of Scottish taxpayers (as defined by the Scotland Acts).	
77	As part of this, there will be no restrictions on the thresholds or rates the Scottish Parliament can set. All other aspects of Income Tax will remain reserved to the UK Parliament, including the imposition of the annual charge to Income Tax, the personal allowance, the taxation of savings and dividend income, the ability to introduce and amend tax reliefs and the definition of income.	
78	The Scottish Government will receive all Income Tax paid by Scottish taxpayers on their non-savings and non-dividend income with a corresponding adjustment in the block grant received from the UK Government, in line with the funding principles set out in paragraph 95.	
79	Given that Income Tax will still apply on a UK-wide basis, albeit with different rates and thresholds in Scotland, it will continue to be collected and administered by HMRC. In line with the approach taken for the Scottish rate of Income Tax, the Scottish Government will reimburse the UK Government for additional costs arising as a result of the implementation and administration of the Income Tax powers described above.	

3.2.1 Clauses 10, 11 and 12 relate to the Smith Commission Agreement's recommendations on income tax.

3.2.2 The 2012 Act provides that from 2016-17 the rate of income tax paid by Scottish taxpayers will be calculated by reducing the basic, higher and additional rates of income tax by 10 pence in the pound and adding a new Scottish rate set by the Scottish Parliament. A SRIT of 10 per cent would mean no change from the UK rates. This Scottish rate must be the same rate for all bands (the so-called 'lockstep').

3.2.3 The draft clauses outlined in the annex below will effect considerably greater changes than those set out in the 2012 Act. As a result the Scottish Parliament will be given powers to introduce new rates and bands of income tax above the UK personal allowance. This will apply to income tax paid on non-savings and non-dividend income – in practice this includes income from employment, profits from self-employment, pensions, taxable social security benefits and income from property. This will apply to all Scottish taxpayers as defined in the 2012 Act – meaning an individual is a Scottish taxpayer if, during a tax year, they are a UK resident for tax purposes and their main place of residence is in Scotland for the majority of the year.

3.2.4 The clauses also deal with a consequential issue relating to the interaction between Capital Gains Tax (CGT) and income tax rates. Currently, individuals who pay income tax at the income tax higher rate also pay CGT at a higher rate of 28 per cent. CGT will remain a reserved matter. To ensure that the tax applies equally to all UK taxpayers, the clauses set out that the rate of CGT that applies to a Scottish income taxpayer will be calculated by reference to the UK income tax rate limits rather than the Scottish income tax rate limits. So the CGT rate of 28 per cent will apply to a Scottish income taxpayer if their income exceeds the UK income tax higher rate threshold.

3.2.5 Consistent with the approach taken with SRIT, the UK Government will need to work closely with stakeholders on the detailed implementation of income tax devolution in other areas, for example the operation of both pensions tax relief and Gift Aid. The draft clauses include a power to make these changes in secondary legislation, which will be brought forward in due course to set out the detailed mechanics for this.

3.3 Value Added Tax (VAT)

Paragraph	Smith Commission Agreement	Clause
84	The receipts raised in Scotland by the first 10 percentage points of the standard rate of Value Added Tax (VAT) will be assigned to the Scottish Government's budget. These receipts should be calculated on a verified basis, to be agreed between the UK and Scottish Governments, with a corresponding adjustment to the block grant received from the UK Government in line with the principles set out in paragraph 95.	13
85	All other aspects of VAT will remain reserved	

3.3.1 Clause 13 relates to paragraphs 84-85 of the Smith Commission Agreement and will assign to the Scottish Government's budget the first 10 percentage points of the revenue attributable to Scotland from the standard rate of VAT. With the agreement of the Scottish Government, the UK Government proposes to go slightly further and additionally assign the first 2.5 percentage points of the revenue attributable to Scotland from the 5 per cent reduced rate.

3.3.2 VAT rates will continue to be set at a UK-wide level as recommended in the Agreement.

3.3.3 Clause 13 also includes a provision to enable HMRC to disclose information as part of the process of deciding what may be proposed as the basis for the calculation in any agreement and as part of the process of seeking to reach agreement or in operating the agreement.

3.4 Air Passenger Duty

Paragraph	Smith Commission Agreement	Clause
86	The power to charge tax on air passengers leaving Scottish airports will be devolved to the Scottish Parliament. The Scottish Government will be free to make its own arrangements with regard to the design and collection of any replacement tax, including consideration of the environmental impact.	14
87	In line with the approach taken in relation to the Scotland Act 2012, if such a tax is introduced by the Scottish Parliament to replace Air Passenger Duty (APD), the Scottish Government will reimburse the UK Government for any costs incurred in 'switching off' APD in Scotland.	
88	A fair and equitable share of associated administrative costs will be transferred to the Scottish Government. The Scottish Government's block grant will be adjusted in line with the principles set out in paragraph 95 to accommodate the devolution of APD.	

3.4.1 Clause 14 relates to paragraphs 86 to 88 of the Smith Commission Agreement on APD. Through this clause the Scottish Parliament will be given the power to charge a tax on air passengers departing from Scottish airports.

3.4.2 The clause includes provision for appointing the day when APD will be switched off in relation to Scotland.

3.4.3 Furthermore, coincident with a new tax being introduced by the Scottish Parliament, the existing APD scheme will no longer apply to such passengers.

3.5 Aggregates Levy

Paragraph	Smith Commission Agreement	Clause
89	Once the current legal issues in relation to Aggregates Levy have been resolved, the power to charge tax on the commercial exploitation of aggregate in Scotland will be devolved to the Scottish Parliament. The Scottish Government will be free to make its own arrangements with regard to the design and collection of any replacement tax.	15
90	In line with the approach taken in relation to the Scotland Act 2012, if such a tax is introduced by the Scottish Parliament to replace Aggregates Levy, the Scottish Government will reimburse the UK Government for any costs incurred in 'switching off' Aggregates Levy in Scotland.	
91	A fair and equitable share of associated administrative costs will be transferred to the Scottish Government. The Scottish Government's block grant will be adjusted in line with the principles set out in paragraph 95 to accommodate the devolution of Aggregates Levy.	

3.5.1 Clause 15 relates to paragraphs 89 to 91 of the Smith Commission Agreement on the Aggregates Levy. Through this clause the power to charge tax on the commercial exploitation of aggregate in Scotland will be devolved to the Scottish Parliament. This devolution will take place once the current legal issues in relation to the Aggregates Levy have been resolved, using the commencement order making power in clause 15. These issues arise out of unresolved challenges to the lawfulness of the levy dating back to 2002.

3.5.2 Following the resolution of these challenges, the clause will enable the Aggregates Levy to be turned off for aggregate commercially exploited in Scotland (including that won from Scottish territorial waters), giving the Scottish Parliament the power to make its own arrangements with regard to the design and collection of any replacement tax on the commercial exploitation of aggregate in Scotland. This will be subject only to the requirement that any tax so introduced fully complies with EU law.

3.5.3 The UK Government will work with the Scottish Government to ensure that double taxation is avoided. This may require changes to the way that the Aggregates Levy operates in the rest of the UK. If required, these consequential changes will be made following the resolution of the legal challenges, further discussion with the Scottish Government and consultation with the quarrying sector. They are therefore not included in this draft clause.

Chapter 4: Welfare

4.1 Summary

4.1.1 Under the Smith Commission Agreement, for the first time, substantial elements of the United Kingdom's (UK) welfare system are to be devolved to Scotland. This will give the Scottish Parliament the levers it needs to make and create changes to suit Scottish circumstances, while retaining the strength, stability and economies of scale found in the UK-wide system.

4.1.2 The Smith Commission proposals, set out in the draft legislation, will devolve benefits which last year accounted for £2.5bn of spending, or around one quarter of all welfare spending outside the state pension.

4.1.3 This is a major legislative and operational change, not least because the welfare system in the UK is historically based on a common system of benefit rules, operational design and delivery. There have been a number of advantages to this, not least in terms of economies of scale, delivering value for money, managing fluctuating workloads, ensuring effective safety nets and providing certainty for people around entitlements. But the UK Government firmly recognises the advantages of devolution with some services best delivered at a local level to help ensure that they can more effectively meet individual needs and circumstances.

4.1.4 Some matters affecting welfare provision, such as housing, are already devolved to the Scottish Parliament. The UK Government, in line with the recommendations made by the Calman Commission on Scottish devolution, has also reformed the Social Fund by abolishing some of the discretionary elements, Community Care Grants and crisis loans, and devolving the funding for them.

4.1.5 The measures now taken forward from the Smith Commission Agreement will build upon the current constitutional arrangements and devolve robust administrative powers in relation to Universal Credit, as well as devolution of a significant package of welfare outside of Universal Credit. The clauses put forward in this chapter will provide powers to create new benefits or other payments in devolved areas of welfare responsibility, make discretionary payments and give the Scottish Parliament control over those employment programmes that support those at risk of long term unemployment. In addition, the Scottish Parliament will have legislative competence to pass its own laws to help disabled people into work. Having the flexibility and accountability to take more decisions on the design and structure of Scotland's welfare system will enable the Scottish Government to tailor policy to Scottish circumstances and target local needs in the way that they regard to be most effective.

4.1.6 These draft clauses meet the commitment set out in the Smith Commission Agreement. As with other draft clauses they are not complete in that there will be many consequential issues that the UK Government and the Scottish Government will work on over the coming months ahead of introduction of the Legislation to Parliament.

4.1.7 Further consideration will be given to the detailed practical aspects of devolving welfare. Key issues to be considered include how to deal with existing benefit awards, the timing of any transfer of responsibility (so as to allow time for the Scottish Government to put new arrangements in place), and the extent to which the existing links with reserved welfare benefits need to be maintained going forward. Some of the key issues are set out below, but this list is not exhaustive:

- Where entitlement to one benefit or service automatically qualifies the recipient for another benefit, payment or service (which can be within or outside the welfare system, including for example tax reductions, in particular Vehicle Exercise Duty and Value Added Tax, see page 33);
- Overlapping rules which, to avoid duplication of state or local provision for a similar purpose, cause entitlement to certain payments or the provision of certain services to cease or be reduced where they overlap with receipt of another similar payment or service;
- Cross- boundary issues, for example in respect of Carer's Allowance where the carer may live in one jurisdiction whilst caring for someone in the other jurisdiction or in respect of industrial injuries where the injury may have occurred in a different jurisdiction to the one in which the individual is resident;
- EU and international issues, for example, migrants' access to benefits, the exportability of certain benefits within the European Economic Area (Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance and Winter Fuel Payment) and elsewhere in the world (Industrial Injuries Benefits), and the interface with Immigration legislation, which remain a reserved matter; and
- Issues relating to how benefits or services are administered, for example provisions covering claims to and payments of benefits; fraud, error, recovery of overpayments and other deductions from benefit; the sharing of information and recovery of benefit from compensation payments.

4.1.8 The UK Government will need to consider with the Scottish Government how any transfer of responsibility for existing caseloads will proceed and will work together with the Scottish Government to ensure that any transition is smooth with no unintended consequences for those currently in receipt of benefits or payments.

4.1.9 A joint Ministerial Working Group on Welfare has been established to provide a forum in which UK Ministers and Scottish Ministers can discuss the operation of the new arrangements – both in advance of legislation being delivered, and also to provide a forum for discussion post Royal Assent. The Ministerial Group will ensure that both Governments are able to keep each other well informed about proposals and prepare timescales for implementation that take into account the needs of both administrations. The Ministerial Group is based on the model adopted successfully to support the delivery of taxation changes set out in the Scotland Act 2012.

4.2 Universal Credit

Paragraph	Smith Commission Agreement	Clause
43	Universal Credit (UC) will remain a reserved benefit administered and delivered by the Department for Work and Pensions (DWP). Within this framework, the Scottish Parliament will have the powers outlined in paragraphs 44 to 45 in relation to UC.	20 21
44	The Scottish Government will be given the administrative power to change the frequency of UC payments, vary the existing plans for single household payments, and pay landlords direct for housing costs in Scotland.	
45	The Scottish Parliament will have the power to vary the housing cost elements of UC, including varying the under-occupancy charge and local housing allowance rates, eligible rent, and deductions for non-dependents.	
46	The power to vary the remaining elements of UC and the earnings taper will remain reserved. Conditionality and sanctions within UC will remain reserved.	
47	Additional administration and programme costs directly associated with the exercise of the powers in paragraphs 44 to 45 will be met by the Scottish Government.	
48	Joint arrangements for the oversight of DWP development and delivery of UC, similar to those established with HM Revenue and Customs (HMRC) in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Governments.	

4.2.1 Clauses 20 and 21 relate to paragraph 44 of the Smith Commission Agreement. The clauses will give Scottish Ministers the power to make alternative payment arrangements in relation to Universal Credit. This will enable the Scottish Government to alter the frequency of payment to a Universal Credit claimant, split payments between members of a couple and decide in what circumstances the housing costs for those in rented accommodation are paid direct to the landlord.[1]

4.2.2 Universal Credit in Great Britain (GB) is currently in the process of being rolled out and as a consequence six existing income-related benefits will be abolished.[2] It is paid as a single household payment. Payment is normally made once a month into a claimant's bank account. Where Universal Credit is claimed by a couple, a single payment is normally made into a single account chosen by them. The Secretary of State will determine certain general circumstances where payment can be split between members of a couple in order to support the best interests of GB citizens. These clauses will provide the Scottish Government with the flexibility to decide in exactly what circumstances household payments should be split in this way and at what point in the claim. Similarly, that clause will provide flexibility on payment frequency, allowing the Scottish Government to determine whether and when payment should be made more

[1] The power to pay the housing costs covered by Universal Credit direct to a landlord extends to rented accommodation costs only.

[2] Working Tax Credit, Child Tax Credit, Employment and Support Allowance, Jobseeker's Allowance, Income Support and Housing Benefit.

often than the standard once a month payment (normally twice monthly or four times a month). Clause 20 will enable the Scottish Government to decide when direct payments of housing costs to landlords for rented accommodation will be made, whether from the outset of a claim or some other point.

4.2.3 Alternative Payment Arrangements can currently be considered at any point during the Universal Credit claim. They may be identified at the outset by the Jobcentre Plus work coach during a Work Search Interview, alongside Personal Budgeting Support, or during the claim, for example if the claimant is struggling with the single monthly payment. They can also be triggered by information received from the claimant, their representative, their caseworker or their landlord, advising of a build-up of rent arrears. To safeguard the claimant's home, a landlord can notify Universal Credit of a build-up of rent arrears and ask for the Universal Credit housing element to be paid direct to them where a rent arrears 'trigger' has been reached.

4.2.4 Clause 20 also relates to paragraph 45 of the Smith Commission Agreement. This clause, in addition to giving powers to determine when direct payments may be made to landlords, will enable Scottish Ministers to vary the housing costs covered by Universal Credit for people in rented accommodation, including varying or removing the under-occupancy charge, and deductions for non-dependents.

4.2.5 The maximum amount of Universal Credit a claimant can receive[3] is determined by their circumstances, including whether they have children, are sick or disabled, are a carer, have childcare costs, or have housing costs. The Universal Credit payment is then determined by applying a single income test to this maximum amount. The Universal Credit calculation and payment cannot be disentangled into separate components. For that reason the powers in Clause 20 will enable Scottish Ministers to vary the amounts used to calculate how much support for housing costs should be included in the maximum amount, before the income test is applied. These powers relate to the calculation of housing costs covered by Universal Credit for social sector and private sector renters.

4.2.6 Scottish Ministers will have the power to decide in what circumstances an under-occupancy charge will be made, and at what percentage reduction rate from the housing costs covered by Universal Credit for social sector tenants. This means that Scottish Ministers will be able to decide whether to apply any under-occupancy reductions[4], or to choose to set them at different levels and provide for an extra room for certain groups of claimants. They will also be able to decide on the level of any deductions for non-dependents and whether to introduce further categories of exemption from the non-dependent deductions. In calculating the amount of rent to be included in the housing costs calculation the Clause will enable Scottish Ministers to decide in what circumstances the level of rents charged by social sector landlords would be considered excessive. For private sector tenants they would be able to vary the local housing allowance rates by varying the manner in which the maximum level of housing support is set.

[3] Chapter 1, Welfare Reform Act 2012.

[4] Set to zero or above, depending on whether the rate should be reduced to 0%, to offset in full the removal of the spare room subsidy.

4.2.7 The matters described in paragraphs 44 and 45 of the Smith Commission Agreement are all governed by regulations made by the UK Government. Therefore, the clauses have the effect of conferring equivalent powers on Scottish Ministers, who will be accountable to the Scottish Parliament for the manner in which they are exercised. These powers will enable both the UK Government, which retains overall responsibility for Universal Credit, and the Scottish Government (where Scottish Ministers have the power) to introduce regulations for Scotland, reflecting the arrangement envisaged by the Smith Commission Agreement that the UK Government should continue to be able to develop and initiate policy changes for Universal Credit without overriding or undermining any decisions made by the Scottish Government.

4.2.8 Universal Credit will remain reserved, and be delivered by DWP across Great Britain, so there will be a need for arrangements to enable smooth administration and liaison between the two governments. In particular it will be important to ensure that any variations that Scottish Ministers wish to make are deliverable and to determine when these might be delivered. For this reason both clauses require Scottish Ministers to consult the Secretary of State so that he can ensure the deliverability of any changes that the Scottish Government wish to take forward. The date on which such changes are brought into effect must also be agreed with the Secretary of State, to ensure that a timescale for delivering changes in Scotland can be discussed and agreed as a part of DWP's overall delivery plan. The clauses make it clear that the Secretary of State could not unreasonably withhold his agreement. Similarly, the clauses also contain an obligation on the part of the Secretary of State for Work and Pensions to consult Scottish Ministers before making regulations that relate to any of the matters in paragraphs 44 and 45 of the Smith Commission Agreement so far as they relate to Scotland.

4.3 Further Devolved Welfare

Paragraph	Smith Commission Agreement	Clause
49	Powers over the following benefits in Scotland will be devolved to the Scottish Parliament: (1) Benefits for carers, disabled people and those who are ill: Attendance Allowance, Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance. (2) Benefits which currently comprise the Regulated Social Fund: Cold Weather Payment, Funeral Payment, Sure Start Maternity Grant and Winter Fuel Payment. (3) Discretionary Housing Payments.	16 17 18 19
50	New arrangements for how Motability will operate in Scotland for DLA/PIP claimants will be agreed between the Scottish and UK Governments.	
51	The Scottish Parliament will have complete autonomy in determining the structure and value of the benefits at paragraph 49 or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.	
52	In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied set out by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland will be transferred to the Scottish Government.	
54	The Scottish Parliament will have new powers to create new benefits in areas of devolved responsibility, in line with the funding principles set out in paragraph 95. The Scottish Parliament will also have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP. In addition it may seek agreement from DWP for the Department to deliver those discretionary payments on behalf of the Scottish Government. All administration and programme costs directly associated with the exercise of this power (either as a result of changes to existing systems or the introduction of new systems) will be met by the Scottish Government in line with the funding principles set out in paragraph 95.	
55	Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment.	
56	The UK Government's Benefit Cap will also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides.	

Benefits for carers, disabled people and those who are ill

4.3.1 Clause 16 relates to paragraph 49(1) of the Smith Commission Agreement. The clause amends the current exceptions to the reservation on social security to provide the Scottish Parliament with legislative competence over provision for disability, carers and industrial injuries benefits which are not income or capital-related, or contributory. This provides the Scottish Parliament with legislative competence for provisions currently covered by Attendance Allowance, Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Industrial Injuries benefits[5] as outlined in paragraph 49(1). At the same time other benefits which provide support to carers and disabled people such as Employment and Support Allowance (the income-related element of which will be replaced by Universal Credit) remain reserved. The Scottish Parliament will have the power to create new benefits or other payments to replace the existing benefits should they wish and the autonomy to determine the structure and value of these as set out in paragraph 54 of the Smith Commission Agreement.

