

Serving Scotland Better: Scotland and the United Kingdom in the 21st Century

An Executive Summary of the Final Report – June 2009



Serving Scotland Better: Scotland and the United Kingdom in the 21st Century

It was a privilege to be asked to chair a Commission to consider how the Scottish Parliament could serve the people of Scotland better.

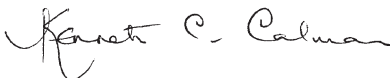
It is a task that has taken just over a year and seen my colleagues and me travelling the length and breadth of Scotland. It has been very hard work – but also very rewarding. Many of the issues are complex, but at the heart of this is our desire to find ways to help improve the lives of the people of Scotland. The reward has been in meeting so many people and discussing the issues with them – at formal evidence sessions, at informal meetings, and at engagement events across the country.

In introducing this summary of our Final Report I would like to thank a number of people. First and foremost, I would like to thank the other fourteen members of the Commission itself. We have worked hard together; all of our business has been conducted in a spirit of common purpose, and often with humour. Despite the differences in our backgrounds and starting perspectives, this Report is unanimous.

I would also like to thank all those who contributed to our work – whether by giving us evidence, attending our local events, or filling in our questionnaire. Your views have played a major part in shaping the final conclusions. Particular thanks are due to Professor Anton Muscatelli, and his colleagues on the Independent Expert Group, who provided us with invaluable advice on finance.

And lastly I would like to thank the Secretariat team who have so ably supported our work, and the other officials in the UK Government and the Scottish Parliament who have provided information and practical support.

The remit we were given was a challenging one but I am confident that our Final Report will fulfil it. On behalf of the whole Commission, I commend it to you.



Kenneth Calman
15 June 2009

This is the summary version of the Final Report of the Commission on Scottish Devolution (often referred to as the Calman Commission). The Full Report *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* was presented to the Scottish Parliament and to the United Kingdom Government on 15 June 2009. It can be found at www.commissiononscottishdevolution.org.uk <<http://www.commissiononscottishdevolution.org.uk>> along with the companion volume *The Commission on Scottish Devolution: A Summary of the Evidence - June 2009*.

An Executive Summary

Introduction

1. The Commission on Scottish Devolution was established by the Scottish Parliament and the United Kingdom Government. The remit was agreed by the Scottish Parliament and is:

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

2. Kenneth Calman was announced as the chairman of the Commission and the full membership is listed on page 29. The Final Report of the Commission was unanimously agreed.
3. In this summary we set out the most important points in our full Report, our main recommendations and the arguments which support them. A comprehensive description of the background, the evidence on which we based our conclusions and the reasoning which led us to them is in our Report.

Our method of working

4. We began work in April 2008. Throughout our work we have been guided by evidence and by our engagement with the people of Scotland and elsewhere in the United Kingdom. We have sought to be transparent and accountable for how we went about our task. Communication has therefore been a high priority for us. Our website has been regularly updated and well used. We distributed 150,000 copies of an information leaflet about the Commission's work across Scotland. Over 900 people filled in our questionnaire. We held 12 local engagement events throughout Scotland and beyond, from Lerwick to Newcastle, and from Ayr to Aberdeen. We have received over 300 written submissions. We have held over 50 public evidence

sessions and 27 private sessions, and published transcripts or notes of each. We have drawn on all of this evidence, and a large volume of other material, to reach our conclusions. On finance issues, we have been greatly assisted by an Independent Expert Group chaired by Professor Anton Muscatelli, whose evidence to us is published and can be found at www.commissiononscottishdevolution.org.uk/papers.php.

5. In December 2008 we published a First Report which set out our progress and formed the basis for consultation. Our unanimous Final Report marks the conclusion of our work. Alongside the Final Report, we have published a summary of all our evidence, so that people can judge it for themselves.

