

National Assembly for Wales

The Scotland Bill January 2011

This paper provides an outline of the provisions of the Scotland Bill which was introduced by the UK Government on 30 November 2010. The Bill implements many of the recommendations of the Commission on Scottish Devolution (“The Calman Commission”) and fulfils an undertaking in the UK Government’s Coalition Agreement.

The Bill does not impact directly on the legislative competence of the National Assembly or the executive powers of Welsh Ministers. However the constitutional developments in Scotland are of interest given that the UK Government stated in the recent Comprehensive Spending Review that: “Depending on the outcome of the forthcoming referendum, the Government will consider with the Welsh Assembly Government the proposals in the final Holtham report, consistent with the work being taken forward in Scotland following the Calman Commission”.

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Enquiry no: 10/3455

National Assembly for Wales

The Scotland Bill

January 2011

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Paper Number: 11/001



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The Scotland Bill

1. Introduction

The Scotland Bill (“the Bill”) was first announced in the Queen’s Speech on 25 May 2010. At the time, it was said that the main elements of the Bill were to:

- Strengthen the devolution settlement in Scotland;
- Increase the financial accountability of the Scottish Parliament;
- Renew the policy responsibility split between the UK and Scottish Parliament; and to
- Improve the relationship between the UK Government and Scottish Ministers.¹

The Bill was subsequently introduced by the Rt. Hon Michael Moore MP, the Secretary of State for Scotland, on 30 November 2010.

In welcoming its introduction, the Secretary of State announced that the Bill:

... is a powerful blueprint which will strengthen Scotland by improving devolution.

Future Scottish governments will have more accountability to the public for the financial decisions they make and will have access to significant borrowing powers. Devolution has worked well over the last decade but today's Bill addresses a number of major issues and takes the settlement forward in a powerful and positive way.

We have created a Bill which is the right one for Scotland and which I am confident will stand the test of time.²

The Scotland Office’s press release added that the “Bill is the largest transfer of financial power from London since the creation of the UK”³ and that its main aims and objectives would be to:

- Provide the Scottish Government with borrowing powers for the first time;
- Devolve to the Scottish Parliament the power to set a Scottish income tax rate each year in order raise a significant share of the revenue it spends. This power will be available from 2015 and will apply equally to the basic, higher and additional rates of income tax; and

¹ [National Assembly for Wales, MRS Paper 10/058: The Queen's Speech, June 2010, Paragraph 2.3 \[Accessed 3 December 2010\]](#)

² [Scotland Office Press Release, Moore publishes Bill to strengthen Scotland's future, 30 November 2010 \[Accessed 3 December 2010\]](#)

³ Ibid

- Devolve to the Scottish Parliament and Scottish Ministers the powers over areas such as air weapons, drink-drive limits and national speed limits.⁴

The Bill was accompanied by a Command Paper, [Strengthening Scotland's Future](#).

2. Background: The Commission on Scottish Devolution (“The Calman Commission”)

The Scotland Bill is a culmination of a three year process and debate on the constitutional future of Scotland.

On 14 August 2007, the minority SNP Scottish Government published [Choosing Scotland's future: a National Conversation: Independence and responsibility in the modern world](#). The paper was intended as the first step in promoting a “national conversation” on Scotland’s constitutional future and included options for constitutional change including further powers to the Scottish Parliament.

The publication of the National Conversation document united the three main pro-Union opposition parties at Holyrood. On 13 August 2007 the BBC reported that the leaders of Labour, the Conservatives and the Liberal Democrats in the Scottish Parliament, the Rt. Hon Jack McConnell MSP, Annabel Goldie MSP and Nicol Stephen MSP, had “issued a joint statement setting out their opposition to government plans for a white paper on an independence referendum”.⁵ Discussions between the opposition parties on how to take forward their opposition to the National Conversation continued through the autumn of 2007 and on 6 December they instigated a debate in the Scottish Parliament on the following motion under the title “A New Agenda for Scotland”:

That the Parliament, recognising mainstream public opinion in Scotland, supports the establishment of an independently chaired commission to review devolution in Scotland; encourages UK Parliamentarians and parties to support this commission also and proposes that the remit of this commission should be:

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 better serve the people of Scotland, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom, and further instructs the Scottish Parliamentary Corporate Body to allocate appropriate resources and funding for this review.⁶