4.3.2 DLA for people aged 16-64 is currently in the process of being replaced by PIP, which the UK Government is implementing in a staged manner. The draft clauses will ensure full devolution to Scotland of both DLA and PIP. However until such time as devolution has taken place and the Scottish Parliament and Government have put in place any new arrangements, claimants in Scotland, like those in the rest of GB, will continue to receive support through either DLA or PIP in accordance with existing legislation and plans.

4.3.3 In the case of Severe Disablement Allowance[6] (SDA), Clause 16 amends the current exceptions to the reservation on social security to provide the Scottish Parliament with full legislative competence over the provision of SDA or a like benefit for those claimants who remain eligible for the benefit at the point devolution commences.

4.3.4 This is because SDA has been closed to new claims since 2001 and existing claimants below state pension age have been, or are in the process of being, reassessed for eligibility to Employment and Support Allowance, which remains reserved to the UK Government. The Scottish Parliament will have the power to create new benefits or other payments to replace SDA for those claimants should they wish and the autonomy to determine the structure and value of this provision, as per paragraph 54 of the Smith Commission Agreement.

4.3.5 In line with the ongoing principle that matters relating to naval, military or air forces of the Crown remain a reserved matter for the UK Government, any schemes relating to payments in the form of pensions or otherwise to be payable on termination of service or on death or retirement or disability attributable to service remain reserved under the Scotland Act 1998.

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[5] The Smith Commission Agreement, paragraph 49(1) referred to devolution of "Industrial Injuries Disablement Allowance". This is not at term used by the UK Government. Instead the Government uses the term Industrial Injuries Benefits (IIBs) to describe those benefits paid as a consequence of workplace prescribed disease or injury.

[6] Severe Disablement Allowance (SDA) is the non-contributory equivalent of Incapacity Benefit. SDA has been closed to new claims since 2001. In October 2008, Employment and Support Allowance (ESA) replaced Incapacity Benefit, SDA and Income Support paid on grounds of incapacity for new claims only. The Government is currently running a programme to reassess existing SDA claimants below state pension age for eligibility for ESA. When a person reaches state pension age they can claim State Pension, which may end entitlement to SDA.

Regulated Social Fund

4.3.6 In respect of paragraph 49(2), clause 17 amends the current exceptions to the reservation on social security to provide the Scottish Parliament with legislative competence over the subject matter of the Regulated Social Fund. The Regulated Social Fund is defined as providing financial assistance for the purposes of meeting maternity expenses (Sure Start Maternity Grants); funeral expenses (Funeral Payments); and expenses for heating incurred due to cold weather (Cold Weather Payments and Winter Fuel Payments). The Scottish Parliament will have the power to create new benefits or other payments to replace the existing benefits should they wish and the autonomy to determine the structure and value of these payments, as set out in paragraph 54 of the Smith Commission Agreement. This will enable the Scottish Government to adapt the level of support it provides to better meet Scotland's needs.

Discretionary Housing Payments

4.3.7 Clause 19 relates to paragraph 49(3) of the Smith Commission Agreement. The clause will devolve legislative competence in relation to Discretionary Housing Payments (DHP), subject to certain restrictions similar to those that already exist in respect of DHPs. This follows on from the recent devolution of the cap on DHP expenditure that has enabled Scottish Local Authorities to add more resources to their DHP budget in order to support people who need extra help with their housing costs. This will give the Scottish Government the power to support people in receipt of Housing Benefit, or those entitled to have their housing costs covered by Universal Credit, with their housing costs. It will provide the Scottish Parliament with the flexibility to provide assistance to Scottish claimants, tailored to local circumstances.

Motability

4.3.8 The Motability scheme enables disabled people to lease a new car, scooter or powered wheelchair. Motability is not a UK Government-run scheme; it is directed and overseen by Motability, an independent charity formed in 1977 and granted a Royal Charter in 1988. The scheme is available to people who receive one of the following:

- Higher Rate Mobility Component of Disability Living Allowance;
- Enhanced Rate of the Mobility Component of Personal Independence Payment;
- War Pensioners' Mobility Supplement; or
- Armed Forces Independence Payment.

4.3.9 DWP does not pay Motability to provide the vehicles; it facilitates the transfer of funds, which the claimant has signed over to Motability. Motability also administers the Specialised Vehicles Fund on behalf of the UK Government. The Fund provides grants towards the cost of complex vehicle adaptations. The UK Government and the Scottish Government will need to work together with Motability and other stakeholders on any proposals arising from the devolution of provisions for disability.

Benefit creation and discretionary payments

4.3.10 Paragraph 54 of the Smith Commission Agreement sets out that the Scottish Parliament will have "powers to create new benefits in areas of devolved responsibility". These powers are conferred by clauses 16 (disability and carer's benefits), 17 (Regulated Social Fund) and 19 (discretionary housing payments). By amending the reservation to provide legislative competence the Scottish Parliament will be able to replace those benefits and payments for which powers are being devolved with any of its own design as long as they specifically relate to areas of welfare responsibility that are devolved. This will enable the Scottish Government to introduce new benefits or payments in devolved areas of competence, tailored specifically to Scottish circumstances.

4.3.11 Clause 18 relates to paragraph 54 of the Smith Commission Agreement. This clause expands the current exception to the reservation relating to the Scottish Welfare Fund and gives power to the Scottish Parliament to legislate to introduce discretionary payments to Scottish claimants, beyond the areas set out for further devolution or those areas already devolved. These payments can be made in any area of welfare, though the Smith Commission Agreement is clear that they must be discretionary. For this reason, the clause provides for a power to make a payment to meet a short term need to avoid risk to the well-being of an individual. This means that the Scottish Government will be able to make payments to individuals on a case-by-case basis, but will not have the power to create permanent entitlement to any new payments beyond the scope of the devolved benefits described earlier.

4.3.12 The Smith Commission Agreement sets out at paragraph 55 that any new benefit or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment. The UK Government agrees with the principle of not automatically off-setting new benefits with reductions elsewhere. The UK Government will therefore consider the introduction of new benefits or discretionary payments on an individual basis, to ensure the implications of any changes are assessed appropriately, and to enable the development of tailored legislation, where appropriate.

Benefit Cap

4.3.13 Paragraph 56 of the Smith Commission Agreement makes clear that the household benefit cap, which caps the total level of payments per household, should not include any additional benefit payments provided by the Scottish Government. Therefore, while this requires no legislation and so is not covered by the draft clauses, the UK Government will ensure that if Scottish Ministers were to increase the amount of a payment in relation to any benefit included within the cap, then the additional amount provided by the Scottish Government would be disregarded for the purposes of the cap, and only the amount of the payment equivalent to that provided by the UK Government would be subject to the cap.

4.4 Employment Support

Paragraph	Smith Commission Agreement	Clause
57	The Scottish Parliament will have all powers over support for unemployed people through the employment programmes currently contracted by DWP (which are presently delivered mainly, but not exclusively, through the Work Programme and Work Choice) on expiry of the current commercial arrangements. The Scottish Parliament will have the power to decide how it operates these core employment support services. Funding for these services will be transferred from the UK Parliament in line with the principles set out in paragraph 95.	22

4.4.1 Clause 22 relates to paragraph 57 of the Smith Commission Agreement. The draft clause makes provision to give the Scottish Parliament legislative competence to pass its own laws in relation to making employment schemes to assist those at risk of becoming long-term unemployed, and to help disabled people into work.

4.4.2 Scottish Ministers and UK Ministers will each be able to use powers in existing legislation (section 2 of the Employment and Training Act and section 17B of the Jobseekers Act) to establish employment programmes in the area devolved to the Scottish Parliament.

4.4.3 The Scottish Parliament will have the competence to create powers which enable the design of new employment programmes – for example through work search support, provision of skills and training, and community placements, or through other new techniques. Any support provided by the Scottish Government for those at risk of long-term unemployment must assist the claimant for at least one year in order to ensure a robust approach to tackling unemployment.

4.4.4 This arrangement is similar to the existing approach to training for employment, which was devolved to the Scottish Parliament under the Scotland Act 1998. As with the draft clause in relation to employment programmes, the Scottish Parliament has legislative competence in relation to training for employment and both the Scottish and UK Government have executive competence in the devolved area. The clause does not affect UK Ministers' broader powers which enable them to ensure that appropriate support is available at every stage of the claimant journey, including core Jobcentre Plus functions which remain reserved, as is set out in the Smith Commission Agreement.

4.4.5 This is a substantial transferral of power. The Scottish Parliament may choose to create powers for similar functions to those which the UK Government delivers in this area of competence, which currently attracts over 95% of funding for centrally contracted employment programmes.

4.4.6 As stated in the Smith Commission Agreement, conditionality and sanctions will remain reserved, including the ability to make mandatory referrals to Scottish Government programmes. The Scottish Government may also choose to offer support to those who are eligible to take part in any scheme of their making.

4.4.7 The Scottish Parliament will have the ability to legislate for the creation of schemes as defined in the draft clause. Separate Scottish schemes will therefore need to be coordinated with the UK-wide system of employment support (as currently delivered by Jobcentre Plus, which the Smith Commission Agreement recommended remain a

reserved matter). Scottish Ministers and UK Ministers will therefore need to work together in the design phase of the new programmes to ensure that both systems will work coherently together in the best interests of claimants.

4.4.8 To ensure that Scottish and UK designed schemes both operate successfully as intended, and work together coherently in the best interest of claimants, it will be essential for both the UK and Scottish Governments to work closely together in the design, implementation and operation of their respective programmes, to ensure that claimants can transition smoothly from one system to the other. Such discussions will be facilitated through forums such as the Joint Ministerial Working Group on Welfare and at an operational level through established local partnerships.

Chapter 5: Public bodies, executive agencies and the Crown Estate

5.1 Summary

5.1.1 Regulatory bodies in the United Kingdom (UK) oversee the strategic direction of particular industries, setting parameters for activities and ensuring quality in their delivery. Regulating a variety of entities, from internationally renowned broadcasting services to highly specialised industry organisations, these independent bodies ensure that particular sectors operate according to set principles with input and oversight from the UK Government and Devolved Administrations.

5.1.2 The Scottish Government and Scottish Parliament have long played a role in informing and contributing to UK and Great Britain (GB) public bodies and executive agencies. In some cases this relationship is formal in nature, in others this involvement has grown up organically and is on a more informal basis.

5.1.3 The Smith Commission Agreement suggests a formalised role for the Scottish Government and the Scottish Parliament with regard to a number of public bodies and executive agencies. A consultative role for Scottish Ministers will ensure that consideration of Scottish specific issues is hardwired into the governance of those organisations that provide UK or GB-wide services. The UK Government will work with the Scottish Parliament and the Scottish Government to devise a proportionate and workable method of consulting the Scottish Parliament on this range of issues.

5.1.4 The organisations referenced in the Agreement for formalised Scottish Government and Scottish Parliament participation cut across a variety of sectors, encompassing broadcasting, communications, transport, energy and the Crown Estate (subject to the carve out that will guarantee defence interests). The agreement increases and formalises Scottish involvement, with some or all of the following for each body: a formal consultative role for the Scottish Government and the Scottish Parliament, the power to approve or make certain appointments, and the requirement for annual reports and accounts to be laid before the Scottish Parliament. These prescribed responsibilities will ensure specific scrutiny and representation is afforded to Scottish issues.

5.2 Broadcasting and Communications

Paragraph	Smith Commission Agreement	Clause
36-38	There will be a formal consultative role for the Scottish Government and the Scottish Parliament in the process of reviewing the BBC's Charter. The BBC will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament in relation to matters relating to Scotland in the same way as it does in the UK Parliament. The power to approve OFCOM appointments to the board of MG Alba will rest solely with Scottish Ministers. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for OFCOM with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a Scottish member to the OFCOM Board who is capable of representing the interests of Scotland. OFCOM will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.	34 43 44

5.2.1 Paragraph 36 of the Smith Commission Agreement, which relates to the relationship between the British Broadcasting Corporation (BBC) and the Scottish Government and Scottish Parliament, will be enacted by Memorandum of Understanding (MoU). This MoU, entered into by the UK Government, Scottish Government, Scottish Parliament and the BBC, will fulfil the Agreement's proposal by setting out commitments that guarantee a full consultative role for the Scottish Government and Scottish Parliament in the review of the Royal Charter[1] and the on going scrutiny of the BBC.

5.2.2 The commitments outlined in the MoU will be:

- A commitment on the UK Government to consult with the Scottish Government and Scottish Parliament before recommending that any Royal Charter on the BBC is granted, and detail concerning the terms of engagement throughout the review process;
- A commitment from the BBC to send its annual report and accounts to the Scottish Government and a commitment from the Scottish Government to lay these before the Scottish Parliament;
- A commitment from the BBC to appear before Scottish Parliament committees on matters relating to Scotland; and
- A commitment to enshrine all the above in the next Charter.

5.2.3 Setting this out in an MoU, rather than draft clauses, ensures that the BBC's integrity and independence is secured by keeping its governance and constitutional arrangements off the statute books. Importantly, delivering this commitment by MoU will ensure that the Scottish Government and Scottish Parliament are able to have a consultative role in time for the next Charter Review, which is due to commence after the 2015 General Election; any draft clauses in this respect, setting out a formal role for the Scottish Government,

[1] The BBC is established by Royal Charter. The Charter sets out how the BBC is constituted, its purposes, and the respective roles of the BBC Trust and the Executive Board. The current Royal Charter expires on 31 December 2016, and the next 'Charter Review' is due to commence after the May 2015 General Election.

would necessarily come into force too late to guarantee such an involvement. Furthermore, the process, timing and scope of the review of the BBC's Charter are not set out in statute.

5.2.4 Clause 34 refers to paragraph 37 of the Smith Commission Agreement and the power of Scottish Ministers to approve Office of Communications (Ofcom) appointments to the board of MG Alba. The clause will transfer responsibility for appointing members solely to Scottish Ministers, securing their strategic oversight in the Gaelic Media Service, and the contribution it makes to an internationally respected British broadcasting service. The transference of sole determination over these appointments will be achieved through removal of references to the Secretary of State in section 183A(4) and (6)(b) of the Broadcasting Act 1990 as delivered through clause 34. As the UK Government will continue to directly fund MG Alba until 2015-16, the Secretary of State will retain the requirement to lay a copy of the Service's annual report before the UK Parliament so that it is able to scrutinise appropriately.[2]

5.2.5 Paragraph 38 of the Smith Commission Agreement relates to the relationship between Ofcom and the Scottish Government and Scottish Parliament. This recommendation will be delivered through clause 43 and an MoU that together will establish a formal consultative role for the Scottish Government and the Scottish Parliament with respect to the activities of, and appointments to, Ofcom in Scotland.

5.2.6 Ofcom, as the UK-wide independent communications regulator overseeing television, radio, telecoms, mobiles, postal services and the airwaves, is currently subject to a number of statutory requirements that ensure Scottish interests retain salience. The Communications Act 2003 requires Ofcom to establish an office in Scotland, and to ensure that members capable of representing the interest and opinions of persons living in Scotland are appointed to their Consumer Panel, Content Board and advisory committee for Scotland.

5.2.7 The draft clause will amend the Office of Communications Act 2002 (the 2002 Act) to confer the power on Scottish Ministers to appoint one member of Ofcom who is capable of representing the interests of Scotland. Prior to any appointment, the Scottish Government will be required to consult with the Secretary of State. This will enable the Secretary of State to ensure that the Board will function effectively as a whole. The appointment will be subject to the existing regulatory framework for appointments to the boards of public bodies, which is set out in the Code of Practice issued by the Commissioner for Public Appointments.[3] The appointee will have the same UK-wide responsibilities as other non-executive members of Ofcom. The clause will additionally amend the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom's statement of accounts to Scottish Ministers to be laid before the Scottish Parliament, and to require Ofcom to send a copy of its annual report to Scottish Ministers to be laid before the Scottish Parliament.

5.2.8 The formal consultative role for the Scottish Government and the Scottish Parliament in the setting of Ofcom's strategic priorities will be achieved through an MoU between the UK Government, Scottish Government, the Scottish Parliament and Ofcom. The MoU will commit Ofcom to consulting the UK Government, the Scottish Government and the Scottish Parliament on their draft annual plan, which sets out Ofcom's strategic priorities for the year ahead. An MoU is the best means of providing clarity and certainty about how the different parties will be consulted on the setting of Ofcom's strategic priorities.

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[2] In August 2014, the UK Government announced that it would be doubling its funding for MG Alba for 2014-16

[3] http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice/

This is because, due to Ofcom's independence from Government, the Secretary of State currently has no statutory role in the setting of Ofcom's strategic priorities and it is therefore not possible to give a statutory underpinning to a formal consultative role for the Scottish Government or Scottish Parliament.

5.3 Maritime Bodies

Paragraph	Smith Commission Agreement	Clause
39-40	There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for the Maritime and Coastguard Agency (MCA) with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a Scottish member to the MCA's Advisory Board who is capable of representing the interests of Scotland. The MCA will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for the Northern Lighthouse Board (NLB) with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a further Scottish Northern Lighthouse commissioner. The NLB will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.	35 36 44

5.3.1 Clauses 36 and 35 relate to paragraphs 39 and 40 of the Smith Commission Agreement and the Scottish Government and Scottish Parliament's role with respect to the activities of two maritime bodies, the Maritime Coastguard Authority (MCA) and the Northern Lighthouse Board (NLB), in Scotland. The clauses will give the Scottish Government and Scottish Parliament a greater role in setting strategic priorities for both bodies in respect of their activities in Scotland, and afford representation of specific Scottish interests.

5.3.2 The Commissioners of Northern Lighthouses (known also as the Northern Lighthouse Board, or the NLB) is the lighthouse authority for Scotland and the Isle of Man and is responsible for delivering a reliable, efficient and cost-effective network of aids to navigation (including lighthouses, buoys and beacons) in these areas.

5.3.3 An amendment to paragraph 1(2) of Schedule 8 to the Merchant Shipping Act 1995 (the 1995 Act) will enable Scottish Ministers to appoint one Commissioner directly to the NLB's Board. The board sets the strategic priorities for the organisation, and this new power will provide that Scottish interests will be fully represented in the delivery of NLB functions in Scotland. A further amendment provides the Secretary of State with an equivalent power to directly appoint a Commissioner to the Board; formalising in legislation what is currently an administrative arrangement.

5.3.4 All appointments will continue to be made in accordance with the broad principles outlined in the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies.

5.3.5 Additionally, an insertion into Schedule 8 of the 1995 Act places a duty on the NLB to provide copies of its annual accounts to Scottish Ministers who will lay them before the Scottish Parliament, giving full visibility of the NLB's activities in Scotland for the

preceding year. Changes to the Scotland Act 1998 (the 1998 Act) through clause 44 will ensure that individuals within the NLB can be required to appear before, and submit specific reports to, the Scottish Parliament.

5.3.6 The MCA is an executive agency of the Department for Transport responsible for the prevention of the loss of lives at sea and implementing British and international maritime law and safety policy throughout the UK. The MCA fulfils the responsibilities of the Secretary of State for Transport, which are set out in the Coastguard Act 1925 (the 1925 Act) and the 1995 Act.