Background

6. The creation of the Scottish Parliament in 1999 was a very significant change in how Scotland is governed. Before that, although much of Government in Scotland was decentralised administratively, all legislative responsibility rested with the UK Parliament at Westminster, and the Ministers in the Scottish Office who ran much of Scotland's domestic policy were answerable to it.
7. Since 1999 Scottish Ministers have been accountable to a Scottish Parliament in Edinburgh, composed of 129 MSPs directly elected by the people of Scotland. The Parliament has the power to make laws across a wide range of domestic policy in Scotland – including crime and justice, education, health, agriculture and the environment, transport, economic development and local government. The powers of the Scottish Parliament are very wide, but some important matters remain reserved to the UK Parliament, most obviously defence and foreign affairs but also social security and other responsibilities. Scotland continues to be represented in the UK Parliament by 59 MPs.
8. The Budget devolved to the Scottish Parliament and Government is a large one. It amounts to over 60% of the public spending that is identifiably Scottish. The UK Government is responsible for the remainder: some of that is spending for the whole UK like defence, but the largest part in Scotland is social security spending. Public spending in Scotland is higher per head than in most other parts of the UK, but taxes collected are not, so that Scotland benefits from

sharing in wider UK taxes. These UK taxes include those from North Sea oil and gas which these go up and down very markedly from year to year, because of the volatility of world oil prices, and are likely to decline in future as production continues to fall.

9. Most of the Scottish budget comes from a block grant from the UK Parliament, paid for out of taxes collected from across the UK, including Scotland. This is calculated by a method called the Barnett formula. It has been used since 1978, long before devolution, and has carried on largely unchanged from that time. It relates changes in the Scottish Budget to changes in budgets for comparable services in England, or England and Wales. Scotland gets a share of the relevant change, based on population. So, for example, if the English health budget is increased by £1 billion a year in a review of UK Government spending, the Scottish budget is increased by £85 million, which means that the increase per head is the same in Scotland as in England. It is then up to the Scottish Government and Parliament to decide whether that extra money will be spent on health or on some other devolved policy area.
10. The Scottish Parliament has wide spending powers, but does not have many tax powers. Apart from local taxation (Scottish Ministers set the level of non-domestic rates and influence rates of council tax) the Scottish Parliament has only the power to vary the basic rate of income tax in Scotland by up to 3 pence in the pound, up or down (the "Scottish Variable Rate" or SVR). This power has not so far been used.

Scotland's place in the United Kingdom

11. How Scotland should relate to England and the other nations of the United Kingdom has always been a very important question of Scottish politics. Scotland has been part of the United Kingdom since the Union of the Parliaments in 1707, and its relationship with England and its other neighbours has changed over that time. Our task has been to consider how that relationship might evolve in the early part of the 21st century.
12. There have always been some aspects of Scotland's national life which have been different from the rest of the UK. The distinctive Scottish legal system and the Scottish education system are good examples. In other respects, however, there is a continuity of

approach between Scotland and the rest of the UK, for example in social security. The balance between these distinctive and shared elements, and how they have developed, has been determined by external circumstances, and by what Scottish people have aspired to. Empire, economic change, world wars, and social movements like the creation of the NHS have all played a part. For example, the growth of an integrated UK economy means the law affecting business and the taxation system is the same across the whole UK. On the other hand, many of the public services that have grown up over the 20th century have separate Scottish identities.

13. There have always been these two threads to Scotland's constitutional life. It has neither been absorbed into England, nor has it sought to cut itself off from the mainstream of British economic and social life. A Scottish Parliament in Edinburgh is the most recent step in the evolution of this relationship, and a very significant one. After 10 years of devolution we have been looking at how well it has worked, and how it should now change and develop further.

The success of devolution

14. The first conclusion we have reached is that devolution has been a real success. The last 10 years have shown that not only is it possible to have a Scottish Parliament inside the UK, but that it works well in practice. Having a Scottish Parliament is in general popular with the people of Scotland, and they welcome the scope to have Scottish issues debated and decided in Scotland. The Scottish Parliament has embedded itself in both the constitution of the United Kingdom and the consciousness of Scottish people. It is here to stay.

Devolution inside a political Union

15. In thinking about how devolution should develop further, we have looked very carefully at how it fits into the wider Union that is the United Kingdom. This is first of all a political Union, with a Parliament at Westminster where every part of the country is represented. Some things like defence and foreign relations can only be dealt with there if we are to have a Union at all. There should be no change in those. But we have considered what impact they have on matters that are now quite properly dealt with by the Scottish Parliament. For instance working with the other members of the European Union

critically affects agriculture and fisheries. This is an example of a recurring theme in our report – the different levels of government in the United Kingdom have to work more closely together.