In proposing the motion, the then Scottish Labour leader, Wendy Alexander MSP stated:

⁴ Ibid

⁵ [BBC News Independence statement in full 13 August 2007 \[Accessed 8 December 2010\]](#)

⁶ [A New Agenda for Scotland, S3M-00976, 4 December 2007 \[Accessed 13 December 2010\]](#)

It is clear that Scotland wants to walk taller within the United Kingdom, not to walk out ... Let us address the case for greater financial accountability. The review of Scotland's future should be about more than party politics, which is why the leaders of the three main Opposition parties in Scotland—I pay generous tribute to Annabel Goldie and Nicol Stephen—have worked together not only in this place but with our UK counterparts to agree this approach.

Today, the Parliament has the chance to offer its support for an independently chaired commission "to review the provisions of the Scotland Act 1998".

We are actively encouraging Westminster colleagues to support the commission. However, it begins today with this Parliament backing the initiative.⁷

The motion was subsequently carried by 76 votes to 46 votes with three abstentions. It was supported by the Labour, Liberal Democrat and Conservative parties and opposed by the SNP. The two Green Party MSPs and one independent MSP abstained.⁸

The UK Government announced its support for the Commission in January 2008 and on 25 March 2008 the Commission on Scottish Devolution, under the chairmanship of Sir Kenneth Calman, was formally announced by the then Secretary of State for Scotland, the Rt. Hon Des Browne MP. In a written ministerial statement to the House of Commons, the Secretary of State announced that the terms and reference of the Commission, as approved by the Scottish Parliament, would be:

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, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom.⁹

The Commission published its final report, [Serving Scotland Better: Scotland and the United Kingdom in the 21st Century](#), in June 2009. The report made 63 recommendations. These recommendations, according to Sir Keith Calman, were intended to:

... improve the financial accountability of the Scottish Parliament, to improve the distribution of powers and functions, to improve joint working between the Parliaments and Governments and encourage cooperation on shared interests, and to strengthen the operation of the Parliament itself. Taken together, we believe these recommendations will enable devolution to serve the people of Scotland better, while also consolidating Scotland's important place within the United Kingdom.¹⁰

⁷ [Scottish Parliament Official Report, 6 December 2007 cm4135 \[Accessed 16 December 2010\]](#)

⁸ Further information on the Calman Commission's work can be found in [House of Commons Library Standard Note, The Commission on Scottish Devolution – the Calman Commission, 4 June 2010 \[Accessed 8 December 2010\]](#)

⁹ HC Deb 25 March 2008 cc7-8WS

¹⁰ [Commission on Scottish Devolution, Message from the Chairman, Sir Kenneth Calman, 15 June 2009 \[Accessed 3 December 2010\]](#)

The previous Labour UK Government published a White Paper, [Scotland's Future in the United Kingdom](#) in November 2009 which took forward the Calman Commission recommendations and set out plans for a Scotland Bill that would be introduced following the UK General Election in May 2010. The then Leader of the Opposition, the Rt. Hon David Cameron MP, accepted many of the White Paper's aims but stated that the Conservative Party would "not be bound" by the Government's proposals and that they would "produce their own White Paper and legislation to deal with the issues raised by Calman"¹¹ should they form a government following the election.

The Scottish Government also produced their own White Paper, [Fiscal Autonomy in Scotland: Taking forward our National Conversation](#), on 24 February 2009. The paper outlined "the case for improving the current fiscal arrangements and the options for reform".¹²

Following the UK General Election on 6 May 2010, the Conservative – Liberal Democrat coalition's [Programme for Government](#) included a pledge to "implement the proposals of the Calman Commission" in Scotland.¹³

The Command Paper which accompanied the Bill reflected this aim, stating that the Bill has "adhered to the spirit of the [Calman] Commission' recommendations"¹⁴ throughout and adding that:

Central to these recommendations was the Commission's view that the Scottish Parliament should be responsible for raising more of its revenue rather than simply spending it. Without those powers, the Parliament lacks the accountability of devolved legislatures in comparable countries.