5.3.7 Clause 36 amends the 1925 and 1995 Acts, placing new duties on the Secretary of State to consult Scottish Ministers when setting the strategic priorities for the MCA with respect to the MCA's activities in Scotland. The MCA will continue to operate freely in cases of incident and emergency, so the duty to consult does not apply to its day-to-day or operational functions.

5.3.8 An MoU will help set out the practical arrangements for the consultative role, and will contain an obligation for the MCA to provide copies of its annual accounts to Scottish Ministers to lay before the Scottish Parliament, giving both greater visibility of the MCA's activities in this part of the UK. The MoU will reflect the new ability for Scottish Ministers to appoint a member to MCA's Advisory Board who is capable of representing Scottish interests. It will also make clear the expectation that individuals from the MCA may be required to appear before, and submit reports to, the Scottish Parliament.

5.4 Energy

Paragraph	Smith Commission Agreement	Clause
41	There will be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which OFGEM must have due regard. OFGEM will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.	42 44

5.4.1 Clause 42 relates to paragraph 41 of the Smith Commission Agreement concerning the role for the Scottish Government and Scottish Parliament in relation to the Office of Gas and Electricity Markets (Ofgem).

5.4.2 There are already provisions concerning the consultation of Scottish Ministers on the Strategy and Policy Statement. The UK Government will work with the Scottish Parliament and Scottish Government to devise a proportionate and workable method of consulting the Scottish Parliament on the strategic priorities set out in the Energy Strategy and Policy statement (SPS). According to section 132 of the Energy Act 2013, Ofgem must have regard to the government's strategic priorities set out in the SPS when carrying out regulatory functions.

5.4.3 The clause requires Scottish Ministers to lay Ofgem's annual report and accounts before the Scottish Parliament, and therefore ensures that copies will be provided to Scottish Ministers.

5.4.4 Clause 44 gives effect to the commitment to ensure that Ofgem will appear before committees of the Scottish Parliament on Scottish issues.

5.4.5 Further details of the role of the Scottish Government in designing renewable incentives can be found at paragraph 8.4.

5.5 Crown Estate

Paragraph	Smith Commission Agreement	Clause
32-35	Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible. Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole. Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.	23

5.5.1 Clause 23 relates to paragraphs 32 to 35 of the Smith Commission Agreement and the Crown Estate in Scotland. Those paragraphs provide for the management and revenue of Crown Estate assets in Scotland to be transferred to the Scottish Parliament, for management responsibility to be further devolved within Scotland, and a MoU between the Scottish and UK Governments to protect strategic UK-wide critical national infrastructure (such as defence & security and oil & gas and energy) to be achieved.

5.5.2 The Crown Estate is an independent commercial public body with responsibility for managing and turning to account Crown property forming part of the estate. Under present law, the management of the Crown Estate is a reserved matter, with the Scottish Parliament unable to legislate in relation to it. New powers will be given to the Scottish Government by a transfer scheme ("the scheme"), transferring in a single transfer the Crown Estate Commissioners' ("the Commissioners") functions of managing wholly-owned Scottish property assets currently forming part of the Crown Estate ("the Scottish assets"). It will remain possible for the Crown Estate to make investments in Scotland and the management of any such investment by the Crown Estate in property in Scotland after the transfer will remain a reserved matter. Defence will also remain a reserved matter and current and future Defence utilisation of Crown property assets will be given legal protection.

5.5.3 The transfer of responsibility for the management of the Scottish assets will include control of any revenues arising from those assets as well as responsibility for managing all liabilities relating to those assets, including responsibility for ensuring the decommissioning of offshore renewable energy installations in Scottish waters under the Energy Act 2004 and declaring safety zones in Scottish waters and the Scottish Renewable Energy Zone. UK Government will consider further the most appropriate

means to achieve this and whether to make provision in the Scotland Bill or on an order under the 1998 Act.

5.5.4 The scheme has been chosen for a number of reasons. Firstly, it will enable the rights and liabilities that are transferring to be identified in detail so that the 'starting point' for the management of the Scottish assets in Scotland is made clear in a public manner. Secondly, it will enable provision to be made for the protection of strategic UK assets. Thirdly, the scheme will include provision for the protection of the employment rights of those Crown Estate staff who are connected with the management of the Scottish assets. This is essential to ensure that the Commissioners are able to transfer a viable ongoing enterprise.

5.5.5 With the approval of the Scottish Ministers, the Treasury may make a transfer scheme in relation to the management of the Scottish assets. The transfer is to the Scottish Ministers or a person nominated by them. As property of the Crown these assets will continue to be owned by Her Majesty in right of the Crown.

5.5.6 The scheme will transfer the rights and liabilities associated with management, which will be designated by the scheme, and must include provision to secure that the employment of Crown Estate staff is not adversely affected by the transfers. The scheme must also include such provision as the Treasury considers necessary or expedient in the interests of defence or national security. The transfer scheme is subject to those provisions. The purpose of these provisions is to ensure that the transfer is not detrimental to the defence of the realm or the interests of UK-wide national security.

5.5.7 Once the transfer scheme takes effect, the revenue from the Scottish assets will be paid into the Scottish Consolidated Fund.

5.5.8 The scheme will also transfer to the Scottish Parliament competence to legislate about the management of the Scottish assets. The 1998 Act will be amended to achieve this.

5.5.9 The Scottish and UK Governments will draw up an MoU. The MoU will include further detail on the legal protections for defence or national security as well as providing that the transfer of management responsibility for the Crown Estate is not detrimental to UK-wide critical national infrastructure in relation to matters such as oil and gas, telecommunications and energy, thereby safeguarding the importance of the Crown Estate's foreshore and seabed assets to the UK as a whole. The MoU will establish a framework of co-operation between its signatories, delivering the Smith Commission Agreement's recommendations whilst securing UK-wide provisions.

5.5.10 In order to ensure that telecommunications provisions continue to be valid upon Crown property following any change in responsibility or ownership, legislation will clarify that the current system in place across the UK will continue to apply in Scotland. This legislative approach will be undertaken in addition to developing the above MoU. And in view of the possibility of future changes to the charging regime for offshore pipeline or electricity network rentals by the New Manager, provision will be made for the transfer scheme to provide safeguards for the principle that taxation of oil and gas receipts should remain reserved, and that consumers across GB should be protected from any excessive rents for energy infrastructure.

5.5.11 The scheme will transfer the Commissioners' functions under the Crown Estate Act 1961. However, the intention is to transfer to the Scottish Parliament competence to legislate about the management of the Scottish assets before the transfer scheme. The Crown Estate Act 1961 will, therefore, only apply if the Scottish Parliament is unable to legislate before the transfer takes effect.

Chapter 6:
Civil protections and advice

6.1 Summary

6.1.1 An assemblage of legislation, specialist public bodies, and common business regulations operates across the country to safeguard civilians in their employment, as consumers, and in business. This is a key strength of the United Kingdom (UK), benefiting citizens across the nations. The draft clauses covered below recognise the importance of these shared benefits and simultaneously set out the legislative devolution of specific aspects of equalities, and consumer advocacy and advice to the Scottish Parliament, and executive devolution of gambling to Scottish Ministers. This will allow these bodies to be increasingly responsive to Scottish issues within a durable common system of social protection and guidance. The clauses also set out how the powers relating to Tribunals will be devolved.

6.1.2 The powers of the Scottish Parliament and Scottish Government in this domain are well established; for some of these issues, such as equalities, the Scottish Government and Scottish Parliament have exercised devolved competencies for a number of years.

6.1.3 The specific recommendations set out in the Agreement span a range of measures, including the power to operate certain tribunals and consumer advocacy and advice services, to legislate on equal opportunities, to require the Competition and Markets Authority (CMA) to undertake market investigations, and to prevent the proliferation of high-staking gambling terminals and payday loan shops.

6.2 Equalities

Paragraph	Smith Commission Agreement	Clause
60	The Equality Act 2010 will remain reserved. The powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland. The Scottish Parliament can legislate in relation to socio-economic rights in devolved areas.	24

6.2.1 Clause 24 relates to paragraph 60 of the Smith Commission Agreement and the role of the Scottish Parliament in relation to equalities. The clause will devolve to the Scottish Parliament the power to legislate on equalities in respect of public bodies in Scotland, which will include but not be limited to the introduction of gender quotas and the consideration of socio-economic inequality when making strategic decisions. This power will enable the Scottish Parliament, by imposing new requirements on public bodies in

Scotland,[1] to introduce new protections for employees and customers of those bodies with regards to their devolved functions. However, the Scottish Parliament will not be able to lower the protections found in the Equality Act 2010.

6.2.2 Scottish Ministers exercise a number of executive competencies in relation to equalities under the Equalities Act 2010. Scottish Ministers may encourage equal opportunities, and the observance of equal opportunity requirements, by developing and implementing policies that promote the equalities position set out by the UK Government; and Scottish Ministers can impose duties on public office-holders and authorities to meet the equal opportunities requirements, a power that has been used regularly by Scottish Ministers across a number of devolved areas. Scottish Ministers also have executive powers in several additional areas including the power to prescribe which Scottish public bodies are subject to the public sector equality duty.

6.2.3 The power to legislate on equal opportunities in relation to Scottish public authorities and cross-border public authorities with Scottish functions will be delivered to the Scottish Parliament through specific exceptions to paragraph L2 in Schedule 5 of the Scotland Act 1998 (the 1998 Act).

6.3 Tribunals

Paragraph	Smith Commission Agreement	Clause
63	All powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.	25
64	Despite paragraph 63, the laws providing for the underlying reserved substantive rights and duties will continue to remain reserved (although they may be applied by the newly devolved tribunals).	

6.3.1 Clause 25 delivers paragraphs 63-64 of the Smith Commission Agreement in relation to tribunals dealing with reserved matters in Scotland. While the underlying reserved rights and duties will continue to be reserved, the clause provides the mechanism for the transfer of functions from reserved tribunals to Scottish tribunals. Doing so will enable the Scottish Parliament to exercise powers relating to those tribunals, including decisions concerning rules of procedure, membership, administration and funding. However, in order to ensure the continuing effective delivery of the overarching national policy (which remains reserved to Westminster) these powers may be subject to specific constraints and requirements. This will also ensure that paragraph 64 of the Smith Commission Agreement, which reserves the underlying rights and duties, is also given effect.

6.3.2 The clause provides for powers to Her Majesty to make an Order of Council, which will give effect to the transfer of functions from a specified reserved tribunal to a specified Scottish tribunal according to the implementation timetable that will be agreed between the UK and Scottish Governments. A draft of each Order will have to be laid before and

[1] 'Public bodies in Scotland' encompasses:

a. Scottish public bodies with solely devolved functions;

b. Scottish public bodies with reserved and devolved functions, only in relation to their devolved functions; and

c. Cross border public authorities (as listed in Schedule 1 to SI 1999/1319) operating in Scotland, only in relation to any Scottish functions.

approved by both the UK and Scottish Parliaments. Until an Order in Council is approved competence will not be transferred.

6.3.3 The underlying substantive law which creates rights of access to tribunals will continue to be reserved. Matters critical to the delivery of reserved policy will continue to be reserved to Westminster to the extent that the relevant Order in Council so provides. These matters are likely to differ between tribunals depending on the reserved policy area and will be set out in the relevant Order in Council transferring competence for each affected area. This will also ensure that paragraph 64 of the Smith Commission Agreement, which reserves the underlying rights and duties, is given effect. It will provide that functions relevant to the delivery of reserved policies continue to remain reserved. It will ensure that procedures across Great Britain do not harm the delivery of policy in reserved areas.

6.3.4 Each Order in Council will set out the precise nature of the matters that will be able to be heard, the specific tribunal within the devolved system that will be responsible for hearing those matters and also any limits, constraints and requirements on the exercise of the powers transferred that are necessary to ensure the continuing effective delivery of the overarching national policy. In this context, the UK Government will have the ability to ensure that appropriate procedural provisions are made to ensure that devolved tribunals maintain consistency with certain features of the reserved tribunal system that are required to support the enforcement of policy. The Order in Council will also provide a vehicle for promoting judicial cooperation to maintain consistency of tribunal practice and procedure.

6.3.5 The Smith Commission Agreement specified that the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission would remain reserved and therefore these are specifically excluded from the scope of the clause. This was on the basis that these are specialist tribunals that decide on matters that have implications for national security of the United Kingdom as a whole and where it is therefore essential that a single national appellate body is maintained. Similar considerations apply to the Pathogens Access Appeals Commission and the Investigatory Powers Tribunal and these are, therefore, also excluded from the scope of the clause. To the extent that national security matters may be handled by any other tribunal, whether generally, or in specific individuals cases only, these will also continue to be reserved.

6.3.6 The transfer of tribunal functions in these areas will be accompanied by an appropriate transfer of existing resources involved in maintaining those tribunals. The clause will not be used to transfer competence where a particular tribunal has never been constituted as there could be no accompanying resource transfer in such matters. Nor would it be used where a particular tribunal is an integral part of a national regulatory body operating in a reserved area where it also provides an appellate function intrinsically linked to its regulatory function. In these cases, the relevant area will also remain reserved.

6.3.7 The UK Government and the Scottish Government will need to discuss the application of this clause to relevant tribunals that sit in Scotland, for example, tribunals dealing with social security, criminal injuries and information rights. These discussions will need to include extensive engagement with the judiciary in both Scotland and England and Wales.

6.4 Competition

Paragraph	Smith Commission Agreement	Clause
71	Scottish Ministers already have the ability to request that a UK regulatory body carry out a market study of their area of responsibility to examine particular competition issues arising in Scotland. Scottish Ministers will also have the power to require the Competition and Markets Authority to carry out a full second phase investigation (in the same way as UK Ministers), after such an initial study has been completed, in relation to particular competition issues arising in Scotland.	41

6.4.1 Clause 41 relates to paragraph 71 of the Smith Commission Agreement and the ability of Scottish Ministers to require that the CMA undertakes a market investigation. The clause will devolve executive functions to Scottish Ministers enabling them, acting with the Secretary of State, to require the CMA to carry out a market investigation. This will provide Scottish Ministers with a power to make references equivalent to the power of a UK Minister of the Crown.

6.4.2 The CMA was established in April 2014 by the Enterprise and Regulatory Reform Act 2013, taking over responsibility for, amongst other things, market studies and market investigations. As set out in the Agreement, Scottish Ministers already have the ability to request that a UK regulatory body carry out a market study to examine particular competition issues arising in Scotland.

6.4.3 The clause will be achieved through an amendment to Section 132 of the Enterprise Act 2002 and will enable Scottish Ministers acting jointly with the Secretary of State, to make a market investigation reference in relation to particular goods or services. This is in line with the powers held by UK Ministers of the Crown.

6.5 Consumer Advocacy and Advice

Paragraph	Smith Commission Agreement	Clause
72	Consumer advocacy and advice will be devolved to the Scottish Parliament.	32

6.5.1 Clause 32 relates to paragraph 72 of the Smith Commission Agreement, and the devolution of consumer advocacy and advice to the Scottish Parliament. The clause will devolve legislative competence for consumer advocacy and advice in relation to general consumer matters, electricity, gas and postal services. In doing so, the Scottish Parliament will have the capacity to implement their own Scottish model of consumer advocacy and advice, tailored to the needs and expectations of a Scottish consumer market.

6.5.2 The consumer landscape in Scotland has undergone significant reform over the past three years as part of a UK-wide review. Between 2013 and 2014 Citizens Advice Scotland assumed responsibility for the delivery of consumer advocacy and advice in relation to general consumer matters, electricity, gas, water and postal services. These transfers were made administratively, and by an Order under the Public Bodies Act 2011.

6.5.3 The clause set out at annex A will provide the Scottish Parliament with competence to make provision for Scotland in relation to the representative, research, and information functions as well as the power to provide advice, information, and guidance, to investigate complaints of general relevance, to pursue complaints for vulnerable consumers, and to assist those facing disconnection, for example from their electricity supply (which are currently contained in the Consumers, Estate Agents and Redress Act 2007). This will be achieved by adding consumer advocacy and advice to the exceptions to the relevant reservations in Part 2 of Schedule 5 to the 1998 Act. Competence for consumer advocacy and advice does not include responsibility for consumer protection policy, which will remain reserved by virtue of section C7 of Schedule 5, or industry levies that fund consumer advocacy and advice.

6.6 Payday Loan Shops

Paragraph	Smith Commission Agreement	Clause
73	The Scottish Parliament will have the power to prevent the proliferation of Payday Loan shops	N/A

6.6.1 Planning powers are already devolved in Scotland, meaning that the Scottish Parliament already has legislative competence to pass laws in relation to planning, including the use of shops for payday loan businesses across Scotland.

6.6.2 Officials in the UK Government and Scottish Government will continue to discuss this part of the Smith Commission Agreement to consider whether any other action is required to deliver it.

6.7 Fixed Odd Betting Terminals

Paragraph	Smith Commission Agreement	Clause
74	The Scottish Parliament will have the power to prevent the proliferation of Fixed-Odd Betting Terminals	33

6.7.1 Clause 33 relates to paragraph 74 of the Smith Commission Agreement and the role of the Scottish Government in administering the presence of Fixed Odds Betting Terminals (FOBTs)[2] in Scotland.

6.7.2 This clause will devolve legislative competence to the Scottish Parliament and executive competence to the Scottish Ministers to vary the number of FOBTs authorised by a betting premises licence by inserting a specific exemption into B9 of Part 2 of Schedule 5 to the 1998 Act. The exception will permit the variation of the number of FOBTs authorised by virtue of a new betting premises licence, but does not permit variation of the number of such gaming machines authorised by existing betting premises licences. For this purpose, Scottish Ministers will be given power to make an order (following the affirmative procedure) to vary the number of these FOBTs and will, as a result, have a greater say over how many of these gaming machines may be made available for use in Scotland.

[2] The term "Fixed Odd Betting Terminals" is not defined in the Gambling Act 2005. Rather than tie the clause to one or more Category or sub-category of gaming machines, defined in the Categories of Gaming Machine Regulations 2007/2158, the clause encompasses any gaming machine on which it is possible to stake more than £10 in respect of a single play.

Chapter 7: Transport

7.1 Summary

7.1.1 Recommendations put forward in the Smith Commission Agreement to devolve further powers over the operation of transport services and infrastructure will provide the Scottish Parliament and Scottish Government with greater control over the transport regime in Scotland. This will allow policy to be devolved and delivered that more closely aligns with Scottish interests and will ensure that decisions about Scotland's roads and railways are taken in Scotland. The draft clauses set out in this chapter take forward the Smith Commission Agreement's recommendations on these matters.

7.1.2 The Scotland Act 1998 (the 1998 Act) gave the Scottish Parliament responsibility for aspects of road safety; the promotion, construction and certain functions of railways; as well as elements of marine and air transport. The Scotland Act 2012 (the 2012 Act) has additionally given executive regulation making powers with regards to speed limits and the power to prescribe drink-driving limits to Scottish Ministers.

7.1.3 The Agreement calls for the devolution of a varied set of powers that represent substantial new responsibilities for the Scottish Government, and together, alongside existing powers, form a holistic set of competencies. Power to appoint public sector operators of Scottish rail services, and devolving powers in relation to railway policing in Scotland represent significant new controls over the railways, whilst extended authority over speed limits and signs will strengthen existing responsibilities in relation to the roads.

7.2 Rail Franchising

Paragraph	Smith Commission Agreement	Clause
65	The power will be devolved to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers.	37

7.2.1 Clause 37 relates to paragraph 65 of the Smith Commission Agreement and the powers related to rail franchising. Currently, public sector operators are precluded from bidding and operating rail franchises in Great Britain (GB). The clause will lift this existing prohibition with regards to passenger rail services that both start and end in Scotland and certain cross border services where Scottish Ministers are the 'appropriate franchising authority'.