16. The United Kingdom is an asymmetrical Union. Not only are the four nations very different in size, but devolution in Wales and Northern Ireland is different from devolution in Scotland, and there is no devolution for England. It is not our job to say whether this should change, or to make recommendations about how England is governed, but we cannot ignore the fact that the Parliament at Westminster is England's parliament as well as the Parliament for the whole of the UK. We can learn lessons from federal countries about how to help different levels of government to cooperate, but the tidy solutions that work where every part of a larger country can be governed in the same way cannot simply be applied here.
17. The UK Parliament still has, as a matter of law, the power to legislate for Scotland on devolved as well as reserved matters. But there is an important convention according to which it does not do so unless it has the agreement of the Scottish Parliament. This works very well in practice and is probably the best example of where Scottish and UK institutions already cooperate well together.

Devolution in an economic Union

18. The UK is an economic Union with a very integrated economy, with goods and services traded within it all the time. We are absolutely clear that this economic Union is to Scotland's advantage and in considering how devolution should develop we have been very careful not to make recommendations that will undermine it. Many devolved powers are important for economic growth, and are most effectively run by the devolved bodies, but the Scottish Parliament and Government cannot run a separate macro-economic policy without threatening the benefits of this economic Union. This is also important for taxation, because the scope to have different rates of tax inside a single economy is limited.

Devolution in a social Union

19. Scotland also forms what we have called a social Union with the rest of the UK. This is not so obvious an idea as the economic Union, but it too has significant implications for how devolution should develop. There are many social ties that bind the UK together: family, professional and cultural. But there are also some common expectations about social welfare. Social security payments are available and are paid on the same basis to people across the country, according to their needs. This principle of fairness should not be undermined, though some benefits may have to be adjusted where they intersect with devolved policies like housing.
20. We think that there are certain social rights which should also be substantially the same, even when it is best that they are separately run in Scotland. The most important of these are that access to health care and education should be, as now, essentially free and provided at the point of need. And when taxes are shared across the UK they should take account of that need. Our first recommendation is therefore that the Scottish and UK Parliaments should confirm their common understanding of what those rights are, and the responsibilities that go with them.

RECOMMENDATION 2.1: The Scottish Parliament and UK Parliament should confirm that each agrees to the elements of the common social rights that make up the social Union and also the responsibilities that go with them.

21. This understanding of how devolution and the Union fit together is what guides our recommendations on improving the financial accountability of the Scottish Parliament, on what functions and responsibilities the Scottish Parliament and Ministers should have, and on how the different levels of government in the United Kingdom should work together.

Improving the financial accountability of the Scottish Parliament

22. We have been asked how to improve the financial accountability of the Scottish Parliament. As well as the evidence we have taken, we have been assisted by a panel of distinguished experts on the subject. They helped us especially to understand how other countries fund regional governments. Their most important advice to us was that the system of funding should support the constitutional relationship that we want to see between Scotland and the rest of the UK.
23. The present funding system has got the Scottish Parliament off to a good start. The Scottish budget has been stable and predictable, and it has helped that the first decade of devolution has been at a time of rising public spending. The freedom the Parliament has in how to spend the money it receives has been good for devolution in its early years.
24. But the present system also has shortcomings. In particular because so much of the budget comes by grant from the UK Parliament, the Scottish Government and Parliament are not accountable to the Scottish electorate for how revenue is raised in the same way that they are for how it is spent.
25. The Parliament already has the power to vary the basic rate of income tax in Scotland by plus or minus 3 pence in the pound (the "Scottish Variable Rate"). If used to the full this could change the Scottish Budget by a little over £1 billion, compared with total spending of around £30 billion. But there is no obligation on the Scottish Parliament to make a tax decision. If it does nothing at all it will get its annual budget from the UK Parliament just the same. No other UK level of government is like that, and our expert advisors found the funding of most regional governments worldwide had some transparent connection to tax receipts.
26. We have looked at alternative mechanisms through which the Scottish Budget might be funded. There are three main ways it might be done. The first is a grant paid from central taxation, as now. This can be used to make sure that the distribution is fair across the different parts of the UK. The second is to assign a share of the proceeds of some taxes raised in Scotland to the Scottish Parliament, for example some of VAT. This can promote efficiency,

as it links the budget of the Scottish Parliament to the fortunes of the Scottish economy. But it has disadvantages too: it would make the amount of money the Scottish Parliament gets less predictable from year to year, and the Parliament would be unable to alter tax rates to help manage this uncertainty. Assignment would add risk to the Scottish Budget, especially at a time of economic difficulty. The third mechanism is to devolve some tax powers to the Scottish Parliament so that it can, put simply, decide whether to increase tax and spend more, or decrease it and spend less. That provides financial accountability, but has to be balanced with efficiency and equity.