The Scotland Bill will solve that problem. The Government proposes the largest transfer of fiscal power from London since the creation of the United Kingdom. The Scottish Parliament will move from raising approximately 15% of its own budget to approximately 35%, a level similar to devolved legislatures in Belgium, Italy, Spain and Australia.¹⁵

3. The Scotland Bill

The Bill achieves many of its aims by amending the *Scotland Act 1998*¹⁶ ("the 1998 Act"). The main provisions of the Bill are outlined in detail below.

¹¹ [The Times, White Paper hands tax-raising powers to Scotland, 25 November 2009 \[Accessed 15 December 2010\]](#)

¹² [Scottish Government, Fiscal Autonomy in Scotland: Taking forward our National Conversation, 24 February 2010 \[Accessed 15 December 2010\]](#)

¹³ [Cabinet Office, The Coalition: our programme for government, May 2010, p.28 \[Accessed 3 December 2010\]](#)

¹⁴ [Scotland Office, Command Paper: Strengthening Scotland's Future, 30 November 2010, p.11 \[Accessed 9 December 2010\]](#)

¹⁵ [Ibid](#)

¹⁶ [Scotland Act 1998 \(c.46\)](#)

3.1. Part 1: The Parliament and its powers

Clause 1 (“Administration of elections”) amends Section 12(1)(a) and (b) of the 1998 Act and transfers certain powers relating to the Scottish Parliament elections, which are currently exercisable by the Secretary of State, to the Scottish Ministers. These include:

- Powers to make provisions on the conduct of the Scottish Parliament elections; and
- The questioning of such elections and the consequences of irregularities.

The Scottish Ministers will still be required to consult the Secretary of State before exercising these powers.

Clause 2 (“Combination of polls at Scottish Parliamentary and other reserved elections”) amends the *Representation of the People Act 1985*¹⁷ so as to require that, where Scottish Parliamentary general elections and UK or European Parliamentary general elections are held on the same day, they are to be taken together.

Clause 4 (“Presiding Officer and deputies”) allows the Parliament, at any time, to elect one or more deputies in addition to the two deputies who have to be appointed by virtue of section 19(1) of the 1998 Act.

Clause 5 (“Scottish Parliamentary Corporate Body”) amends the 1998 Act so as to allow for a minimum of four members of the Scottish Parliament to be appointed as members of the Scottish Parliamentary Corporate Body. Currently, the number of MSP members of the SPCB is fixed at four. Any increase in the number of SPCB members will be implemented by a change to the standing orders of the Scottish Parliament.

Clause 6 (“Bills: statements as to legislative competence”) requires anyone in charge of a Bill, not just Ministers, to make a statement on or before introduction of the Bill, that the Bill is within the Parliament’s legislative competence.

Clause 7 (“Partial suspension of Acts subject to scrutiny by the Supreme Court”) permits a new procedure under which a Bill may be given Royal Assent where only part of the Bill is subject to a reference to the Supreme Court (under Section 33 of the 1998 Act). If a Bill is given Royal Assent with only some of its provisions being subject to a reference, those provisions would have no effect until the decision on the reference is made.

¹⁷ [Representation of the People Act 1985 \(c.50\)](#)

Clause 8 (“Members’ interests”) gives greater flexibility to the Scottish Parliament when making provision for a member’s interests regime.

Clause 9 (“Constituencies, regions and regional members”) repeals transitional provisions included in the *Scottish Parliament (Constituencies) Act 2004*¹⁸ which are no longer required.

Clause 10 (“Continued effect of provisions where legislative competence conferred for limited period”) provides that any Act of the Scottish Parliament which is made prior to the “sun setting” of legislative competence (i.e. where an Order in Council gives legislative competence to the Scottish Parliament for a limited period of time) should continue to have effect, even in circumstances where the related legislative competence has expired.

Clause 11 (“Air weapons”) gives legislative competence to the Scottish Parliament in relation to the regulation of air weapons. The Secretary of State however retains the power to make rules and orders relating to especially dangerous weapons.