7.2.2 Scottish Ministers already have an extensive range of executive functions related to franchising of passenger services in Scotland. Devolved executive functions empower the Scottish Ministers to procure, let, manage and enforce Scottish franchise agreements with regards to Scotland-only services and certain cross border services. This clause will unlock such existing executive functions that the Scottish Ministers have as "appropriate franchising authority" and "appropriate designating authority" to allow public sector operators to become franchisees in respect of for Scotland-only services.

7.2.3 This power will be delivered through an amendment to Section 25 of the Railways Act 1993, which explicitly prohibits public sector operators from being franchisees.

7.3 British Transport Police

Paragraph	Smith Commission Agreement	Clause
67	The functions of the British Transport Police in Scotland will be a devolved matter.	30

7.3.1 Clause 30 relates to paragraph 67 of the Smith Commission Agreement and the functions of the British Transport Police (BTP) in Scotland.

7.3.2 At present, the BTP is responsible under the Railways and Transport Safety Act 2003 for railway policing throughout Great Britain, with oversight provided by the British Transport Police Authority. This clause will devolve legislative competence in relation to railway policing in Scotland. This will be achieved through amending paragraph E2 of Schedule 5 Part II to the 1998 Act which reserves the provision and regulation of rail services and rail transport security by including an exception for the policing of the railways and railway property.

7.3.3 This change will allow the Scottish Parliament to legislate in relation to the policing of railways in Scotland. Further consideration will need to be given to the manner in which executive competence will be transferred and to related organisational and operational aspects of the policing of the railways in Scotland.

7.4 Roads

Paragraph	Smith Commission Agreement	Clause
66	Remaining powers to change speed limits will be devolved to the Scottish Parliament. Powers over all road traffic signs in Scotland will also be devolved.	26 27 28 29

7.4.1 Clauses 26, 27, 28 and 29 relate to paragraph 66 of the Smith Commission Agreement and the powers to change speed limits and over road traffic signs in Scotland. The clauses will transfer legislative competence to the Scottish Parliament and all remaining executive powers to Scottish Ministers in respect of traffic signs and speed limits in Scotland, except the ability to exempt from speed limits vehicles that are used for reserved purposes and the training requirements for drivers of exempt vehicles. These powers will help enable the Scottish Government to manage roads in a way that better meets the needs of Scotland's road network. The subject matter of the Road Traffic Offenders Act 1998 will remain reserved.

7.4.2 At present, Scottish Ministers hold certain executive functions pertaining to traffic signs, being consulted as a matter of course by the Secretary of State. Clause 25 will amend Section E1 concerning road transport in Schedule 5 of the 1998 Act to devolve legislative competence to the Scottish Parliament. The transfer of executive functions, including the reserved general power to prescribe traffic signs and to direct their placing and removal is achieved through amendments to the Road Traffic Regulation Act 1984 (the 1984 Act) and the Road Traffic Act 1988. The clause also devolves similar powers in respect of pedestrian crossings.

7.4.3 Scottish Ministers have more extensive executive powers over several aspects of speed limits. Executive functions in respect of speed limits on special roads,[1] general speed limits on roads other than restricted roads,[2] speed limits for particular classes of vehicles and temporary speed limits have all been devolved to Scottish Ministers. In addition, the Secretary of State for Transport is obliged to consult Scottish Ministers ahead of exercising any powers in respect of speed limits on special roads.

7.4.4 Subject to the exceptions mentioned in paragraph 7.4.1, amendments to the 1998 Act will devolve legislative competence to the Scottish Parliament, and all remaining executive functions to Scottish Ministers in respect of speed limits in Scotland are delivered through amendments to the 1984 Act.

[1] Almost all special roads are motorways.

[2] Restricted roads are roads with a system of carriageway lighting.

Chapter 8: Energy

8.1 Summary

8.1.1 Great Britain (GB) benefits from a single energy market, which delivers a safe, secure energy system where costs are spread over the GB consumer base. Existing arrangements are designed to match energy supply and demand requiring sophisticated networks and diverse sources of supply across the whole of GB. Energy is, for the most part reserved in relation to Scotland, however the Scottish Government possesses a variety of executive functions relating to energy policy.

8.1.2 The draft clauses set out in this chapter, following the recommendations made by the Smith Commission Agreement, complement and build upon the existing powers that sit with the Scottish Government and Scottish Parliament. These drafted provisions sit within specific areas where proposed approaches can enhance correlation between supply and demand or facilitate coordination with the responsibilities already devolved without sacrificing the integrity or stability of the GB-wide energy market.

8.1.3 The specific amendments set out in the Agreement and below encompass executive and legislative powers for several policy issues including powers concerning the design and implementation of supplier obligations in relation to energy efficiency and fuel poverty, the licensing of onshore exploration and extraction of oil and gas, responsibility for mineral access rights, and a formal consultative role for renewable energy incentives.

8.2 Energy Efficiency and Fuel Poverty

Paragraph	Smith Commission Agreement	Clause
68	Powers to determine how supplier obligations in relation to energy efficiency and fuel poverty, such as the Energy Company Obligation and Warm Home Discount, are designed and implemented in Scotland will be devolved. Responsibility for setting the way the money is raised (the scale, costs and apportionment of the obligations as well as the obligated parties) will remain reserved. This provision will be implemented in a way that is not to the detriment of the rest of the UK or to the UK's international obligations and commitments on energy efficiency and climate change.	38 39

8.2.1 Clauses 38 and 39 relate to paragraph 68 of the Smith Commission Agreement and powers concerning the design and implementation of supplier obligations relating to energy efficiency and fuel poverty in Scotland. The clauses will transfer executive competence to Scottish Ministers to empower them to design and implement supplier obligations in Scotland. This is achieved through amendments to the Gas Act 1986, Electricity Act 1989 and Energy Act 2010 (the 2010 Act).

8.2.2 The design and implementation of supplier obligations is an element of the single Great Britain energy market and affects its operation. Reserving control over the fundamental aspects of supplier obligations, as specified in paragraph 68 of the Smith Commission Agreement, ensures that the supplier obligation framework can continue to operate as part of the single GB market thus preventing competitive distortions that could disadvantage some consumers.

8.2.3 Setting policies for addressing fuel poverty across Scotland, England and Wales is currently formed from a mixture of devolved matters, such as housing, buildings and promotion of energy efficiency, and reserved matters, such as prohibition and GB-wide regulation. The functions for setting overall targets and strategies for addressing fuel poverty are already devolved to Scottish Ministers under the Scotland Act 1998 (the 1998 Act).

8.2.4 A supplier obligation scheme is defined as a regulatory obligation placed on one or more licensed electricity suppliers or licensed gas suppliers, requiring them to take action intended to make a direct contribution to improving energy efficiency or for the purpose of addressing fuel poverty.

8.2.5 Regulation making power in relation to schemes for reducing fuel poverty is executively devolved through clause 38. This is achieved by an insertion to the 2010 Act.

8.2.6 Holding powers over the design and implementation of energy efficiency and fuel poverty measures will enable the Scottish Government to more accurately meet the specific needs of Scottish households, whilst maintaining the strength and consistency found in the single GB energy market through the continued reservation of certain powers.

8.3 Onshore Oil and Gas Extraction

Paragraph	Smith Commission Agreement	Clause
69	The licensing of onshore oil and gas extraction underlying Scotland will be devolved to the Scottish Parliament. The licensing of offshore oil and gas extraction will remain reserved.	31
70	Responsibility for mineral access rights for underground onshore extraction of oil and gas in Scotland will be devolved to the Scottish Parliament.	

8.3.1 Clause 31 concerns paragraph 69 of the Smith Commission Agreement and the licensing of onshore oil and gas extraction. So far as onshore oil and gas is concerned, the clause will devolve to Scottish Ministers the current regime for the licensing of exploration and extraction of oil and gas. Further, the clause will transfer to the Scottish Parliament legislative competence for the licensing of onshore oil and gas exploration and extraction. The licensing of offshore oil and gas extraction however is and will remain reserved.

8.3.2 Scottish Ministers and the Scottish Parliament already have substantial control of onshore oil and gas activities through planning controls and environmental regulation, which are fully devolved. This enables the Scottish Ministers to set the framework of consideration of all planning applications for oil and gas projects onshore; to refuse permission for activities which are not acceptable in the specific locations proposed; and to impose appropriate controls to prevent pollution and protect the environment in respect of proposals which do receive permission.

8.3.3 To give effect to the Smith Commission Agreement recommendation, the clause defines a 'Scottish onshore area' in which Scottish Ministers will be able to exercise powers under Part 1 of the Petroleum Act 1998, currently held by the Secretary of State, for the licensing of the exploration for and extraction of petroleum. These will include powers to grant licences, and to make further provisions in respect of licences within the Scottish onshore area. Scottish Ministers will also benefit from information sharing powers and will gain powers of inspection, and powers to make Regulations setting out Model Clauses to be incorporated into licences. However, the power to require consideration, which may take the form of a royalty, in return for the grant of a licence, will remain reserved as requiring a royalty would, in effect, levy an additional tax on onshore projects. This meets the clear intentions that administration of existing licences and the issue of future licences should be matters for the Scottish Parliament while all aspects of the taxation of oil and gas receipts should remain reserved, as set out in paragraph 83 of the Agreement.

8.3.4 Clause 31 also addresses paragraph 70 of the Smith Commission Agreement and mineral access rights for onshore extraction of oil and gas. In line with the transfer of legislative competence with regards to licencing onshore oil and gas extraction, the clause confers legislative competence on the Scottish Parliament in relation to access rights for onshore oil and gas. Subsection (II) transfers executive functions to the Scottish Ministers in relation to access rights for onshore oil and gas.

8.3.5 The clause will not confer legislative competence for health and safety legislation or the inspection and enforcement of that, including the Borehole Sites and Operations Regulations 1995. The Smith Commission Agreement in relation to health and safety is covered in more detail in the *Next Steps* chapter.

8.4 Renewables

Paragraph	Smith Commission Agreement	Clause
41	There will be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which OFGEM must have due regard. OFGEM will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.	40

8.4.1 Clause 40 relates to paragraph 41 of the Smith Commission Agreement and the role of the Scottish Government in designing renewable incentives.

8.4.2 There are several existing schemes to support electricity[1] generation from renewable sources. These are the Feed-in Tariffs scheme, which supports small scale generation, the Renewables Obligation, which supports large scale generation, and the new Contracts for Difference regime, which is replacing the Renewables Obligation in that context. The current degree of involvement of Scottish Ministers, including consultation, varies by scheme.

8.4.3 The clause will establish a broad duty on the Secretary of State to consult the Scottish Government on the design of new incentives to support renewable electricity generation, or the re-design of the existing incentive schemes detailed above. The duty will arise where the new incentive would apply in Scotland, or any re-design would affect the way an incentive operates in Scotland. It will apply to incentives that are both statutory and non-statutory in nature.

8.4.4 Further detail of the 'formal consultative role' for the Scottish Government and the Scottish Parliament can be found at paragraph 5.4.

[1] The clause concerns renewable schemes related to the generation of electricity using renewable sources, rather than the generation of heat using renewable sources because as heat is not covered by any of the reservations in the Scotland Act 1998, it has been treated as devolved.

Chapter 9: Next steps

9.1 Summary

9.1.1 The draft clauses presented in this command paper represent the fulfilment of a promise made to the people of Scotland. However, the steps towards a stronger and enduring constitutional settlement do not end here. The next session of the United Kingdom (UK) Parliament will see these clauses brought forward in a new Scotland Bill. In order for the Bill to be ready the coming months will see work to further refine the clauses, to consider questions of commencement and consequential amendments to other legislation, and to prepare the documents that usually accompany a Bill on introduction. Beyond the clauses, vital work is already taking place to ensure that Scotland's two governments and parliaments deliver successfully for people in Scotland.

9.1.2 Effective inter-governmental working is essential to guarantee the best possible provision of services and representation for the people of the UK; a renewed commitment to build these relationships and explore better ways of working, as recommended by the Smith Commission Agreement, will require close collaboration between the UK Government and Devolved Administrations.

9.1.3 Central to the success of the new Scotland Bill will be a continued focus and dedication to public and stakeholder engagement. Following today's publication, the UK Government will undertake an engagement programme across Scotland to ensure that people have the opportunity to contribute their views as work continues to prepare the draft legislation for introduction in Parliament.

9.1.4 Together, these next steps will help us to address the personal recommendations set out by Lord Smith to improve inter-governmental working, facilitate devolution from the Scottish Parliament, ensure Parliamentary and independent oversight, and to raise public awareness of the powers of the Parliament.

9.2 Inter-governmental working including EU representation

Paragraph	Smith Commission Agreement
28-30	The parties believe that the current inter-governmental machinery between the Scottish and UK Governments, including the Joint Ministerial Committee (JMC) structures, must be reformed as a matter of urgency and scaled up significantly to reflect the scope of the agreement arrived at by the parties. The views of the other devolved administrations will need to be taken fully into account in the design of the quadrilateral elements of that revised machinery. In parallel, formal processes should be developed for the Scottish Parliament and UK Parliament to collaborate more regularly in areas of joint interest in holding respective Governments to account. Those reformed inter-governmental arrangements will: (1) include the development of a new and overarching Memorandum of Understanding (MoU) between the UK Government and devolved administrations. In addition to the subjects included in the current MoU, the revised MoU would: (a) lay out details of the new bilateral governance arrangements which will be required to oversee the implementation and operation of the tax and welfare powers to be devolved by way of this agreement. Those revised arrangements will also need to be consistent with the fiscal framework to be developed further to paragraph 95 of this agreement. (b) provide for additional sub-committees within the strengthened JMC structure beyond the current sub-committees. New sub-committees could include, but need not be limited to, policy areas such as home affairs; rural policy, agriculture & fisheries; or social security/welfare. (2) be underpinned by much stronger and more transparent parliamentary scrutiny, including: (a) the laying of reports before respective Parliaments on the implementation and effective operation of the revised MoU. (b) the pro-active reporting to respective Parliaments of, for example, the conclusions of Joint Ministerial Committee, Joint Exchequer Committee and other inter-administration bilateral meetings established under the terms of this agreement. (3) provide for more effective and workable mechanisms to resolve interadministration disputes in a timely and constructive fashion with a provision for well-functioning arbitration processes as a last resort.

Paragraph	Smith Commission Agreement
31	The parties recognise that foreign affairs will remain a reserved matter. They also recognise the need to reflect fully the views of the other devolved administrations when drawing up any revised governance arrangements in relation to Scottish Government representation of the UK to the EU. In that context, the parties agree that the implementation of the current Concordat on the Co-ordination of European Union Policy Issues should be improved. This should be achieved by: (1) ensuring that Scottish Ministers are fully involved in agreeing the UK position in EU negotiations relating to devolved policy matters. For example, it may be appropriate as part of this process for a UK Government Minister to chair a meeting of devolved administration Ministers where another UK Government Minister represents the position of England (or England and Wales in certain policy areas) while devolved administration Ministers represent their respective interests. (2) ensuring that Scottish Ministers are consulted and their views taken into account before final UK negotiating positions relating to devolved policy matters are agreed. (3) presuming that a devolved administration Minister can speak on behalf of the UK at a meeting of the Council of Ministers according to an agreed UK negotiating line where the devolved administration Minister holds the predominant policy interest across the UK and where the relevant lead UK Government Minister is unable to attend all or part of a meeting.

9.2.1 Lord Smith and the parties placed great emphasis on the need for the Scottish Government and UK Government to work together more effectively. As well as the paragraphs in the Agreement itself Lord Smith included this as one of his four personal recommendations, suggesting that '*Both Governments need to work together to create a more productive, robust, visible and transparent relationship. There also needs to be greater respect between them.*'

9.2.2 It is in the best interests not only of the people of Scotland but of people across the UK, that the Devolved Administrations and UK Government work well together for the benefit of the whole of the UK. Therefore, and as recognised in the Smith Agreement, changes to inter-governmental working will be developed collaboratively by the UK Government and the three Devolved Administrations. This work has already begun. The Joint Ministerial Committee met on 15 December 2014 and the Prime Minister, the First Ministers of Scotland and of Wales and the First Minister and the deputy First Minister of Northern Ireland agreed to commission work on a revised Memorandum of Understanding.[1] Officials have set up an initial meeting in early February, which will form the first step in this process.

9.2.3 This work is complex and may take a number of months, but it is important that we get it right. Changes to the Joint Ministerial Committee structure, dispute resolution mechanisms and governance arrangements between the UK Government and the Devolved Administrations, as well as Parliamentary oversight, will underpin future governmental working across the UK.

[1] https://www.gov.uk/government/news/joint-ministerial-committee-communique-december-2014

9.2.4 Intrinsically linked to revised inter-governmental working arrangements are the recommendations to improve the implementation of the current Concordat on European Union Policy Issues covering UK representation to the EU. Discussions on this will be taken forward as part of the wider work on revising inter-governmental relations and changes will be made in parallel. Together, this will lead to stronger and more collaborative governance of the UK, to the advantage of all citizens.

9.3 Further issues for consideration

Paragraph	Smith Commission Agreement
48	Joint working arrangements for the oversight of DWP development and delivery of UC, similar to those established with HMRC in relation to the Scottish rate of Income Tax, should be established by the UK and Scottish Government.
58	As the single face-to-face channel for citizens to access all benefits delivered by DWP, Jobcentre Plus will remain reserved. However, the UK and Scottish Government will identify ways to further link services through methods such as co-location wherever possible and establish more formal mechanisms to govern the Jobcentre Plus network in Scotland.
61	The parties are strongly of the view to recommend the devolution of abortion and regard it as an anomalous health reservation. They agree that further serious consideration should be given to its devolution and a process should be established immediately to consider the matter further.
62	The devolution of xenotransplantation; embryology, surrogacy and genetics; medicines, medical supplies and poisons; and welfare foods (i.e. matters reserved under Sections J2 to J5 of Head J – Health and Medicines, Schedule 5 to the Scotland Act 1998) should be the subject of further discussions between the UK and Scottish Governments. Those discussions are without prejudice to whether or not devolution takes place and in what form.
96(1)	[The Scottish and UK Governments should work together to] seek, with respect to food labelling, to agree changes to the European country of origin rules so that a 'made in Scotland' brand is recognised under EU law.
96(2-4)	[The Scottish and UK Governments should work together to] (2) explore the possibility of introducing formal schemes to allow international higher education students graduating from Scottish further and higher education institutions to remain in Scotland and contribute to economic activity for a defined period of time. (3) explore the possibility of extending the temporary right to remain in Scotland for someone who is identified as a victim of human trafficking, including in particular to enable the individual to participate in relevant legal proceedings. (4) explore, with respect to asylum seekers, the possibility of: a. different powers being in place in Scotland for asylum seekers to access accommodation and financial support and advice. b. being able to lodge from within Scotland an asylum claim to the Home Office. c. MSPs being able to represent directly to UK Visas and Immigration and Immigration Enforcement their concerns with respect to devolved matters affecting their constituents.

Paragraph	Smith Commission Agreement
96(5)	[The Scottish and UK Governments should work together to] explore whether to revise the current legal and practical arrangements in respect of levy raising (for example, with respect to red meat and seafood) to ensure that Scotland is able to decide at any stage whether to opt into UK arrangements and, if so, receives an equitable share of any UK monies levied.
96(6)	The Scottish and UK Governments should work together to] ensure that fines, forfeitures, fixed penalties imposed by courts and tribunals in Scotland as well as sums recovered under Proceeds of Crime legislation are retained by the Scottish Government. The Scottish Government's block grant would need to be adjusted in line with the principles set out in paragraph 95 to accommodate the retention of these sums.
96(7)	The Scottish and UK Governments should work together to] review the functions and operations of the Health and Safety Executive in Scotland and consider how the future requirements to best serve the people of Scotland could be delivered operationally whilst remaining within a reserved health and safety legislative framework.