27. In an economic Union devolving taxation could introduce serious economic inefficiencies, and the UK tax system is comparatively administratively efficient for taxpayers and government. We do not want to undermine or distort the efficient UK single market or create undue compliance costs. In our report we analyse in detail the scope for devolving taxes without creating economic problems. There are several taxes which we recommend should be devolved, because they tax items which are less mobile, and so are unlikely to cause significant economic distortions. They are Stamp Duty on property transactions, the Aggregates Levy, Landfill Tax and Air Passenger Duty. These also provide useful additional fiscal levers to the Scottish Parliament.
28. A much more substantial way to provide financial accountability is through income tax. Income tax rates have a clear and direct impact on many family budgets, and so can be a significant factor in how people vote – this makes politicians who set those rates keenly aware of the implications of their decisions. Almost all income tax payers are voters. It is also the highest yielding tax, raising about £10 billion a year in Scotland and so is capable of making up a significant proportion of the Scottish Budget.
29. The Scottish Variable Rate (SVR) provides a basis on which to build. It already allows the Scottish Parliament to share with the UK in the revenues from income tax, albeit in a limited way, and the statutory framework already exists for collecting a different rate of income tax in Scotland from the rest of the UK.
30. At present, the SVR applies only to the basic rate of income tax, and not to the higher rates. Nor does it apply to the tax which is charged on savings income such as interest from bank and building society accounts. We believe that the Scottish Parliament should have access

to income from all of the rates of income tax, but that it should not be able to change the nature or the structure of the tax. What income is taxable, the various reliefs and allowances, the different bands of income to which different rates apply, how many rates there should be and how different those rates should be from each other should all be decided at a UK level. This is because income tax is a progressive tax: as well as raising revenue it is used as a tool of redistribution of resources across society. We believe this should remain a function of national government, because it is an aspect of the social Union to which Scotland belongs.

31. Our recommendation is that the Scottish Parliament should be able to determine a "Scottish rate" of income tax applying to all rates, but should not be able to change the difference between the rates. In principle this should apply also to tax on income from savings and distributions, but there are practical problems. Most of this tax is collected at source by banks and building societies at the same rate for all savings accounts, and sent directly to the tax authorities. So in general banks do not have to know anything about the tax position of their customers. (Arrangements are made for savers who are not liable to pay any tax.) If there were to be a different Scottish rate applied to savings, then banks and other institutions would have to identify which of their customers was liable to pay tax at the "Scottish rate" and account for it separately. This would be a disproportionate administrative burden in relation to a tax which yields only about one tenth of the total of income tax in Scotland.
32. Instead of a separate "Scottish rate" of income tax on savings, we believe the yield for this tax should be shared between the Scottish Parliament and the UK Parliament by being assigned, that is to say, shared out on a formula basis, without any scope for the Scottish Parliament to decide on the tax rate. This will mean that all of income tax in Scotland is shared between the Parliaments.
33. The SVR has not been successful in creating financial accountability. One significant reason why is that the Scottish Parliament does not have to take a tax decision at all. We recommend that the Scottish Parliament should take a tax decision when it makes its budget choices. To make that happen, devolved tax revenue should be substituted for some of the block grant from the UK Parliament. The UK Government should reduce the rate of income tax applying in Scotland, at all rates, by 10 pence in the pound, and then reduce

the grant to the Scottish Parliament by an equivalent amount. This would, in practice, allow the Scottish Parliament to levy its own “Scottish rate” of income tax (applying to all rates) to reinstate at least some of that income, or to raise even more.