Clause 12 (“Insolvency”) returns to the UK Parliament the responsibility for making law in respect of certain elements of the process for the winding up of companies in Scotland. According to the Explanatory Notes, this will “allow the UK Parliament, when amending the law on winding up in England and Wales, also to amend the law in Scotland (where appropriate given the different legal systems)”.¹⁹

Clause 13 (“Regulation of the health professions”) returns to the UK Parliament the responsibility for regulating health professionals in Scotland. The 1998 Act provided that the regulation of health professions is a reserved matter and therefore outside the legislative competence of the Scottish Parliament. “The health professionals” are defined in the 1998 Act however as meaning the professions regulated by the enactments listed. The effect of this is that the regulation of any health professions which are not regulated by the enactments listed is within the legislative competence of the Scottish Parliament. This Clause corrects this anomaly.

Clause 14 (“Antarctica”) confirms that it will not be within the legislative competence of the Scottish Parliament to pass Acts which relate to the regulation of activities in Antarctica.

¹⁸ [Scottish Parliament \(Constituencies\) Act 2004 \(c.13\)](#)

¹⁹ Explanatory Notes, Paragraph 53

3.2. *Part 2: Ministers and their powers*

Clause 15 (“The Scottish Government”) renames the Scottish Executive as the Scottish Government.

Clause 16 (“Time limit for human rights actions against Scottish Ministers etc”) inserts a time limit for actions against the Scottish Ministers under the 1998 Act where it is claimed that they have acted incompatibly with the European Convention on Human Rights

Clause 17 (“BBC Trust member for Scotland”) requires a Minister of the Crown to obtain the agreement of the Scottish Ministers before making a recommendation for the appointment to the BBC of the ordinary member who will hold the Scottish post. The Secretary of State for Culture, Olympics, Media and Sport makes the recommendation of who should be appointed by Order in Council to the BBC Trust.

Clause 18 (“Scottish Crown Estate Commissioner”) requires that one of the Crown Estate Commissioners be appointed, on recommendation of the Chancellor of the Exchequer, as the Scottish Estate Commissioner.

Clause 19 (“Misuse of drugs”) amends the *Misuse of Drugs Act 1971*²⁰ and in effect gives Scottish Ministers the powers to issue addict licences to doctors acting in Scotland.

Clause 20 (“Power to prescribe drink-driving limits”) amends the *Road Traffic Act 1988*²¹ to give Scottish Ministers powers to make regulations in relation to the prescribed alcohol limit which applies when driving in Scotland.

Clause 21 (“Speed limits”) amends the *Road Traffic Regulation Act 1984*²² to give the Scottish Ministers the power to determine the level of the Scottish national speed limit and the power to make regulations to specify traffic signs to indicate that limit.

Clause 23 (“Implementation of international obligations”) makes provision so that a single piece of subordinate legislation, made by UK Ministers or following consideration by the UK Parliament, dealing with the observation or implementation of international obligations can have effect throughout the United Kingdom, irrespective of whether or not it deals with matters falling within devolved competence.

²⁰ [Misuse of Drugs Act 1971 \(c.38\)](#)

²¹ [Road Traffic Act 1988 \(c.52\)](#)

²² [Road Traffic Regulation Act 1984 \(c.27\)](#)

3.3. Part 3: Finance

Clause 24 (“Taxation: introductory”) provides the structure within which the Scottish Parliament may legislate on tax which includes powers to:

- Set a rate of income tax for Scottish taxpayers;
- Set stamp duty, land tax and landfill tax; and
- Make provision for new devolved taxes.

Clause 25 (“Amendments relating to the Commissioners for Revenue and Customs”) amends existing legislation to enable Her Majesty’s Revenue and Customs (“HMRC”) to:

- Disclose information to Scottish Ministers regarding devolved taxes;
- To make such information confidential and subject to onward disclosure controls;
- To ensure that such devolved taxes are neither a function nor an “assigned matter” of HMRC.

This clause sets out amendments to the *Commissioner for Revenue and Customs Act 2005*²³ and the *Customs and the Excise Management Act 1979*²⁴ to provide for the role of HMRC in relation to devolved taxes.

Clause 26 (“Scottish rate of income tax”) deals with the Scottish rate of income tax. It repeals Part 4 of the 1998 Act and replaces it with new sections which confer on the Scottish Parliament a power to set a Scottish rate of income tax, for Scottish taxpayers. Standing Orders must provide that only a member of the Scottish Government may move a motion for a Scottish rate resolution. The rate of income tax is to be calculated under section 6(2B) of the *Income Tax Act 2007*.²⁵

Clause 27 (“Income tax for Scottish taxpayers”) introduces various amendments to the *Income Tax Act 2007*.