9.3.1 The Smith Commission Agreement identified a number issues for consideration where future collaborative work between the UK and Scottish Governments would be required. These cover a broad range of issues, encompassing: country of origin food labelling; food levies; student visas; temporary rights for victims of human trafficking; certain powers relating to asylum seekers; Jobcentre Plus, abortion; medicines; veterinary medicine; healthy food schemes; poisons; health and safety; and fines, forfeitures, fixed penalties and proceeds of crime.

9.3.2 Initial discussions have either already taken place or are scheduled to occur over the coming weeks on all of these considerations, with productive conversations taking place between officials and Ministers on the scope and shape of future work between the two governments. In some cases, these discussions are exploring the possibility of devolution, elsewhere they are focused on improving working practices within the existing devolution settlement.

9.3.3 In certain instances significant actions are underway or awaiting commencement. These include: to review the health and safety outcomes that are being sought within Scotland within a reserved legislative framework; consideration by the UK's four red meat industry bodies of options to amend current arrangements followed by a public consultation; discussion on how the governance arrangements for the Seafish levy can ensure that spend between the four administrations is transparent and equitable; further discussions with a view to introducing more formal mechanisms to take account of any Scottish considerations in the authorisation of veterinary medicines; the proposed establishment of a new joint official level working group to consider further activity on the Welfare Foods Policy.

9.3.4 Additionally, in his personal recommendations Lord Smith suggested 'that the Scottish Parliament's Presiding Officer and Speaker of the House of Commons meet shortly after 25 January to agree on action to improve public understanding of Scotland's constitutional settlement.' A meeting has been set up to take place in January to discuss this. Both Parliaments already have education, outreach and communication teams that provide a full range of public engagement services.

9.3.5 Lord Smith also noted that the addition of new responsibilities set out in the Agreement should lead to strengthened Parliamentary oversight of the Scottish Government. As Lord Smith noted the Presiding Officer is already leading work on Parliamentary reform. She is placing particular importance on making committee scrutiny more effective.

9.3.6 Lord Smith's final personal recommendation was for further devolution from the Scottish Parliament. The Scottish Government will explore how they can transfer powers from the Scottish Parliament to empower local communities across Scotland, and the UK Government stands prepared to share their experiences to facilitate this process.

9.4 Bringing forward a Bill, implementation and engagement

9.4.1 In preparing his report, Lord Smith sought to engage with and take of account of the views of people and organisations across Scotland, receiving over 18,000 submissions from the public and more than 400 from civic groups.

9.4.2 The UK Government will continue this through an engagement programme, which will enable the public and stakeholders to engage with the Government on issues associated with the devolution settlement and submit questions or comment. This activity will assist with the process of refining the draft clauses to make them ready for introduction in Parliament, whilst recognising that the Smith Agreement records the agreement reached by Scotland's five main parties. This process will also assist the preparation of the other documents that will need to accompany the Bill, such as the Impact Assessment.

9.4.3 Organisations and individuals are invited to send their thoughts on the draft clauses to draftlegislationcomments@scotlandoffice.gsi.gov.uk.

9.4.4 The engagement programme will include a public information campaign in Scotland aimed at providing information about the current devolution settlement and how it is changing, both through the 2012 Act and the Smith Agreement.

9.4.5 Future engagement will build on the contribution of the stakeholder group of representative bodies from across Scotland, which was established to support the preparation of the draft legislation. There will also be bilateral engagement with stakeholders on specific provisions that are of interest to them, and the Government will seek to bring together a wide forum of stakeholders to ensure that the clauses are given full consideration ahead of introduction.

Annex A:
Draft clauses

Draft Scotland Clauses 2015

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PART 1

CONSTITUTIONAL ARRANGEMENTS

The Scottish Parliament and the Scottish Government

1 The Scottish Parliament and the Scottish Government

(1) In section 1 of the Scotland Act 1998 (the Scottish Parliament) after subsection (1) insert— *5*

"(1A) A Scottish Parliament is recognised as a permanent part of the United Kingdom's constitutional arrangements."

(2) In section 44 of the Scotland Act 1998 (the Scottish Government) for the words in subsection (1) before paragraph (a) substitute— *10*

"(1) There shall be a Scottish Government.

(1A) A Scottish Government is recognised as a permanent part of the United Kingdom's constitutional arrangements.

(1B) The members of the Scottish Government shall be—".

The Sewel convention *15*

2 The Sewel convention

In section 28 of the Scotland Act 1998 (Acts of the Scottish Parliament) at the end add—

"(8) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament." *20*

Changes to constitutional arrangements

3 Operation of the Scottish Parliament and Scottish Government

(1) The Scotland Act 1998 is amended as follows.

(2) In paragraph 4 of Schedule 4 (protection of Scotland Act 1998 from modification) for sub-paragraph (2) substitute— *25*

"(2) This paragraph does not apply to modifying—

(a) Part 1 (except sections 1(1) and (1A), 2(2A), 12A, 23, 23A, 27(3), 28(1) to (4), (6) to (8), 29 to 35, 36(1)(c) and (6), 37 and 38, and, subject to paragraph (g) below, Schedules 1 to 5), *30*

(b) Part 2 (except sections 44(1), (1A), (1B)(c), (3) and (4), 48(5), 51 to 59, 60 to 63),

(c) section 69(3), sections 81 to 83 and 85, sections 91, 93, 94 and 97,

(d) sections 112, 113 and 115, and Schedule 7 (insofar as those sections and that Schedule apply to any power in this Act of the Scottish Ministers to make subordinate legislation),

(e) sections 118, 120 and 121,

(f) section 124 (insofar as that section applies to any power in this Act of the Scottish Ministers to make subordinate legislation),

(g) paragraphs 1(1), 2(1), 2(3) and 3 to 14 of Schedule 1, and Schedule 2 (except paragraph 7)."

(3) In paragraph 1 of Schedule 7 (procedure for subordinate legislation) in the entry for section 97 for "Type A" substitute "Type D".

4 Super-majority for certain legislation passed by the Scottish Parliament

(1) In section 28(5) (Acts of the Scottish Parliament) at the beginning insert "Subject to section 30A,"

(2) After section 30 (legislative competence: supplementary) the Scotland Act 1998 insert—

"30A Super-majority for certain legislation

(1) An Act of the Scottish Parliament is not law so far as any provision of the Act would modify the law relating to a protected subject-matter, unless the Bill for the Act was passed by a majority of at least two-thirds.

(2) For these purposes, a Bill is passed by a majority of at least two-thirds if at its final stage—

(a) the Bill is passed without a division, or

(b) the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament.

(3) The following are protected subject-matters for the purposes of subsection (1)—

(a) the persons entitled to vote as electors at an election for membership of the Parliament,

(b) the systems by which members of the Parliament are returned for the constituencies and regions,

(c) the number of constituencies under this Act,

(d) the number of regions under this Act, and

(e) the number of regional members to be returned for each region."

(3) In section 31 (scrutiny of Bills before introduction) after subsection (2) insert—

"(2A) The Presiding Officer shall, on or before the introduction of a Bill in the Parliament, decide whether or not in his view the provisions of the Bill would modify the law relating to a protected subject-matter and state his decision."

(4) In section 32 (submission of Bills for Royal Assent) in subsection (3)(a) after "the Parliament" insert "or that the Bill or any provision of it would modify the law relating to a protected subject-matter".

(5) In section 33(1) (scrutiny of Bills by the Supreme Court), after "the question of" insert "— (a)", and for "to the Supreme Court for decision" substitute ", or *5*

(b) whether a Bill or any provision of a Bill would modify the law relating to a protected subject-matter,

to the Supreme Court for decision."

(6) In section 33(2) for "at any time during" to the end substitute—

"(a) at any time during— *10*

(i) the period of four weeks beginning with the passing of the Bill, and

(ii) any period of four weeks beginning with any subsequent approval of the Bill in accordance with standing orders made by virtue of section 36(5), or *15*

(b) in the case of a reference under subsection (1)(b), after the Presiding Officer has stated his decision under section 31(2A) but before the Bill is passed."

(7) In section 33(3)—

(a) after "He shall not make a reference" insert "under subsection (1)(a)"; *20*

(b) after "intend to make" insert "such".

(8) In paragraph 1 of Schedule 6 (devolution issues) after sub-paragraph (a) insert—

"(aa) a question whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament would modify the law relating to a protected subject-matter". *25*

Elections

5 Conduct of Scottish Parliamentary and Local Government Elections

(1) The Scotland Act 1998 is amended as follows.

(2) In section 2 (ordinary general elections), at the beginning of subsection (2) insert "Subject to subsection (2A)," and after that subsection insert— *30*

"(2A) The poll shall be held no less than two months but no more than six months after the day fixed by subsection (2) if that day is the date of the poll at—

(a) a parliamentary general election, other than an early parliamentary general election within the meaning of section 2 of the Fixed-term Parliaments Act 2011, *35*

(b) a European parliamentary general election, or

(c) an ordinary local government election in Scotland, which is not an election to fill a casual vacancy." *40*

(3) For section 12 (power of the Scottish Ministers to make provision about elections) and 12A (power of the Secretary of State to make provision about

elections) substitute—

"12 Power of the Scottish Ministers to make provision about elections

(1) The Scottish Ministers may by order make provision as to—
  (a) the conduct of elections for membership of the Parliament,
  (b) the questioning of such an election and the consequences of irregularities, and
  (c) the return of members of the Parliament otherwise than at an election.

(2) The provision that may be made under subsection (1)(a) includes, in particular, provision—
  (a) about the registration of electors,
  (b) for disregarding alterations in the register of electors,
  (c) about the limitation of election expenses of candidates,
  (d) for the combination of polls where—
    (i) the poll at an ordinary general election for membership of the Parliament and the poll for a local government by-election in Scotland are to be held on the same date,
    (ii) the poll at an extraordinary general election for membership of the Parliament and the poll at an ordinary local government election in Scotland are to be held on the same date, or
    (iii) the poll at an extraordinary general election for membership of the Parliament and the poll for a local government by-election in Scotland are to be held on the same date.
  (e) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded), and
  (f) for modifying section 8(7) to ensure that allocation of the correct number of seats for the region.

(3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying section 10(4) and (5).

(4) The provision that may be made under subsection (2)(a) does not include provision about the use of the digital service for applications for registration or for verifying information contained in applications for registration

(5) An order under subsection (1) may—
  (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and
  (b) so far as may be necessary in consequence of any provision made by an order under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors.

(6) The return of a member of the Parliament at an election may be questioned only under Part III of the Representation of the People Act 1983 as applied by an order under subsection (1).

(7) For the purposes of this Act, the regional returning officer for any region is the person designated as such in accordance with an order made by the Scottish Ministers under this subsection.

(8) "Digital service" has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001.

12A Power of the Secretary of State to make provision about the combination of polls

(1) The Secretary of State may by regulations make provision for the combination of the polls listed in subsection (2) with—
  (a) ordinary general elections for membership of the Parliament,
  (b) extraordinary general elections for membership of the Parliament, and
  (c) by-elections for membership of the Parliament.

(2) The polls are—
  (a) parliamentary general elections,
  (b) early parliamentary general elections,
  (c) parliamentary by-elections,
  (d) European parliamentary general elections, and
  (e) European parliamentary by-elections.

(3) The Secretary of State must obtain the agreement of the Scottish Ministers before making regulations under this section."

(4) In Section B3 of Schedule 5 (elections) before the heading "Interpretation" insert—

"*Exception*

The subject-matter of sections 1(2) to (4), 2(2) and (3) to (6), 3 to 10 and 12 of this Act, insofar as those sections relate to the conduct of elections for membership of the Parliament.".

(5) In Section B3 of Schedule 5 after the heading "Interpretation" insert—

""The conduct of elections for membership of the Parliament" does not include provision about the combination of polls at elections for membership of the Parliament with polls at other elections except where—
  (a) the poll at an ordinary general election for membership of the Parliament and the poll for a local government by-election are to be held on the same date,
  (b) the poll at an extraordinary general election for membership of the Parliament and the poll at an ordinary local government election in Scotland are to be held on the same date, or
  (c) the poll at an extraordinary general election for membership of the Parliament and the poll for a local government by-election in Scotland are to be held on the same date."

(6) Omit paragraph 5A of Part 1 of Schedule 5 (referendums).

(7) Article 13 and Schedule 5 of the Scottish Parliament (Elections etc.) Order 2010 are revoked.

(8) Omit sections 1 and 2 of the Scotland Act 2012.

6 Elections: franchise and registration

(1) The Scotland Act 1998 is amended as follows.

(2) In Section B3 of Schedule 5 omit "The franchise at local government elections.".

(3) In Section B3 of Schedule 5 after the exception inserted by section 5(4) insert—

"The franchise at elections for membership of the Parliament.

The registration of electors for elections for membership of the Parliament and local government elections, but not provision about the use of the digital service for applications for registration or for verifying information contained in applications for registration."

(4) In Section B3 of Schedule 5 after the heading "Interpretation" insert—

""digital service" has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001."

(5) In section 53 of the Representation of the People Act 1983 (power to make regulations about registration etc.) after subsection (8) insert—

"(9) Subject to subsection (11), the Scottish Ministers may make regulations under subsection (1) and (3) containing provision under paragraphs 1A, 3ZA and 8C of Schedule 2 relating to the use of the digital service in relation to Scotland."

(10) In subsection (9)—

(a) "digital service" has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001, and

(b) "use of the digital service" means use of that service for applications for registration or for verifying information contained in applications for registration.

(11) Regulations under subsection (9) may not be made without the agreement of the Secretary of State."

7 Campaign and controlled expenditure

(1) In the Scotland Act 1998, Section B3 in Part 2 of Schedule 5 (reservation of elections) is amended as follows.

(2) After the exception inserted by section 6(3) insert—

"The subject-matter of Parts 5 and 6 of the Political Parties, Elections and Referendums Act 2000 in relation to elections the conduct of which is within the legislative competence of the Parliament, except where the polls at such elections and other elections are combined."

(3) In section 155 of the Political Parties, Elections and Referendums Act 2000 (power to vary specified sums or percentages)—

(a) at the beginning of subsection (1) insert "Except where subsection (1A) applies,",

(b) after subsection (1) insert—

"(1A) The Scottish Ministers may by order vary any sum for the time being specified in Part 5 or 6 and Schedule 9, 10 or 11 insofar as that sum relates to—

(a) an election the conduct of which is within the legislative competence of the Scottish Parliament, or

(b) elections the polls at which are combined, if all the elections concerned are within the legislative competence of the Scottish Parliament.",

(c) in subsection (2)—

(i) after "the Secretary of State" insert "or the Scottish Ministers", and

(ii) in paragraph (a) after "he" insert "or they", and

(d) after subsection (4) insert—

"(4A) Subsection (4) applies to the Scottish Parliament as it applies to Parliament as if the references to the Secretary of State were to the Scottish Ministers."

8 Electoral Commission

(1) Section B3 (elections) of Schedule 5 to the Scotland Act 1998 is amended as follows.

(2) After the exception inserted by section 7(2) insert—

"The subject-matter of sections 5 to 10, 13, 145 to 148, and 150 to 154 of the Political Parties, Elections and Referendums Act 2000 in relation to elections for membership of the Parliament."

(3) After the heading "Interpretation" insert—

"References to provisions of the Political Parties, Elections and Referendums Act 2000 are to be read as at the day on which section 8 of the Scotland Act 2015 comes into force."

9 Devolution of the Boundary Commission for Scotland in relation to Scottish Parliament constituency boundaries

(1) Paragraphs 3 to 7 of Schedule 1 to the Scotland Act 1998 (Boundary Commission reports and notices, and Orders in Council) are amended as follows.

(2) For "the Secretary of State" in each place, and for "he" in paragraphs 3(9) and 6(1), substitute "the Scottish Ministers".

(3) For—

(a) "each House of Parliament", "either House of Parliament" or "the House" in each place, and

(b) "Parliament" in all other places, except in paragraph 6(7),

substitute "the Parliament".

(4) In paragraph 3(4)—

(a) after "Boundary Commission for Scotland" insert "to the Scottish Ministers";

(b) for "not later than 30 June 2010" substitute "no earlier than 1 May 2018 and no later than 1 May 2022".

(5) In paragraph 3(6) omit "(but not before the submission of their first report)".

(6) Omit paragraph 3(11).

(7) In paragraph 6(1) for "thinks" substitute "think". *5*

(8) In Section B3 of Part 3 of Schedule 5 to the Scotland Act 1998 (elections) after the exception inserted by section 8(2) insert—

"The functions of the Boundary Commission for Scotland under paragraphs 3 to 14 of Schedule 1.

The number of constituencies, regions and regional members; but that does not except the specification of constituencies or regions by or under paragraphs 1(2) or 2(2) of Schedule 1." *10*

PART 2

TAX

Income tax *15*

10 Income tax: power of Scottish Parliament to set rates

(1) Section 80C of the Scotland Act 1998 (power to set a Scottish rate for Scottish taxpayers) is amended as follows.

(2) In subsection (1) (power to set Scottish rate) for the words from "the Scottish rate" to the end substitute "the Scottish basic rate, and any other rates, for the purposes of section 11A of the Income Tax Act 2007 (which provides for the income of Scottish taxpayers which is charged at those rates)". *20*

(3) For subsection (2) substitute—

"(2A) Where a Scottish rate resolution sets more than one rate it must also set limits (or a limit) for the purpose of enabling it to be ascertained, for the purposes of section 11A of that Act, which rates apply in relation to a Scottish taxpayer." *25*

(4) Omit subsection (4).

(5) In subsection (5) (Scottish rate to be a whole number or half a whole number) for "The Scottish rate" substitute "A rate set by a Scottish rate resolution". *30*

(6) After that subsection insert—

"(5A) A limit set by a Scottish rate resolution must be a whole number of pounds."

(7) In the title for "Scottish rate" substitute "rates".

(8) Other provisions of Part 4A of the Scotland Act 1998 are amended as follows. *35*

(9) In section 80A(1)(a) (overview of Part 4A) after "rate" insert "or rates".

(10) Section 80G (supplemental powers to modify enactments) is amended as follows.

(11) In subsection (1) (power to modify section 11A of the Income Tax Act 2007) for "basic, higher and additional rates" substitute "basic rate and any other rates set by a Scottish rate resolution".

(12) In subsection (1A) (power to modify references to certain rates of income tax in relation to Scottish taxpayers) for the words from "so that" to the end substitute "that contains a reference to the basic rate, higher rate or additional rate so as to make any provision that they consider necessary or expedient in consequence of or in connection with a Scottish rate resolution".

(13) In subsection (1B) (power to postpone effect of Scottish rate etc in relation to PAYE regulations) for paragraphs (a) and (b) substitute—

"(a) provision made by a Scottish rate resolution for a tax year, or

(b) the absence of, or of particular provision in, a Scottish rate resolution for a tax year,".

(14) In section 80HA(3)(b) (report by the Comptroller and Auditor General: meaning of "Scottish rate provisions") for "the Scottish higher rate or the Scottish additional rate" substitute "or another rate set by a Scottish rate resolution".