34. So if the Scottish Parliament set a Scottish income tax rate of 10 pence then Scotland’s overall income tax rates would be the same as the rest of the UK and its spending would be the same as it would have been if it had been funded wholly by grant. But the Scottish Parliament could also decide to set a higher or lower “Scottish rate” than 10 pence, and its budget would be affected accordingly. The same principle should be applied to the whole of the four taxes we have identified for devolution. This will mean that over one third of devolved current spending would be funded by taxes decided and raised in Scotland. In our view that provides real accountability.
35. Whilst this recommendation will substantially reduce the Scottish Parliament’s reliance on grant from the UK Parliament, the grant will still provide a significant share of the funding for the Scottish Parliament. We think that this is right because it reflects the principle of the social Union, that taxes are pooled together and shared out in the form of a grant according to need. This allows for fairness in the provision of those welfare services which are part of the social Union. UK taxation includes, of course, taxes levied and collected by the UK Government in Scotland.
36. At the moment, annual changes to the amount of grant paid to the Scottish Parliament are determined by the Barnett formula. These changes have some relation to need as they depend on Scotland’s population relative to England’s. But the Barnett formula often criticised as not being properly linked to any agreed measure of need and as leading to an outcome which is over-generous to Scotland. Agreeing what is a fair measure of need is difficult, and using it to determine a level of spending seen as fair is a highly political process. Nevertheless, in our view need is the only basis on which grant funding can be properly justified, and it should be need for the common welfare services that comprise the social Union.
37. That, however, would require a needs assessment applying across the whole UK: it cannot be done for Scotland alone. We are not set up to make such an assessment and have no remit in relation to the rest of the UK. So it is not for us to judge whether the present level of public spending in Scotland is appropriate or not. Until such time as a

needs assessment is conducted, the Barnett formula, proportionately reduced to take account of devolved taxes, can continue to be used to determine the grant element in the Scottish Budget.

38. At present, the Scottish Parliament has powers only to borrow from HM Treasury in order to manage its cash flow. Its capital expenditure, like its current expenditure, is determined by the Barnett formula. The tax powers we recommend will give the Scottish Parliament some control over its total spending. But if it is to be accountable for its spending decisions it should be able to influence the total of its capital spending in any one year as well. So we recommend that the Scottish Government has the capacity to borrow for capital investment on a Prudential basis. Borrowing does not, of course, increase the total that is available to spend in the long run: it has to be repaid, with interest, and in the long run additional spending can only be met from additional taxation. But it provides useful flexibility for the Scottish Parliament and can be managed within the UK's overall macro-economic framework.
39. The Scottish Parliament should not be wholly dependent on grant, because that does not allow it to be accountable to the people of Scotland. Our recommendations will mean a big enough part of its budget will come from devolved taxation for it to be genuinely accountable. We can see an argument for going further than that and decreasing further the proportion that comes in grant from the UK Parliament, to make clearer the extent to which the Scottish Parliament is financed from Scottish tax receipts. The best way to do this would be to assign some of the proceeds of some other taxes. This carries considerable risks for the Scottish Budget as it would become dependent on a stream of income over which the Scottish Parliament had no real control. We are not recommending that in our Report. It is, however, something which can be considered for the future when our recommendations have bedded in, and the possibility of assigning several percentage points of VAT and a share of fuel duty should be considered for implementation then.
40. Our recommendations will be a big change, and they will have to be introduced carefully, stage by stage. Implementation will have to be very carefully managed. Especially at a time of economic uncertainty, we need to avoid instability in the public finances, and either windfall gains or adverse shocks to the Scottish Budget simply from changes in the system. Because the Scottish budget will depend more on tax raised in Scotland, it will be exposed to the risks that taxes are

more or less than expected. When the system is being phased in, there may need to be limits on how much of that risk it should bear. There will also need to be changes in the oversight of tax collection so that Her Majesty's Revenue and Customs can work on behalf of Scottish Ministers in collecting devolved taxes.

41. Our full recommendations are therefore a combination of funding mechanisms that strikes the right balance between equity, accountability and efficiency. They will neither disrupt the economic Union between Scotland and the rest of the United Kingdom nor break the bonds of common social citizenship which we describe as the social Union.

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

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

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

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

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

RECOMMENDATION 3.5: This system will require a strengthening of the inter-governmental arrangements to deal with finance.

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

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

RECOMMENDATION 3.7: The Scottish Ministers should be given additional borrowing powers.