Clause 28 (“Scottish tax on transactions involving interest in land”) is one of a series of clauses (along with clauses 29, 30 and 31) which together provide for the mechanism for bringing to an end the collection and management of stamp duty land tax (“SDLT”) in Scotland and allowing the Scottish Parliament to bring in its own land transaction tax.

²³ [Commissioner for Revenue and Customs Act 2005 \(c.11\)](#)

²⁴ [Customs Excise Management Act 1979 \(c.2\)](#)

²⁵ [Income Tax Act 2007 \(c.3\)](#)

Clause 32 (“Borrowing by the Scottish Ministers”) amends sections 66 and 67 of the 1998 Act to revise the circumstances under which the Scottish Ministers may borrow and sets out the main controls and limits on such borrowing. The Scottish Ministers will be able to run up to £2.7bn of outstanding debt, of which up to £500m of debt can be from current borrowing and £2.2bn of debt from capital borrowing.

The Explanatory Notes further states that:

The borrowing must be in the form of a loan either from the National Loan Fund (through the Secretary of State) or from another lender, such as a commercial bank. The clause does not allow Scottish Ministers to issue Scottish gilts or bonds as the clause requires borrowing to be by way of a loan.²⁶

The Command Paper accompanying the Bill adds that “A Scottish cash reserve will be introduced” to “manage fluctuations around devolved tax receipts”, to complement the borrowing powers set out on the face of the Bill.²⁷

3.4. UK-Scottish Tax Committee

In addition to the provisions included on the face of the Bill, the Command Paper makes reference to the establishment of a new UK-Scottish tax committee with an allocated seat for Scottish Ministers. The Command Paper states that:

Going forward, the relationship between the two governments will need to reflect that both administrations now share a significant tax base in Scotland and there will be a new degree of interdependency around their policies. The UK Government will therefore establish a UK-Scottish tax committee, comprising Ministers from both Governments, which will discuss shared interests in taxation and macroeconomic policy.²⁸

3.5. Changes to the Block Grant

In relation to the changes to the block grant as a result of the Bill, the Command Paper states that:

For the duration of the current Spending Review period (from 2010 to 2015), changes to the block grant derived from overall changes to the UK Government expenditure will continue to be calculated by the Barnett formula.²⁹

From 2015 onwards however, following the devolution of the smaller taxes under the Bill, changes to the block grant “will be introduced in a phased way, to allow for the staged devolution of the taxes and transitional period of income tax”.³⁰ This will reflect in the long-term a new fundamental principle to the system of

²⁶ Explanatory Notes, Paragraph 182

²⁷ Ibid

²⁸ [Scotland Office, Command Paper: Strengthening Scotland's Future, 30 November 2010, p.13 \[Accessed 9 December 2010\]](#)

²⁹ [Ibid, p.34 \[Accessed 9 December 2010\]](#)

finance proposed for Scotland, namely “that some of the block grant is exchanged for the scope for the Scottish Parliament to levy its own taxes”.³¹

According to the Command Paper these changes to the block grant will take place over a three stage process:

1. Phase 1 will allow for the devolution of smaller taxes, currently planned for April 2015. When this happens, the Command Paper states that “there will be a one-off reduction which will then be deducted from the block grant for all future years”.³²
2. Phase 2 will allow for the subsequent devolution of income tax in a period of transition. According to the Command Paper “For income tax, the deduction from April 2016 in each year of transition will be based on an Office of Budget Responsibility annual forecast of Scottish income tax receipts”.³³
3. Phase 3 will be the post transition period where “there will be a one-off deduction to the block grant with the total budget derived by the Barnett formula adjusted proportionately going forward to make this deduction permanent”.³⁴

The proposals contained in the Command Paper reflect the recommendations made by the Calman Commission, which stated that a common approach (namely the proportionate deduction model) should be applied to all devolved taxes; the initial offset to the block grant should be equivalent to the devolved tax in the first year of devolution, and in subsequent years the offset should be a fixed proportion of the grant.