(15) The amendments made by this section have effect so that a Scottish rate resolution, under Part 4A of the Scotland Act 1998 as it has effect without those amendments, may not be passed so as to set a rate for any tax year following such tax year as is appointed by the Treasury by order under this subsection (as the last year for which that Part is to have effect without those amendments).

(16) A Scottish rate resolution made under Part 4A of the Scotland Act 1998 as amended by this section may not apply for a tax year preceding such tax year as is appointed by the Treasury by order under this subsection (as the first year for which that Part is to have effect with the amendments made by this section).

(17) The tax year appointed under subsection (15) must precede the tax year appointed under subsection (16).

11 Income tax: amendments of Income Tax Act 2007

(1) The Income Tax Act 2007 is amended as follows.

(2) Section 6 (rates at which income tax is charged) is amended as follows.

(3) In subsection (3) omit paragraph (za).

(4) After that subsection insert—

"(4) See also section 80C of the Scotland Act 1998 which makes provision for the purposes of section 11A (income charged at Scottish rates)."

(5) Omit section 6A (the Scottish basic, higher and additional rates).

(6) In section 10(4) for "the Scottish basic, higher and additional" substitute "Scottish".

(7) Section 11A (income charged at the Scottish basic, higher and additional rates) is amended as follows.

(8) For subsections (1) to (3) substitute—

"(1A) Income tax is charged at the Scottish basic rate, and any other rates set by a Scottish rate resolution for the tax year in question, on the non-savings income of a Scottish taxpayer."

(9) Omit subsection (6).

(10) In the title for "the Scottish basic, higher and additional" substitute "Scottish".

(11) In section 13 (income charged at dividend rates)—

(a) in subsection (1)(b) omit "or the Scottish basic rate,",

(b) in subsection (2)(b) omit "or the Scottish higher rate,",

(c) in subsection (2A)(b) omit "or the Scottish additional rate,",

(d) in subsection (4) omit "or the Scottish basic, higher or additional rate", and

(e) after subsection (4) insert—

"(5) In relation to an individual who is a Scottish taxpayer, references in this section to income that would otherwise be charged at a particular rate are to be read as references to income that would, if the individual were not a Scottish taxpayer, be charged at that rate (and subsection (4) is to be read accordingly)."

(12) In section 989 (definitions for the purposes of the Income Tax Acts)—

(a) omit the definitions of "Scottish additional rate" and "Scottish higher rate",

(b) in the definition of "Scottish basic rate", for the words after "Scottish basic rate" substitute "in relation to a tax year, means the Scottish basic rate set by a Scottish rate resolution for that year", and

(c) at the appropriate place insert—

""Scottish rate resolution" means a resolution of the Scottish Parliament under section 80C of the Scotland Act 1998,".

(13) In Schedule 4 (index of defined expressions)—

(a) omit the entries relating to the Scottish higher rate and the Scottish additional rate, and

(b) in the entry relating to the Scottish basic rate for "6A (as applied by section 989)" substitute "989".

(14) The amendments made by this section have effect in relation to the tax year appointed by the Treasury under section 10(16) and subsequent tax years.

12 Income tax: amendments of Taxation of Chargeable Gains Act 1992

(1) Section 4 of the Taxation of Chargeable Gains Act 1992 (rates of capital gains tax) is amended as follows.

(2) In subsections (4) and (5) omit ", the Scottish higher rate".

(3) At the end insert—

"(10) For the purposes of the following references, an individual who is a Scottish taxpayer is to be treated as if income tax were chargeable in

relation to that individual as it is chargeable in relation to an individual who is not a Scottish taxpayer—

(a) the references in subsections (4) and (5) to income tax being chargeable at the higher rate;

(b) the reference in subsection (7) to the basic rate limit. *5*

(11) Section 4A(5) is to be read accordingly."

(4) In section 4A(5) of that Act (section 4: special cases) omit ", the Scottish higher rate".

(5) The amendments made by this section have effect in relation to the tax year appointed by the Treasury under section 10(16) and subsequent tax years. *10*

Value added tax

13 Assignment of VAT

(1) The Scotland Act 1998 is amended as follows.

(2) In section 64 (Scottish Consolidated Fund), after subsection (2) insert—

"(2A) The Secretary of State shall in accordance with section 64A pay into the Fund out of money provided by Parliament any amounts payable under that section." *15*

(3) After that section insert—

"64A Assignment of VAT

(1) Where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the standard rate VAT attributable to Scotland for any period ("the agreed standard rate amount"), the amount described in subsection (3) is payable under this section in respect of that period. *20*

(2) Where there is an agreement between the Treasury and the Scottish Ministers for identifying an amount agreed to represent the reduced rate VAT attributable to Scotland for that period ("the agreed reduced rate amount"), the amount described in subsection (4) is payable under this section in respect of that period. *25*

(3) The amount payable in accordance with subsection (1) is the amount obtained by multiplying the agreed standard rate amount by— *30*

$$\frac{10}{SR}$$

where SR is the number of percentage points in the rate at which value added tax is charged under section 2(1) of the Value Added Tax Act 1994 for the period. *35*

(4) The amount payable in accordance with subsection (2) is the amount obtained by multiplying the agreed reduced rate amount by—

$$\frac{2.5}{RR}$$

where RR is the number of percentage points in the rate at which value added tax is charged under section 29A(1) of the Value Added Tax Act 1994 for the period.

(5) The payment of those amounts under section 64(2A) is to be made in accordance with any agreement between the Treasury and the Scottish Ministers as to the time of the payment or otherwise."

(4) The Commissioners for Revenue and Customs Act 2005 is amended as follows.

(5) In subsection (2) of section 18 (confidentiality: exceptions) omit "or" after paragraph (i), and after paragraph (j) insert ", or

(k) which is made in connection with (or with anything done with a view to) the making or implementation of an agreement referred to in section 64A(1) or (2) of the Scotland Act 1998 (assignment of VAT)."

(6) After that subsection insert—

"(2A) Information disclosed in reliance on subsection (2)(k) may not be further disclosed without the consent of the Commissioners (which may be general or specific)."

(7) In section 19 (wrongful disclosure) in subsections (1) and (8) after "18(1)" insert "or (2A)".

Devolved taxes

14 Tax on carriage of passengers by air

(1) In Part 4A of the Scotland Act 1998, after Chapter 4 insert—

"CHAPTER 5

TAX ON CARRIAGE OF PASSENGERS BY AIR

80L Tax on carriage of passengers by air

A tax charged on the carriage of passengers by air from airports in Scotland is a devolved tax."

(2) Tax may not be charged in accordance with that provision on the carriage of passengers boarding aircraft before the date appointed under subsection (4).

(3) In section 28(4) of the Finance Act 1994 (air passenger duty), for "the United Kingdom" substitute "England, Wales or Northern Ireland".

(4) Subsection (3) has effect in relation to flights beginning on or after such date as the Treasury appoint by regulations made by statutory instrument.

(5) The Treasury may by regulations made by statutory instrument make further provision relating to the disapplication of air passenger duty in relation to flights beginning at airports in Scotland.

15 Tax on commercial exploitation of aggregate

(1) In Part 4A of the Scotland Act 1998, after the Chapter 5 inserted by section 14 insert—

"CHAPTER 6

TAX ON COMMERCIAL EXPLOITATION OF AGGREGATE

80M Tax on commercial exploitation of aggregate

A tax charged on aggregate subjected to commercial exploitation in Scotland is a devolved tax."

(2) Tax may not be charged in accordance with that provision on commercial exploitation of aggregate before the date appointed under subsection (4).

(3) In section 16(2) of the Finance Act 2001 (aggregates levy) for "the United Kingdom" substitute "England, Wales or Northern Ireland".

(4) Subsection (3) has effect in relation to commercial exploitation of aggregate on or after such date as the Treasury appoint in regulations made by statutory instrument.

(5) The Treasury may by regulations made by statutory instrument make further provision relating to the disapplication of aggregates levy in relation to commercial exploitation of aggregate in Scotland.

PART 3

WELFARE BENEFITS AND EMPLOYMENT SUPPORT

Welfare benefits

16 Disability, industrial injuries and carer's benefits

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 (social security schemes) is amended as follows.

(2) In the Exceptions, before the paragraph beginning "The subject-matter of Part II of the Social Work (Scotland) Act 1968" insert—

"**Exception 1**

Any of the following benefits—

(a) disability benefits, other than severe disablement benefit or industrial injuries benefits,

(b) severe disablement benefit, so far as payable in respect of a relevant person, and

(c) industrial injuries benefits, so far as relating to employment which is employed earner's employment for the purposes of section 94 of the Social Security Contributions and Benefits Act 1992 as at the relevant date or to participation in training for such employment;

but this exception does not except a benefit which is, or which is an element of, an excluded benefit.

Exception 2

Carer's benefits, other than a benefit which is, or which is an element of, an excluded benefit." 5

(3) In the Exceptions, at the beginning of the paragraph beginning "The subject-matter of Part II of the Social Work (Scotland) Act 1968" insert—

"**Exception 3**".

(4) In the Interpretation provision, after "local taxes." insert—

""Disability benefit" means a benefit which is normally payable in respect of— 10

(a) a significant adverse effect that impairment to a person's physical or mental condition has on his or her ability to carry out day-to-day activities (for example, looking after yourself, moving around or communicating), or 15

(b) a significant need (for example, for attention or for supervision to avoid substantial danger to anyone) arising from impairment to a person's physical or mental condition;

and for this purpose the adverse effect or need must not be short-term. 20

"Severe disablement benefit" means a benefit which is normally payable in respect of—

(a) a person's being incapable of work for a period of at least 28 weeks beginning not later than the person's 20th birthday, or 25

(b) a person's being incapable of work and disabled for a period of at least 28 weeks;

and "relevant person", in relation to severe disablement benefit, means a person who is entitled to severe disablement allowance under section 68 of the Social Security Contributions and Benefits Act 1992 on the date on which section 16 of the Scotland Act 2015 comes into force as respects severe disablement benefit. 30

"Industrial injuries benefit" means a benefit which is normally payable in respect of—

(a) a person's having suffered personal injury caused by accident arising out of and in the course of his or her employment, or 35

(b) a person's having developed a disease or personal injury due to the nature of his or her employment;

and "the relevant date", in relation to industrial injuries benefit, means the date of introduction into Parliament of the Bill that becomes the Scotland Act 2015. 40

"Carer's benefit" means a benefit which is normally payable in respect of the regular and substantial provision of care by a relevant carer to a disabled person; and for this purpose— 45

(a) "relevant carer" means a person who—

(i) is 16 or over,

(ii) is not in full-time education, and

(iii) is not gainfully employed;

(b) "disabled person" means a person to whom a disability benefit is normally payable.

"Excluded benefit" means—

(a) a benefit, entitlement to which, or the amount of which, is normally determined to any extent by reference to a person's income or capital (for example, universal credit under Part 1 of the Welfare Reform Act 2012),

(b) a benefit, entitlement to which, or the amount of which, is normally determined to any extent by reference to a person's national insurance contributions or would be so determined but for the person's being of a particular age (for example, employment and support allowance under section 1(2)(a) of the Welfare Reform Act 2007), or

(c) a benefit payable by way of lump sum in respect of a person's having, or having had—

(i) pneumoconiosis,

(ii) byssinosis,

(iii) diffuse mesothelioma,

(iv) bilateral diffuse pleural thickening, or

(v) primary carcinoma of the lung where there is accompanying evidence of one or both of asbestosis and bilateral diffuse pleural thickening.

"Employment" includes any trade, business, profession, office or vocation and, in relation to industrial injuries benefit, includes participation in training for employment (and "employed" is to be read accordingly)."

17 Benefits for maternity, funeral and heating expenses

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 is amended as follows.

(2) In the Exceptions, after exception 3 (see section 16(3) above) insert—

"**Exception 4**

Providing financial assistance for the purposes of meeting—

(a) maternity expenses,

(b) funeral expenses, or

(c) expenses for heating in cold weather."

(3) In the Exceptions, for the words from "But the following are not excepted" to "Act 2000 (discretionary housing payments)." substitute—

"**Exclusions from exceptions 1 to 7**

Nothing in exceptions 1 to 7 is to be read as excepting—

(a) payments out of the National Insurance Fund,

(b) payments out of the Social Fund, or

(c) the provision by a Minister of the Crown of assistance by way of loan for the purpose of meeting, or helping to meet, an intermittent expense."

(4) In the Interpretation provision, omit the words from "Paragraph 5(1) of Part 3 of this Schedule" to "it is to be treated as if it were."

18 Discretionary payments

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, for the words from "Providing occasional financial" to "unsettled way of life." substitute—

"**Exception 5**

Providing financial or other assistance to or in respect of individuals who appear to require it for the purposes of meeting, or helping to meet, a short-term need that requires to be met to avoid a risk to the well-being of an individual.

This exception does not except providing assistance where the requirement for it arises from reduction, non-payability or suspension of a benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit) unless—

(a) the need for it also arises from some exceptional event or exceptional circumstances, and

(b) the need is immediate as well as short-term.

Exception 6

Providing occasional financial or other assistance to or in respect of individuals who have been or might otherwise be—

(a) in prison, hospital, a residential care establishment or other institution, or

(b) homeless or otherwise living an unsettled way of life,

and who appear to require the assistance to establish or maintain a settled home."

19 Discretionary housing payments

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 6 (see section 18 above) insert—

"**Exception 7**

Providing financial assistance to individuals who—

(a) are entitled to—

(i) housing benefit, or

(ii) any other reserved benefit payable in respect of a liability to make rent payments, and

(b) appear to require further financial assistance to meet or help to meet housing costs.

This exception does not except providing financial assistance to an individual where the requirement for the assistance arises from—

(a) a liability to meet charges for water, sewerage or related environmental services,

(b) a liability to meet payments of local taxes,

(c) a liability to meet a service charge in respect of which a reserved benefit is not payable in the individual's case,

(d) a liability to pay increased rent, interest or other charges on account of late payment or non-payment of housing costs,

(e) suspension of a reserved benefit,

(f) reduction or non-payability of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit), or

(g) reduction or non-payability of a reserved benefit as a result of the recovery of an overpayment.

This exception also does not except providing financial assistance to an individual on a regular basis in respect of accommodation where the assistance exceeds—

(a) in a case where the individual is entitled to housing benefit, the total amount of the payments in respect of which housing benefit is payable less any charges for which housing benefit is not payable in the individual's case, and

(b) in a case where the individual is entitled to any other reserved benefit, the maximum amount that the individual could receive by way of that benefit in respect of that accommodation.

For the purposes of this exception—

"rent payments"—

(a) has the meaning given from time to time by paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013 (S.I. 2013/376) or any re-enactment of that paragraph, or

(b) if at any time universal credit ceases to be payable to anyone, has the meaning given by that paragraph or any re-enactment of that paragraph immediately before that time;

"reserved benefit" means a benefit which is to any extent a reserved matter."

20 Universal credit: costs of claimants who rent accommodation

(1) A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.

(2) This section applies to—

(a) regulations under section 11(4) of the Welfare Reform Act 2012 (determination and calculation of housing cost element), so far as relating to any liability of a claimant in respect of accommodation which the claimant rents, and

(b) regulations under section 5(1)(p) of the Social Security Administration Act 1992 (payments to another person on behalf of the beneficiary), so far as relating to the payment of an amount of universal credit in respect of any such liability.

(3) For the purposes of this section—

(a) a claimant "rents" accommodation if he or she is liable to make rent payments (with or without other payments) in respect of it, and

(b) "rent payments" has the meaning given from time to time by paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013 (S.I. 2013/376).

(4) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless—
  (a) they have consulted the Secretary of State about the practicability of implementing the regulations, and
  (b) the Secretary of State has given his or her agreement as to when any change made by the regulations is to start to have effect, such agreement not to be unreasonably withheld.

(5) The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.

21 Universal credit: persons to whom, and time when, paid

(1) A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.

(2) This section applies to regulations under section 5(1)(i) of the Social Security Administration Act 1992, so far as relating to the person to whom, or the time when, universal credit is to be paid.

(3) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless—
  (a) they have consulted the Secretary of State about the practicability of implementing the regulations, and
  (b) the Secretary of State has given his or her agreement as to when any change made by the regulations is to start to have effect, such agreement not to be unreasonably withheld.

(4) The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.

Employment support

22 Employment support

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section H3 (job search and support) is amended as follows.

(2) For the heading "Exception" substitute "Exceptions".

(3) After that heading insert—

> **"Exception 1**
> The making by a person of arrangements for, or arrangements for the purposes of or in connection with a scheme for, any of the following purposes—
> (a) assisting disabled persons to select, obtain and retain employment;
> (b) assisting persons claiming reserved benefits who are at risk of long-term unemployment to select, obtain and retain employment, where the assistance is for at least a year;

(c) assisting employers to obtain suitable employees who are persons referred to in paragraph (a) or (b).

The arrangements referred to in this exception include—

(a) securing that the assistance referred to in this exception is provided by another person;

(b) providing or arranging for the provision of facilities, support or services to any person;

(c) the making of payments to any person.

The assistance referred to in this exception includes—

(a) work search support,

(b) skills training, and

(c) work placements for the benefit of the community.

In this exception—

(a) "disabled person" has the same meaning as it has in the Equality Act 2010 as at the date of introduction into Parliament of the Bill that becomes the Scotland Act 2015;

(b) "reserved benefit" means a benefit which is to any extent a reserved matter."

(4) At the beginning of the existing exception which begins "The subject-matter of—" insert—

"**Exception 2**".

(5) The Scotland Act 1998 has effect as if section 56(1)(g) of that Act included a reference to section 17B of the Jobseekers Act 1995.

PART 4

OTHER LEGISLATIVE COMPETENCE

23 Crown Estate

(1) In Part 5 of the Scotland Act 1998, before the heading "Miscellaneous" insert—

"The Crown Estate

90B The Crown Estate

(1) The Treasury may make a scheme transferring on the transfer date all the existing Scottish functions of the Crown Estate Commissioners ("the Commissioners") to the Scottish Ministers or a person nominated by the Scottish Ministers ("the transferee").

(2) The existing Scottish functions are the Commissioners' functions relating to the part of the Crown Estate that, immediately before the transfer date, consists of—

(a) property, rights or interests in land in Scotland, excluding property, rights or interests mentioned in subsection (3), and

(b) rights in relation to the Scottish zone.

(3) Subsection (2)(a) excludes property, rights or interests held by a limited partnership registered under the Limited Partnerships Act 1907.

(4) The scheme must provide for the transfer to the transferee of designated rights and liabilities of the Commissioners in connection with the functions transferred.

(5) The scheme must include provision to secure that the employment of any person in Crown employment (within the meaning of section 191 of the Employment Rights Act 1996) is not adversely affected by the transfer.

(6) The scheme must include such provision as the Treasury consider necessary or expedient —

(a) in the interests of defence or national security,

(b) in connection with access to land for the purposes of telecommunications, or with other matters falling within Section C10 in Part 2 of Schedule 5,

(c) for securing that the management of such property, rights or interests does not conflict with the exploitation of resources falling within Section D2 in Part 2 of Schedule 5, or with other reserved matters in connection with their exploitation, and

(d) for securing consistency, in the interests of consumers, in the management of such property, rights or interests and of property, rights or interests to which other functions of the Commissioners relate, so far as it affects the transmission or distribution of electricity or the provision or use of electricity interconnectors.

(7) Any transfer by the scheme is subject to any provision under subsection (6).

(8) On the transfer date, the existing Scottish functions and the designated rights and liabilities are transferred and vest in accordance with the scheme.

(9) A certificate by the Treasury that anything specified in the certificate has vested in any person by virtue of the scheme is conclusive evidence for all purposes.