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

Strengthening cooperation between Governments and Parliaments

42. A recurring theme in our work has been the need for the different levels of Government to work together. This has come up when we looked at finance, and at legislative and executive powers. Scotland now has two Parliaments (as well as a European one). Each has distinct responsibilities, but they both serve the Scottish people. Inevitably there will be political differences and competition between their members. In a democracy this is healthy, but the two levels of government should still be expected to cooperate together for the public good.
43. There is already a basis to build on. The Governments can and do work together. Dealing with civil contingencies, such as the present swine flu outbreak, is a good example. The best developed example of cooperation between both Governments and Parliaments is what is known as the Sewel Convention, where the UK Parliament legislates for Scotland on devolved matters with the agreement of the Scottish Parliament. This is regularly used and works well in practice.

44. Overall, however, we have been struck by how underdeveloped the inter-governmental and inter-parliamentary arrangements are. In other countries where there is more than one level of government these relationships tend to be better organised, and are seen as an important element of the constitution.
45. We therefore make a series of recommendations which are designed to emphasise the need for the two levels of government to work better together, in a transparent way, and to offer more opportunities for cooperation, which we think that the people of Scotland have a right to expect. The guiding principle is one of mutual respect, as each Parliament has its proper responsibilities, and each has its own democratic mandate. Part 4 of our Report contains our detailed consideration, and our recommendations are set out below:

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION 4.8: Shortly after the Queen's Speech the Secretary of State for Scotland (or appropriate UK Government Cabinet Minister), should be invited to appear before the Scottish Parliament to discuss the legislative programme and respond to questions in a subsequent debate. Similarly, after the Scottish Government's legislative programme is announced the First

Minister should be invited to appear before the Scottish Affairs Committee to outline how Scottish Government legislation interacts with reserved matters.

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

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

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

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

RECOMMENDATION 4.12: The Joint Ministerial Committee (JMC) machinery should be enhanced in the following ways:

- a. The primary focus should be on championing and ensuring close working and cooperation rather than dispute resolution (though it will be a forum to consider the latter as well).
- b. There should be an expanded range of areas for discussion to provide greater opportunities for cooperation and the development of joint interests.

- c. There should be scope to allow issues to be discussed at the appropriate level including the resolution of areas of disagreement at the lowest possible level.

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

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

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

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

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

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

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

- a. When a request is received there should be a presumption that Scottish Ministers are accepted as part of the UK delegation where EU matters which cover devolved areas are for discussion;
- b. When Scottish Ministers request to speak in support of the agreed UK Government line there should be a presumption that this is granted wherever practicable.

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

RECOMMENDATION 4.19: The JMC process should be subject to greater Parliamentary scrutiny, and have greater public transparency:

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

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

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

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

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

Strengthening the devolution settlement

46. The Scottish Parliament has very wide legislative powers. It can make law on anything that is not reserved to the UK Parliament. That enables it to deal with most domestic issues in Scotland – crime and justice, health, education, housing, transport and economic development, the environment, agriculture and fisheries and many other matters. Reserved issues include defence and foreign affairs, macro-economic management and social security.
47. The evidence we have had is that the division of responsibilities in the Scotland Act was well thought through, and works well in practice. So we have not looked again at every element of these responsibilities, but instead at areas where there appear to be problems or pressures for change. These included: constitution and institutions; culture, charities, sport and gaming; employment and skills; energy; environment and planning; health and biosecurity; justice and home affairs; marine and fisheries; revenue and tax raising; science, research and higher education; social security; trade and commerce and others. Our detailed discussion of each of these is in Part 5 of our Final Report, and is not repeated here.
48. One important general theme in looking at these areas is that, although the split between devolved and reserved areas is well drawn at present, there will always be areas where the responsibilities of the different levels of government interact with one another. These are often the areas which are identified as areas for possible change.

But it is clear that simply re-drawing the boundary will in many cases not solve the problem: there will always be interactions and overlaps wherever it is set. This emphasises that what is often needed is more effective arrangements for cooperation between the different levels of government.

49. Nevertheless we have identified a number of places where the boundary of the settlement – either the legislative powers of the Scottish Parliament or the powers of Scottish Ministers – should be adjusted. These include a number of matters which we think should be devolved. Each is discussed in detail in our Report, to which the numbering below refers. They are:

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

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

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

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

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

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

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

RECOMMENDATION 5.17: The effectiveness of the agreement [on marine planning] reached by the UK and Scottish Governments should be kept under review by the inter-governmental machinery, and nature conservation should be

devolved to the Scottish Parliament at the earliest appropriate opportunity, taking into account the experience and evidence to be gained from the operation of the regime set out in the respective Marine Bills.