An outline of the four mechanisms which could be used to calculate such a deduction from the block grant was included in the Holtham Commission’s final report, [Fairness and accountability: a new funding settlement for Wales](#).³⁵

- **own based deduction (OBD)** - deduction indexed to the assessed growth of the devolved tax base;
- **indexed deduction (ID)** – initial deduction indexed to an external variable such as the relevant UK tax base;

³⁰ [Scotland Office, *Command Paper: Strengthening Scotland’s Future*, 30 November 2010, p.33 \[Accessed 15 December 2010\]](#)

³¹ [Ibid, p.34 \[Accessed 15 December 2010\]](#)

³² [Ibid, p.34 \[Accessed 15 December 2010\]](#)

³³ [Ibid, p.35 \[Accessed 15 December 2010\]](#)

³⁴ [Ibid, p.35 \[Accessed 15 December 2010\]](#)

³⁵ Further information on the Holtham Commission’s recommendations is available in the [Quick Guide: Final Report of the Independent Commission on Funding and Finance for Wales \(Holtham Commission\)](#) prepared by MRS.

- **proportionate deduction (PD)** – grant reduced by a given percentage; thus the initial deduction will grow at same rate as the grant; and
- **fixed real deduction (FRD)** – grant reduced by an agreed sum, which is indexed to inflation.

Each of these options in turn was considered in detail in relation to the situation in Wales, with hypothetical examples, in Chapter 5 of the Holtham Commission’s final report.

In relation to Wales, the Holtham Commission suggested that the approach suggested by the Calman Commission for Scotland is “unlikely to represent a reasonable deal for the Assembly Government”.³⁶ The report also concludes that the best model for each tax in Wales would have to be assessed and that a “one size fits all” approach is unlikely to work.³⁷

3.6. Part 4: Miscellaneous and general

Clause 33 (“Maximum penalties which may be specified in subordinate legislation”) changes the maximum penalties which may be applied to offences created in relation to Scotland to reflect summary justice reforms made by *The Scottish Parliament in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007*.³⁸ The maximum penalties which may be applied to offences created in relation to England and Wales and Northern Ireland remain the same.

Clause 34 (“Power to make consequential and transitional provisions”) confers powers on the Secretary of State or the Treasury to make consequential or transitional provision to the Bill by order.

4. Response to the Bill

The leader of the SNP and First Minister of Scotland, the Rt. Hon Alex Salmond MSP, welcomed the devolution of further powers to the Scottish Parliament and Scottish Ministers but stated that the Bill “leaves big questions unanswered”.³⁹ He added:

Scotland needs full financial responsibility to boost our recovery, invest in our public services and support long-term sustainable growth. This Bill falls far short of that - it is 'Calman Minus' which threatens to short-change Scotland.

³⁶ [Independent Commission on Funding and Finance for Wales, Final report: Fairness and accountability: a new funding settlement for Wales, July 2010, paragraph 5.24 \[Accessed 16 December 2010\]](#)

³⁷ [Ibid](#)

³⁸ [The Scottish Parliament in the Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp.6\)](#)

³⁹ [Scottish Government press release, Scotland Bill published at Westminster, 30 November 2010 \[Accessed 9 December 2010\]](#)

The fiscal powers are far too limited, and for the sake of Scotland's economy and public services the Bill needs to be strengthened - either by the Scottish Parliament or the people.⁴⁰

Under an agreement known as the [Sewel Convention](#), Westminster will not pass Bills that contain “relevant provisions”⁴¹ without first obtaining the consent of the Scottish Parliament.⁴² The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee on the basis of a Legislative Consent Memorandum.

Such memorandums are usually tabled by the Scottish Government, however the Scottish Parliament’s Standing Orders allows for a member other than a member of the Scottish Executive to table a legislative consent motion and memorandum. This can only be done after the Scottish Government has tabled a legislative consent memorandum in respect of the Bill themselves.⁴³

The Scottish Government tabled a Legislative Consent Memorandum relating to the Bill on 1 December, but only provided qualified support to the Bill. The motion put forward for agreement by the Scottish Government stated:

That the Parliament agrees that the relevant provisions of the Scotland Bill, introduced in the House of Commons on 30 November 2010, relating to air weapons, the misuse of drugs, drink-driving limits, speed limits, Scottish tax on land transactions, and Scottish tax on disposal to landfill, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.⁴⁴