(10) The scheme may provide—

(a) for the scheme to be modified by agreement after it comes into effect;

(b) for modifications to have effect from the transfer date.

(11) The scheme may include—

(a) incidental, supplemental and transitional provision;

(b) consequential provision, including provision amending an enactment, instrument or other document;

(c) provision conferring or imposing a function on any person including any successor of the transferee;

(d) provision for the creation of new rights or liabilities in relation to the functions transferred.

(12) In this section—

"designated" means specified in or determined in accordance with the scheme;

"the transfer date" means a date specified by the scheme as the date on which the scheme is to have effect.

(13) The Treasury may make a scheme under this section only with the agreement of the Scottish Ministers.

(14) The power to make a scheme under this section is exercisable by statutory instrument."

(2) In Part 1 of Schedule 5 to the Scotland Act 1998 (general reservations) in paragraph 2(3) after "Crown Estate" insert "(that is, the property, rights and interests under the management of the Crown Estate Commissioners)". *5*

(3) In section 1(2) of the Civil List Act 1952 (payment of hereditary revenues into the Scottish Consolidated Fund) after "treasure trove" insert "and from the property, rights and interests the management of which is transferred by the scheme under section 90B of the Scotland Act 1998". *10*

24 Equal opportunities

(1) Section L2 (equal opportunities) in Part 2 of Schedule 5 to the Scotland Act 1998 is amended as follows.

(2) For the words from "including" to the end of paragraph (d) substitute "including the subject-matter of— *15*

(a) the Equality Act 2006, and

(b) the Equality Act 2010."

(3) Under the heading "Exceptions", at the end insert—

"The subject matter of Part 1 of the Equality Act 2010 (socio-economic inequalities)." *20*

(4) Under the heading "Exceptions", at the end insert—

"Equal opportunities in relation to the Scottish functions of any Scottish public authority or cross-border public authority, except to the extent that provision is made by the Equality Act 2006 or the Equality Act 2010." *25*

(5) Under the heading "Interpretation", at the end insert—

"The references to the subject-matter of, or provision made by, the Equality Act 2006, the Equality Act 2010 and Part 1 of that Act are to be read as references to that subject-matter or provision as at the day on which section 24 of the Scotland Act 2015 comes into force, but treating any provision of those enactments that is not yet in force on that day as if it were in force." *30*

25 Scottish tribunals

(1) In Part 3 of Schedule 5 to the Scotland Act 1998 (reserved matters: general provisions) after paragraph 2 insert— *35*

"Scottish tribunals

2A (1) This Schedule does not reserve the transfer to a Scottish tribunal of tribunal functions relating to reserved matters, so far as those functions are exercisable in relation to Scottish cases. *40*

(2) Sub-paragraph (1) does not apply in relation to functions of any of the following—

(a) the First-tier Tribunal or the Upper Tribunal that are established under section 3 of the Tribunals, Courts and Enforcement Act 2007;

(b) an employment tribunal or the Employment Appeal Tribunal;

(c) a tribunal listed in Schedule 1 to the Tribunals and Inquiries Act 1992;

(d) a tribunal listed in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007.

(3) Sub-paragraph (2)(c) and (d) include a tribunal established after this paragraph comes into force.

(4) In the case of a tribunal referred to in sub-paragraph (2), this Schedule does not reserve the transfer of a specified function of the tribunal to a specified Scottish tribunal, so far as the function is exercisable in relation to Scottish cases, in accordance with provision made by an Order in Council.

(5) The Order in Council may make any provision which Her Majesty considers necessary or expedient for the purposes of or in consequence of the transfer of the function and its exercise by the Scottish tribunal.

(6) Such provision may—

(a) include provision that—

(i) modifies the function;

(ii) imposes conditions or restrictions (including conditions or restrictions relating to the composition or rules of procedure of the Scottish tribunal, or to its staff or accommodation);

(iii) specifies the category or categories of Scottish cases in relation to which the transfer is to have effect;

(b) be made with a view to purposes including—

(i) securing consistency in any respect in practice or procedure or otherwise between the Scottish tribunal and other tribunals;

(ii) promoting judicial co-operation in the interests of consistency.

(7) Sub-paragraph (6) does not limit the provision that may be made by an Order in Council by virtue of sub-paragraph (5).

(8) In this paragraph—

"Scottish cases" has the meaning given by an Order in Council;

a "Scottish tribunal" means a tribunal in Scotland that does not have functions in or as regards any other country or territory (except for purposes ancillary to its functions in or as regards Scotland);

"specified" means specified by an Order in Council;

"tribunal functions" means any functions of a tribunal, other than functions of—

(a) the Pathogens Access Appeal Commission;

(b) the Proscribed Organisations Appeal Commission;

(c) the Special Immigration Appeals Commission;

(d) the tribunal established by section 65(1) of the Regulation of Investigatory Powers Act 2000 (investigatory powers tribunal);

(e) any other tribunal with functions relating to matters falling within Section B8 of Part 2 of Schedule 5.

(9) The powers conferred by this paragraph do not affect the powers conferred by section 30 or section 113."

(2) In paragraph 1(2) of Schedule 7 (procedure for subordinate legislation) at the appropriate place insert—

"Schedule 5, Part 3, paragraph 2A	Type A"

26 Roads

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section E1 (specific reservations: road transport) is amended as follows.

(2) In the reservation relating to the subject-matter of certain enactments, for paragraph (c) (reservation of subject-matter of section 17 and other provisions of the Road Traffic Regulation Act 1984) substitute—

"(c) section 17 of the Road Traffic Regulation Act 1984 (traffic regulation on special roads) except so far as relating to the speed of vehicles on special roads, and section 87 of that Act (exemption of emergency vehicles from speed limits) so far as relating to vehicles used in connection with any other reserved matter or to the training of drivers of vehicles,"

(3) In the exception relating to the Road Traffic Act 1988, after "sections" insert "36 (offence of failing to comply with traffic sign),".

(4) After that exception insert—

"Interpretation

The reference to the subject-matter of section 87 of the Road Traffic Regulation Act 1984 is to be construed as a reference to it as at the date when section 26 of the Scotland Act 2015 comes into force (and, accordingly, paragraph 5(1) of Part 3 of this Schedule does not apply to that reference)."

27 Roads: traffic signs etc

(1) The Road Traffic Regulation Act 1984 is amended as follows.

(2) Section 25(1) (Secretary of State to make pedestrian crossing regulations) for "Secretary of State" substitute "national authority".

(3) In section 64 (general provisions as to traffic signs)—

(a) in subsections (1) and (2) for "Secretary of State" substitute "national authority",

(b) in subsection (1) for "Ministers acting jointly" substitute "national authority,

(c) omit subsections (2A) to (2C), and
(d) omit subsections (7) and (8).

(4) Section 65 (powers of highway authorities as to placing of traffic signs) is amended as follows.

(5) In subsection (1) omit "as may be given by the Ministers acting jointly". *5*

(6) In subsections (1), (2), (3A)(ii) and (4) for "Secretary of State" substitute "national authority".

(7) In subsection (3) after "power" insert "of the Secretary of State".

(8) After that subsection insert—

"(3ZA) The power of the Scottish Ministers to give general directions under subsection (1) is to be exercisable by Scottish statutory instrument. *10*

(3ZB) Before giving a general direction under subsection (1) the Secretary of State must consult with the Scottish Ministers.

(3ZC) Before giving a general direction under subsection (1) the Scottish Ministers must consult with the Secretary of State." *15*

(9) In subsection (3A)(ii) after "prescribed" insert "in regulations made by the national authority".

(10) In section 69(3) (Secretary of State's directions for removal of traffic signs) for "Secretary of State" substitute "national authority".

(11) In section 70(1) (default powers of Secretary of State as to traffic signs)— *20*
(a) for "Secretary of State" substitute "national authority",
(b) omit "himself",
(c) omit "by him" in the first place,
(d) for "him", in the second place, substitute "the national authority", and
(e) after "the authority" insert "that failed to comply with the direction". *25*

(12) In section 71(1) (power to enter land in connection with traffic signs) for "Secretary of State" substitute "national authority".

(13) In section 77 (modification of provisions relating to directions where Secretary of State is the traffic authority) for "Secretary of State", in both places, substitute "national authority". *30*

(14) Section 79 (advances by Secretary of State towards expenses of traffic signs) is amended as follows.

(15) In subsection (1), for the words from "Secretary of State to "Parliament," substitute "The national authority may".

(16) After subsection (1) insert— *35*

"(1A) An advance by the Secretary of State under this section is to be made out of moneys provided by Parliament."

(17) In subsections (3) and (5) for "Secretary of State" substitute "national authority".

(18) Section 36 of the Road Traffic Act 1988 (offence of failing to comply with traffic sign) is amended as follows. *40*

(19) In subsections (1)(b) and (3)(a) for "Secretary of State" substitute "national authority".

(20) In subsection (5) for the words from "Secretary of State for the Environment" to "jointly" substitute "national authority".

(21) After subsection (5) insert— *5*

"(5A) In this section "national authority" has the meaning given by section 142(1) of the Road Traffic Regulation Act 1984."

28 Roads: speed limits

(1) The Road Traffic Regulation Act 1984 is amended as follows.

(2) Section 81 (speed limit for restricted roads) is amended as follows. *10*

(3) In subsection (2)—
  (a) for "Ministers acting jointly" substitute "national authority", and
  (b) omit the words from "made" to "Parliament".

(4) After that subsection insert—

"(3) An order under subsection (2)— *15*
  (a) if made by the Secretary of State, is to be made by statutory instrument and approved by a resolution of each House of Parliament;
  (b) if made by the Scottish Ministers, is subject to the affirmative procedure. *20*

(4) Before making an order under subsection (2) the Secretary of State must consult with the Scottish Ministers.

(5) Before making an order under subsection (2) the Scottish Ministers must consult with the Secretary of State."

(5) In section 82 (what roads are restricted roads)— *25*
  (a) in subsection (1)(b) for "Secretary of State" substitute "Scottish Ministers", and
  (b) in subsection (3) for "prescribed manner" substitute "manner prescribed in regulations made by the national authority".

(6) Section 83 (provisions as to directions by a traffic authority under section 82(2)) is amended as follows. *30*

(7) In subsection (1)—
  (a) for "Secretary of State", in both places, substitute "national authority", and
  (b) for "his" substitute "the authority's". *35*

(8) After subsection (3) insert—

"(4) An order of the Scottish Ministers containing a direction under section 82(2) is to be made by Scottish statutory instrument."

(9) Section 84 (speed limits on roads other than restricted roads) is amended as follows. *40*

(10) In subsections (1A) and (1B) for "Secretary of State" substitute "national authority".

(11) After subsection (6) insert—

"(7) An order of the Scottish Ministers under subsection (1) is to be made by Scottish statutory instrument." *5*

(12) Section 85 (traffic signs for indicating speed restrictions) is amended as follows.

(13) In the following places, for "Secretary of State" substitute "national authority"—

(a) subsection (1),
(b) subsection (2)(a) and (b), *10*
(c) subsection (3), and
(d) subsection (5A).

(14) In subsection (3)—

(a) omit "himself",
(b) omit "by him" in the first place, and *15*
(c) for "him", in the second place, substitute "the national authority".

(15) In subsection (5A) omit the words from "or, where" to "officer of the Scottish Ministers".

(16) In subsection (7) after "power" insert "of the Secretary of State".

(17) After subsection (7) insert— *20*

"(8) The power of the Scottish Ministers to give general directions under subsection (2) is to be exercisable by Scottish statutory instrument.

(9) Before giving any general directions under subsection (2) the Secretary of State must consult with the Scottish Ministers.

(10) Before giving any general directions under subsection (2) the Scottish Ministers must consult with the Secretary of State." *25*

(18) In section 87 (exemption of emergency vehicles from speed limits) (as amended by section 19 of the Road Safety Act 2006)—

(a) in paragraph (b) of subsection (1) for "prescribed purposes" substitute "purposes prescribed by regulations made by the relevant authority", *30*
(b) in that paragraph after "may be" insert "so",
(c) in subsection (2)(a) for "this section" substitute "subsection (3)",
(d) in subsection (4) for "The regulations", in the first place, substitute "Regulations under subsection (3)",
(e) in subsection (5) for "The regulations", in the first place, substitute "Regulations under subsection (3)", *35*
(f) in subsection (6) for "The regulations" substitute "Regulations under subsection (3)", and
(g) at the end insert—

"(7) In this section "relevant authority"— *40*

(a) in relation to vehicles used on roads in Scotland, except vehicles used in connection with reserved matters (within the meaning of the Scotland Act 1998), means the Scottish Ministers,

(b) otherwise, means the Secretary of State."

29 Roads: procedure for regulations and interpretation

(1) The Road Traffic Regulation Act 1984 is amended as follows.

(2) In section 17 (traffic regulation on special roads)—
(a) omit subsection (3ZD), and
(b) omit paragraph (b) of subsection (3A) (and the "and" before it).

(3) In section 86 (speed limits for particular classes of vehicles) omit subsection (9).

(4) In section 88 (temporary speed limits) omit subsection (7A).

(5) Section 134 (regulations) is amended as follows.

(6) In subsection (2) omit "82(1)(b)".

(7) After subsection (3) insert—

"(3A) Before making regulations under section 25, 64 or 87(1)(b) the Secretary of State must consult with the Scottish Ministers."

(8) After subsection (5) insert—

"(6) Regulations made by the Scottish Ministers under this Act (except section 86) are subject to the negative procedure.

(7) Before making regulations under section 25, 64 or 87(1)(b) the Scottish Ministers must consult with the Secretary of State.

(8) Before making regulations under this Act, except section 82(1)(b), the Scottish Ministers must consult with such representative organisations as they think fit."

(9) In section 142(1) (general interpretation) at the appropriate place insert—

""national authority"—
(a) in relation to roads in England and Wales, means the Secretary of State;
(b) in relation to roads in Scotland, means the Scottish Ministers."

(10) In section 195 of the Road Traffic Act 1988 (regulations) after subsection (4) insert—

"(4ZA) Regulations made by the Scottish Ministers under section 36(5) are subject to the negative procedure."

30 Policing of railways and railway property

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section E2 (specific reservations: rail transport) is amended as follows.

(2) Under the heading "Exceptions", after the exception relating to the promotion and construction of railways insert—

"Policing of railways and railway property."

(3) Under the heading "Interpretation", after the definition of "railway" insert—

""Railway property" has the meaning given by section 75(3) of the Railways and Transport Safety Act 2003."

31 Onshore oil and gas extraction

(1) The Petroleum Act 1998 is amended as follows.

(2) In section 3 (licences to search and bore for and get petroleum)—

(a) for "the Secretary of State" in subsection (1), and in the second place in subsection (3), substitute "the appropriate Minister", and

(b) after subsection (3) insert—

"(3A) In this Part "the appropriate Minister" means—

(a) in relation to the Scottish onshore area, the Scottish Ministers;

(b) otherwise, the Secretary of State."

(3) Section 4 (licences: further provisions) is amended as follows.

(4) In subsection (1) for "the Secretary of State" substitute "the appropriate Minister".

(5) After that subsection insert—

"(1A) Regulations made by the Secretary of State under subsection (1)(e) may include model clauses on the following matters in relation to licences granted by the Scottish Ministers—

(a) the consideration payable for a licence,

(b) the measurement of petroleum obtained from the licensed area, and

(c) the keeping of accounts.

(1B) Regulations made by the Scottish Ministers under subsection (1)(e) may not include model clauses on the matters listed in subsection (1A)."

(6) In subsection (3) for "Any such regulations" substitute "Any regulations made by the Secretary of State".

(7) After that subsection insert—

"(3A) Any regulations made by the Scottish Ministers shall be subject to the negative procedure in the Scottish Parliament."

(8) In subsection (4) omit the words after paragraph (b), and after that subsection insert—

"(4A) As soon as practicable after granting a licence under section 3, the Scottish Ministers shall publish notice of the fact in the Edinburgh Gazette stating—

(a) the name of licensee; and

(b) the situation of the area in respect of which the licence has been granted."

(9) In section 5A (rights transferred without consent) for "the Secretary of State" in each place substitute "the appropriate Minister".

(10) In section 5B(1) (information) for "the Secretary of State" in each place substitute "the appropriate Minister".

(11) In section 7 (ancillary rights) in subsection (2)—
  (a) in paragraph (b) omit "and", and
  (b) at the end of paragraph (c) insert "; and
    (d) references to the Minister in section 4 of that Act included the Scottish Ministers in relation to licences granted regarding the Scottish onshore area.".

(12) In section 8 (power to inspect plans of mines) for "the Secretary of State" in each place substitute "the appropriate Minister".

(13) After section 8 insert—

"8A Scottish onshore area

(1) The Scottish onshore area is the area of Scotland that is within the baseline provided for in article 3 of the Territorial Sea (Baselines) Order 2014 (or any order replacing that order).

(2) In subsection (1) "Scotland" has the same meaning as in the Scotland Act 1998."

(14) In section 188(12) of the Energy Act 2004 in subsection (7A) of the substituted text before paragraph (a) insert—
  "(za) Part 1 of the Petroleum Act 1998,".

(15) Section D2 in Part 2 of Schedule 5 to the Scotland Act 1998 (oil and gas) is amended as follows.

(16) Under the heading "Exceptions" insert—
  "The granting of licences to search and bore for and get petroleum within the Scottish onshore area, except for any consideration payable for such licences.
  Access to petroleum within the Scottish onshore area."

(17) After the heading "Exceptions" insert—
  "*Interpretation*
  The Scottish onshore area is the area of Scotland that is within the baseline provided for in article 3 of the Territorial Sea (Baselines) Order 2014 (or any order replacing that order)."

32 Consumer advocacy and advice

(1) Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations) is amended as follows.

(2) In Section C7 (consumer protection)—
  (a) for the heading "Exception" substitute "Exceptions";
  (b) after that heading insert—

  "The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office."

(3) In Section C8 (product standards, safety and liability) after the heading

"Exceptions" insert—

"The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office."

(4) In Section C9 (weights and measures) after the reservations insert—

"*Exceptions*
The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office."

(5) In Section C11 (posts)—
(a) for the heading "Exception" substitute "Exceptions";
(b) after the exception relating to financial assistance insert—

"The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office; but this does not except any modification of the functions of the Office of Communications."

(6) In Section D1 (electricity)—
(a) for the heading "Exception" substitute "Exceptions";
(b) after the exception relating to the Environmental Protection Act 1990 insert—

"The provision of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office; but this does not except any modification of the functions of the Gas and Electricity Markets Authority."

(7) In Section D2 (oil and gas), at the end of the exceptions insert—

"The provision in relation to gas of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office; but this does not except any modification of the functions of the Gas and Electricity Markets Authority."

33 Power to change number of fixed odds betting terminals

(1) In Section B9 in Part 2 of Schedule 5 to the Scotland Act 1998 (betting, gaming and lotteries) at the end insert—

"*Exception*
The number of gaming machines for which the maximum charge for use is more than £10 that a betting premises licence issued under the Gambling Act 2005 authorises the holder to make available for use."

(2) The Gambling Act 2005 is amended as follows.

(3) In section 172 (gaming machines) in subsection (11) for "Secretary of State" substitute "appropriate Minister".

(4) After that subsection insert—

"(12) In subsection (11) the "appropriate Minister" means—
(a) the Scottish Ministers, so far as the order varies the number of gaming machines for which the maximum charge for use is

more than £10 authorised by a betting premises licence in respect of premises in Scotland;

(b) otherwise, the Secretary of State."