RECOMMENDATION 5.21: The Deprived Areas Fund should be devolved to the Scottish Parliament given the geographic nature of the help it is designed to provide and the fit with the Scottish Government’s wider responsibilities.

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

50. Similarly, there are a number of areas where we think that matters would be more effectively dealt with at a UK level. These are:

RECOMMENDATION 5.2: There should be a single definition of each of the expressions “charity” and “charitable purpose(s)”, applicable for all purposes throughout the United Kingdom. This should be enacted by the UK Parliament with the consent of the Scottish Parliament.

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

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

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

RECOMMENDATION 5.23: The UK Insolvency Service, with appropriate input from the relevant department(s) of the Scottish Government, should be made responsible for laying down the rules to be applied by insolvency practitioners on both sides of the border. This should be achieved by UK legislation.

51. In addition to these areas where we recommend adjustment to the boundary of the settlement, there are a number of matters where we think the issues we have considered can be addressed through closer working between the Parliaments and the Governments. These are:

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

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

RECOMMENDATION 5.7: In dealing with the children of asylum seekers, the relevant UK authorities must recognise the statutory responsibilities of Scottish authorities for the well-being of children in Scotland.

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

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

RECOMMENDATION 5.18: Research Councils UK should re-examine its approach to funding so that Scottish institutions [such as the Scottish Agricultural College] delivering a comparable function to institutions elsewhere in the UK have access to the

same sources of research funding, with the aim of ensuring that the effective framework for research that has been established across the UK is not jeopardised.

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

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

RECOMMENDATION 5.24: The interpretation provision in relation to “social security purpose” in the Scotland Act should be amended to make it clear that the reservation refers to social security purposes related to the type of provision provided by the UK Department for Work and Pensions.

Strengthening the Scottish Parliament

52. Finally we have also considered how the Scottish Parliament itself works.
53. In particular we have considered the robustness of the Scottish Parliament’s procedures for scrutinising legislation. The main area where we were struck that the Parliament might be more effective was its scrutiny of Bills towards the end of the legislative process. Currently, the final opportunity to amend the Bill and the debate on whether to pass it are taken together in one stage (called Stage 3). As a result, MSPs have almost no time to reflect on the amendments they have just made before the Bill is passed into law. We have therefore concluded that Stage 3 should routinely be split into two separate stages, held on different days. Related to this was a concern that novel amendments could be made to a Bill at Stage 3, and as a result could receive insufficient scrutiny (particularly by interested stakeholders, who were otherwise very positive about the

Parliament's legislative process). We therefore recommend that the Presiding Officer should have the power to identify in advance Stage 3 amendments which, in his view, raise substantial new issues. If the Parliament agrees to any such amendments, the relevant provisions should be referred back to a committee for further scrutiny before the Bill as a whole can be passed, unless the Bill's promoter can persuade the Parliament that this is not necessary.

54. The full detail of our consideration of these and other aspects of the Parliament's operation can be found in Part 6 of our Report. Our recommendations are:

RECOMMENDATION 6.1: In relation to the Parliament's committee system:

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

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

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

RECOMMENDATION 6.4: The Presiding Officer should be able to identify in advance of Stage 3 amendments that (in his view) raise substantial issues not considered at earlier stages. If, at the end of the amendment proceedings, any such amendment has been agreed to, relevant provisions of the Bill should be referred

back to committee for further Stage 2 consideration unless the Parliament decides otherwise (on a motion that may be moved only by the member in charge of the Bill).

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

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

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

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

The Commission

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- Rani Dhir MBE – Executive Director, Drumchapel Housing Cooperative
- Professor Sir David Edward – retired Judge of the European Court of Justice
- Lord Elder (Murray Elder) – Labour peer
- Audrey Findlay CBE – former Leader of Aberdeenshire Council, Convener of the Scottish Liberal Democrat Party
- Lord Lindsay (Jamie Lindsay) – former Scottish Office Minister, Conservative peer and Chairman of the Scottish Agricultural College
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The Commission's website is:
www.commissiononscottishdevolution.org.uk.

The website contains further information about the Commission and all aspects of its work. In particular, it includes Commission minutes and other papers, transcripts and notes of oral evidence, written submissions and questionnaire responses. It is envisaged that arrangements will be made to ensure that the website is archived for long-term public access at (or from) the above web-address.

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