(5) In section 355 (regulations, orders and rules)—

(a) in subsections (1) and (3) after "the Secretary of State" insert "or the Scottish Ministers", and

(b) for subsections (9) and (10) insert—

"(9) Regulations or orders made by Scottish Ministers under subsection (4) or sections 172 or 285 shall be subject to the affirmative procedure.

(10) Regulations made by Scottish Ministers under any other provision of this Act shall be subject to the negative procedure."

(6) The amendments made by this section do not apply in relation to a betting premises licence issued before this section comes into force.

PART 5

OTHER EXECUTIVE COMPETENCE

34 Gaelic Media Service

(1) In section 183A of the Broadcasting Act 1990 (membership of the Gaelic Media Service)—

(a) in subsection (4) for "the Secretary of State and the Scottish Ministers" substitute "the Scottish Ministers", and

(b) in subsection (6)(b) for "the Secretary of State with the agreement of the Scottish Ministers" substitute "the Scottish Ministers".

(2) Section 17(4) to (6) of the Scotland Act 2012 is repealed.

35 Commissioners of Northern Lighthouses

(1) Schedule 8 of the Merchant Shipping Act 1995 is amended as follows.

(2) In paragraph 1(2) (Commissioners of Northern Lighthouses), after paragraph (e) insert—

"(f) a person appointed by the Secretary of State (in addition to the person nominated under paragraph (d));

(g) a person appointed by the Scottish Ministers."

(3) In paragraph 2(2) (elections by the Commissioners) for "five" substitute "three".

(4) After paragraph 4 (Commissioners constituting quorum) insert—

"4A (1) The Commissioners shall send to the Scottish Ministers a copy of any accounts that they have been required to provide under section 218.

(2) The Scottish Ministers shall lay those accounts before the Scottish Parliament.

(3) The Commissioners shall send to the Scottish Ministers any report made under section 198(4)(b) (reports on inspections).

(4) The Scottish Ministers shall lay any such report before the Scottish Parliament."

36 Maritime and Coastguard Agency

(1) In section 1 of the Coastguard Act 1925 (transfer of the coastguard to the Board of Trade), at the end insert— 5

"(4) The Secretary of State must consult the Scottish Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to activities of the Coastguard in Scotland.

(5) In subsection (4) "Scotland" has the same meaning as in the Scotland Act 1998." 10

(2) In section 292 of the Merchant Shipping Act 1995 (general functions of the Secretary of State) after subsection (2) insert—

"(3) The Secretary of State must consult the Scottish Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to the safety standards of ships and seafarers in Scotland. 15

(4) In subsection (3) "Scotland" has the same meaning as in the Scotland Act 1998."

37 Rail: franchising of passenger services 20

In section 25 of the Railways Act 1993 (public sector operators not to be franchisees) after subsection (2) insert—

"(2A) This section does not apply in relation to Scottish franchise agreements."

38 Fuel poverty: support schemes 25

(1) The Energy Act 2010 is amended as follows.

(2) In section 9 (schemes for reducing fuel poverty) after subsection (1) insert—

"(1A) In relation to Scotland, that is subject to section 14A (power of the Scottish Ministers to make schemes)."

(3) After section 14 (regulations under Part 2: procedure) insert— 30

"14A Power of the Scottish Ministers to make schemes under this Part

(1) The power by regulations under section 9 to make one or more schemes in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.

(2) For the purposes of the exercise of that power by the Scottish Ministers, this Part applies— 35

(a) as if references to the Secretary of State in sections 9, 10 and 14(1) and (4) were references to the Scottish Ministers;

(b) with the omission in section 9 of subsections (4), (9)(a), (c)(i), (v) and (vi) and (11); 40

(c) as if in section 10(7) "Parliament" were "the Scottish Parliament".

(3) The power of the Scottish Ministers under section 9 does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters). *5*

(4) The Scottish Ministers may not make regulations under section 9 unless—

(a) they have consulted the Secretary of State about the proposed regulations, and

(b) the Secretary of State has agreed to the regulations being made. *10*

(5) Subsection (1) does not prevent the Secretary of State making a support scheme in relation to Scotland with the agreement of the Scottish Ministers.

(6) Subsection (1) does not prevent the Secretary of State making a support scheme in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies. *15*

(7) This subsection applies if—

(a) a scheme in relation to England and Wales has been made, or the Secretary of State intends to make such a scheme, and

(b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that a scheme in relation to Scotland is made with a corresponding scheme period, it is necessary for the Secretary of State to exercise the power under section 9 to make such a scheme. *20*

(8) In paragraph (b) of subsection (7) a "corresponding scheme period" means a scheme period beginning and ending at the same time as that specified or to be specified in the scheme mentioned in paragraph (a). *25*

(9) This subsection applies if it appears to the Secretary of State, in the case of a support scheme made by the Scottish Ministers (the "Scottish scheme"), that the Scottish scheme is, alone or in conjunction with a scheme made or to be made by the Secretary of State in relation to England and Wales, likely to— *30*

(a) cause detriment to the United Kingdom, or

(b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency, *35*

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish scheme.

(10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 9. *40*

(11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9)— *45*

(a) must be in writing;

(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);

(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(12) Where the Secretary of State makes a scheme in accordance with subsection (6), section 14(5) does not prevent the Secretary of State, by regulations under section 9, revoking any scheme made by the Scottish Ministers so far as it is inconsistent with the scheme made by the Secretary of State."

39 Energy company obligations

(1) The Gas Act 1986 is amended as follows.

(2) In section 33BC (promotion of reduction in carbon emissions) after subsection (1) insert—

"(1ZA) In relation to Scotland, that is subject to section 33BCA (power of the Scottish Ministers to impose obligations on gas suppliers in order to promote reductions in carbon emissions).".

(3) After section 33BC insert—

"33BCAScottish Ministers' promotion of reductions in carbon emissions: gas suppliers

(1) The power by order under section 33BC to impose obligations on gas suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.

(2) For the purposes of the exercise of that power by the Scottish Ministers section 33BC applies—

(a) with the omission of "(or each gas supplier of a specified description)", "within a specified period and" and "under the order for that transporter or supplier" in subsection (1),

(b) with the addition, in subsection (1) after "gas supplier" in each place, of "on whom the Secretary of State has decided to impose an obligation",

(c) with the omission of subsections (3), (5)(a), (7)(a) and (10A),

(d) with the omission of "Citizens Advice" and "gas transporters" in subsection (11),

(e) as if references to the Secretary of State were to the Scottish Ministers, and

(f) as if references to each or either House of Parliament were to the Scottish Parliament.

(3) The power of the Scottish Ministers under section 33BC does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

(4) The Scottish Ministers may not make an order under section 33BC unless—

(a) they have consulted the Secretary of State about the proposed order, and

(b) the Secretary of State has agreed to the order being made.

(5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers.

(6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies.

(7) This subsection applies if—

(a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and

(b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 33BC to impose such a scheme.

(8) In paragraph (b) of subsection (7) a "corresponding obligation period" means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the "Scottish obligations"), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to—

(a) cause detriment to the United Kingdom, or

(b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations.

(10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 33BC.

(11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9)—

(a) must be in writing;

(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);

(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 33BC, may

revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State.

(13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers.

(14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers—

(a) to the Secretary of State for the purpose of enabling them to review the operation and effect in England of an order made under section 33BC;

(b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 33BC."

(4) In section 33BD (promotion of reduction in home-heating costs) after subsection (1) insert—

"(1A) In relation to Scotland, that is subject to section 33BDA (power of the Scottish Ministers to impose obligations to promote reductions in home-heating costs).".

(5) After section 33BD insert—

"33BDAScottish Ministers' promotion of reductions in home-heating costs: gas suppliers

(1) The power by order under section 33BD to impose obligations on gas suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.

(2) For the purposes of the exercise of that power by the Scottish Ministers section 33BD applies—

(a) with the omission of "(or each gas supplier of a specified description)", "within a specified period and" and "under the order for that transporter or supplier" in subsection (1),

(b) with the addition, in subsection (1) after "gas supplier" in each place, of "on whom the Secretary of State has decided to impose an obligation"

(c) with the omission of "(3)" in subsection (4),

(d) as if in subsection (4) for "(10A)" there were substituted "(11)",

(e) as if the duty to consult under section 33BC(11) (as applied by subsection (4)) did not refer to "Citizens Advice" and "gas transporters",

(f) with the omission of subsection (4)(e),

(g) as if references to the Secretary of State were to the Scottish Ministers, and

(h) as if references to each or either House of Parliament were to the Scottish Parliament.

(3) The power of the Scottish Ministers under section 33BD does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

(4) The Scottish Ministers may not make an order under section 33BD unless—

(a) they have consulted the Secretary of State about the proposed order, and

(b) the Secretary of State has agreed to the order being made.

(5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers.

(6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies.

(7) This subsection applies if—

(a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and

(b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 33BC to impose such a scheme.

(8) In paragraph (b) of subsection (7) a "corresponding obligation period" means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the "Scottish obligations"), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to—

(a) cause detriment to the United Kingdom, or

(b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations.

(10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 33BD.

(11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9)—

(a) must be in writing;

(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);

(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 33BD, may revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State.

(13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers.

(14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers—

(a) to the Secretary of State for the purpose of enabling them to review the operation and effect in England of an order made under section 33BD;

(b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 33BD."

(6) The Electricity Act 1989 is amended as follows.

(7) In section 41A (promotion of reduction in carbon emissions) after subsection (1) insert—

"(1ZA) In relation to Scotland, that is subject to section 41AB (power of the Scottish Ministers to impose obligations to promote reductions in carbon emissions).".

(8) After section 41A insert—

"41ABScottish Ministers' promotion of reductions in carbon emissions: electricity suppliers

(1) The power by order under section 41A to impose obligations on electricity suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.

(2) For the purposes of the exercise of that power by the Scottish Ministers section 41A applies—

(a) with the omission of "(or each electricity supplier of a specified description)", "within a specified period and" and "under the order for that distributor or supplier" in subsection (1),

(b) with the addition, in subsection (1) after "electricity supplier" in each place, of "on whom the Secretary of State has decided to impose an obligation",

(c) with the omission of subsections (3), (5)(a), (7)(a) and (10A),

(d) with the omission of "Citizens Advice" and "electricity distributors" in subsection (11),

(e) as if references to the Secretary of State were to the Scottish Ministers, and

(f) as if references to each or either House of Parliament were to the Scottish Parliament.

(3) The power of the Scottish Ministers under section 41A does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

(4) The Scottish Ministers may not make an order under section 41A unless—
  (a) they have consulted the Secretary of State about the proposed order, and
  (b) the Secretary of State has agreed to the order being made.

(5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers.

(6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies.

(7) This subsection applies if—
  (a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and
  (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 41A to impose such a scheme.

(8) In paragraph (b) of subsection (7) a "corresponding obligation period" means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the "Scottish obligations"), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to—
  (a) cause detriment to the United Kingdom, or
  (b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations.

(10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 41A.

(11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9)—
  (a) must be in writing;

(b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);

(c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 41A, may revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State.

(13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers.

(14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers—

(a) to the Secretary of State for the purpose of enabling them to review the operation and effect in England of an order made under section 41A;

(b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 41A."

(9) In section 41B (promotion of reduction in home-heating costs) after subsection (1) insert—

"(1A) In relation to Scotland, that is subject to section 41BB (power of the Scottish Ministers to impose obligations to promote reductions in home-heating costs).".

(10) After section 41B insert—

"41BBScottish Ministers' promotion of reductions in home-heating costs: electricity suppliers

(1) The power by order under section 41B to impose obligations on electricity suppliers in relation to Scotland is exercisable by the Scottish Ministers and not, except as provided by this section, by the Secretary of State.

(2) For the purposes of the exercise of that power by the Scottish Ministers section 41B applies—

(a) with the omission of "(or each electricity supplier of a specified description)", "within a specified period and" and "under the order for that distributor or supplier" in subsection (1),

(b) with the addition, in subsection (1) after "electricity supplier" in each place, of "on whom the Secretary of State has decided to impose an obligation",

(c) with the omission of "(3)" in subsection (4),

(d) as if in subsection (4) for "(10A)" there were substituted "(11)",

(e) as if the duty to consult under section 41A (as applied by subsection (4)) did not refer to "Citizens Advice" and "electricity distributors",

(f) as if references to the Secretary of State were to the Scottish Ministers, and

(g) as if references to each or either House of Parliament were to the Scottish Parliament.

(3) The power of the Scottish Ministers under section 41B does not include power to make provision in relation to the subject matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

(4) The Scottish Ministers may not make an order under section 41B unless—

(a) they have consulted the Secretary of State about the proposed order, and

(b) the Secretary of State has agreed to the order being made.

(5) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland with the agreement of the Scottish Ministers.

(6) Subsection (1) does not prevent the Secretary of State imposing obligations in relation to Scotland without the agreement of the Scottish Ministers if subsection (7) or (9) applies.

(7) This subsection applies if—

(a) obligations in relation to England and Wales have been imposed, or the Secretary of State intends to impose such obligations, and

(b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that obligations in relation to Scotland are made with a corresponding obligation period, it is necessary for the Secretary of State to exercise the power under section 41B to impose such a scheme.

(8) In paragraph (b) of subsection (7) a "corresponding obligation period" means an obligation period beginning and ending at the same time as that specified or to be specified by the obligations mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed by the Scottish Ministers (the "Scottish obligations"), that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed by the Secretary of State in relation to England and Wales, likely to—

(a) cause detriment to the United Kingdom, or

(b) adversely affect the ability of the United Kingdom to comply with any international obligation in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make specified modifications to the Scottish obligations.

(10) In determining for the purposes of subsection (9), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made by the Secretary of State and the Scottish Ministers under section 41B.

(11) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9)—
  (a) must be in writing;
  (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b);
  (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

(12) Where the Secretary of State imposes obligations in accordance with subsection (6), the Secretary of State, by order under section 41B, may revoke any order made by the Scottish Ministers so far as it is inconsistent with the order made by the Secretary of State.

(13) The power by notice under section 103B(1)(b) and (c) of the Utilities Act 2000 to require information to review the operation of an order made by the Scottish Ministers and maintain a measures record is exercisable by the Scottish Ministers.

(14) Information obtained by virtue of subsection (13) may be disclosed by the Scottish Ministers—
  (a) to the Secretary of State or the purpose of enabling them to review the operation and effect in England of an order made under section 41B;
  (b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of an order made under section 41B."

40 Renewable electricity incentive schemes: consultation

In the Scotland Act 1998 after section 90B (inserted by section 23) insert—

Renewable electricity incentive schemes

90C Renewable electricity incentive schemes: consultation

(1) The Secretary of State must consult the Scottish Ministers before—
  (a) establishing any renewable incentive scheme that applies in Scotland, or
  (b) amending such a scheme as it relates to Scotland.

(2) Subsection (1) does not apply to amendments that are of a minor, technical or administrative nature; and the Secretary of State is not to be taken to establish or amend a scheme by exercising a power under a scheme, other than a power that is exercisable subject to any parliamentary procedure.

(3) In subsection (1) a "renewable incentive scheme" means any scheme, whether statutory or otherwise, that provides an incentive to generate, or facilitate the generation of, electricity from sources of energy other than fossil fuel or nuclear fuel.

This includes the following insofar as they relate to the generation of electricity from sources of energy other than fossil fuel or nuclear fuel—

(a) the contracts for difference scheme, as provided for in sections 6 to 26 of the Energy Act 2013;
(b) feed-in tariffs for small-scale generation of electricity, as provided for in sections 41 to 43 of the Energy Act 2008;
(c) renewables obligations, as provided for in sections 32 to 32Z2 of the Electricity Act 1989."

41 References to Competition and Markets Authority

In section 132(5) of the Enterprise Act 2002 (ministerial power to make references to Competition and Markets Authority: meaning of "appropriate Minister")—

(a) omit the "or" after paragraph (a), and
(b) after paragraph (b) insert—

"(c) the Scottish Ministers and the Secretary of State acting jointly; or
(d) the Scottish Ministers, the Secretary of State and one or more than one other Minister of the Crown, acting jointly."

PART 6

MISCELLANEOUS

42 Gas and Electricity Markets Authority

(1) The Utilities Act 2000 is amended as follows.

(2) In section 5 (annual and other reports of Authority)—

(a) in subsection (5) omit "and" at the end of paragraph (a) and insert—

"(aa) send a copy of the report to the Scottish Ministers, and", and

(b) after subsection (5) insert—

"(5A) The Scottish Ministers shall lay a copy of each annual report before the Scottish Parliament."

(3) After section 5 insert—

"5XA Laying of accounts before Scottish Parliament

(1) The Comptroller and Auditor General must send to the Authority, in respect of each of its accounting years, a copy of the certified accounts and report of the Authority no later than 15th January of the financial year following that to which the accounts relate.

(2) The Authority must send to the Scottish Ministers, in respect of each of its accounting years, a copy of the certified accounts and report of the Authority no later than 31st January of the financial year following that to which the accounts relate.

(3) The Scottish Ministers must lay a copy of whatever is sent to them under subsection (2) before the Scottish Parliament.

(4) In subsections (1) and (2) "certified accounts and report" means those accounts certified under sections 5 and 7 of the Government Resources

and Accounts Act 2000, and the report issued by the Comptroller and Auditor General under section 6(3)(a) of that Act."

43 Office of Communications

(1) Section 1 of the Office of Communications Act 2002 (the Office of Communications) is amended as follows.

(2) In subsection (3) after paragraph (a) insert—

"(aa) a member appointed by the Scottish Ministers;".

(3) After subsection (3) insert—

"(3A) Before appointing a member under subsection (3)(aa) the Scottish Ministers must consult the Secretary of State."

(4) After subsection (10) insert—

"(11) Paragraphs 1 and 2 of the Schedule apply in relation to the appointment made under subsection (3)(aa) as if—

(a) any reference to the Secretary of State was to the Scottish Ministers, and

(b) after paragraph 2(6) there were inserted—

"(7) Before the Scottish Ministers remove a person from office they must consult the Secretary of State.'"".

(5) The Schedule to the Office of Communications Act 2002 is amended as follows.

(6) In paragraph 11(3) (accounts and audit)—

(a) omit "and" at the end of paragraph (a), and

(b) at the end of paragraph (b) insert "and

(c) shall send a copy of the statement and of his report to the Scottish Ministers."

(7) After paragraph 11(3) insert—

"(4) The Scottish Ministers shall lay a copy of the statement and report sent to them under sub-paragraph (3) before the Scottish Parliament."

(8) In paragraph 12 (annual report)—

(a) in sub-paragraph (1) after "Secretary of State" insert "and the Scottish Ministers", and

(b) after sub-paragraph (3) insert—

"(4) The Scottish Ministers shall lay a copy of every report sent to them under this paragraph before the Scottish Parliament.".

(9) In article 2(2) of the Public Appointments Order in Council 2014 (interpretation) in paragraph (a) of the definition of "appointing authority" after "as the case may be," insert "the Scottish Ministers,".

44 Bodies that may be required to attend before the Parliament

(1) The Scotland Act 1998 is amended as follows.

(2) After section 23 insert—

"23A Power to impose requirements on specific bodies

(1) Section 23 applies in relation to requirements imposed on a person in connection with the discharge of the functions of a body mentioned in subsection (2) in relation to Scotland with the omission of— *5*

(a) the words after paragraph (b) in subsection (1), and

(b) subsections (2) and (6).

(2) The bodies are—

(a) the Commissioners of Northern Lighthouses,

(b) the Office of Communications, and *10*

(c) the Gas and Electricity Markets Authority.".

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