In response, the Scottish Labour leader, the Rt. Hon Ian Gray MSP, criticised the Scottish Government’s handling of the Bill and tabled his own Legislative Consent Motion and Memorandum which was supported by the Scottish Conservatives and the Scottish Liberal Democrats.⁴⁵ This was an attempt by the pro-Union parties to show complete support to the Bill, in contrast to the Scottish Parliament’s qualified position. Their motion stated:

That the Parliament agrees that the provisions of the Scotland Bill, introduced in the House of Commons on 30 November 2010, should be considered by the UK Parliament.⁴⁶

In a debate on the Bill in the Scottish Parliament on 9 December 2010, the Rt. Hon Ian Gray MSP reiterated his support for the Bill’s proposals:

⁴⁰ [Ibid](#)

⁴¹ “Relevant provisions” include provisions in a Westminster Bill that a) changes the law on a “devolved matter” or b) alter the legislative competence of the Scottish Parliament or the executive competence of Scottish Ministers.

⁴² A similar procedure also applies in Wales. See [Quick Guide: Legislative Consent Motions](#) prepared by the Members’ Research Service for more information.

⁴³ [Scottish Parliament Standing Orders, Chapter 9B \[Accessed 10 December 2010\]](#)

⁴⁴ [Scottish Government, Legislative Consent Memorandum: Scotland Bill, 1 December 2010, p.4 \[Accessed 10 December 2010\]](#)

⁴⁵ [Herald Scotland, SNP urged to support reforms of Holyrood, 7 December 2010 \[Accessed 8 December\]](#)

⁴⁶ [Iain Gray MSP, Legislative Consent Memorandum: Scotland Bill, 6 December 2010, p.4 \[Accessed 10 December 2010\]](#)

This Parliament took matters into its own hands, as any self-respecting Parliament should. We debated and agreed the creation of a cross-party and cross-sectoral commission under the chairmanship of Sir Kenneth Calman, and the then UK Government, respecting that parliamentary wish, engaged with the commission and its conclusions and produced a white paper outlining how they could be legislated for at Westminster.

Even the intervention of a bitterly contested general election and the resulting change of Government has not derailed progress towards a stronger devolution settlement. The coalition in Westminster has tabled its Scotland Bill and has undertaken to steer it through the legislative process by next year.⁴⁷

In response, the First Minister, the Rt. Hon Alex Salmond MSP, told the Scottish Parliament:

I welcome aspects of this debate. I welcome the fact that we are having a constitutional debate in Scotland and that we are debating which powers to transfer to the Scottish Government, the Scottish Parliament and the Scottish people. That is important and should be welcomed. However, it is unfortunate that some measures, even in Calman, have not been devolved ...

The key question for the Scottish Parliament is how we can grow the Scottish economy. We can do that only through independence or having fiscal responsibility. If we as members of a national Parliament are concerned about ensuring that we preserve the welfare of the Scottish people, we cannot in good conscience accept a provision that would have cost us £8 billion over the past 10 years and introduced a deflationary bias. The challenge for the Scotland Bill Committee and the Parliament is to find a mechanism to grow us into a better future in Scotland.⁴⁸

The leader of the Scottish Conservatives, Annabel Goldie MSP, fully supported the provisions included in the Bill:

The Scotland Bill, which was unveiled on St Andrew's day, reflects the deep thinking and thorough process that culminated in the Calman commission report. The bill will set the direction of the Parliament for the rest of the decade and beyond. It is not a tweak and tinker. It is not merely an MOT. It is a road map for our future. It is the direction of travel that is wanted by the great majority of people in Scotland, and wanted overwhelmingly by the Parliament. It is no coincidence that, as the three unionist parties have come together to make devolution work better, support for independence has hit an historic low. Let us be very clear: we have settled the constitutional question, and devolution has won.⁴⁹

The leader of the Scottish Liberal Democrats, Tavish Scott MSP, also added his support to the Bill's proposals:

The Scotland Bill is an important step forward. It will improve the next session of Parliament and the one after that. MSPs will be more accountable to the people of Scotland and to individuals, organisations and Scottish business. The bill will strengthen Scottish democracy for the future. Surely that is good.⁵⁰

⁴⁷ [Scottish Parliament Official Report, 9 December 2010 cml31356 \[Accessed 10 December 2010\]](#)

⁴⁸ [Ibid, cm31363 \[Accessed 10 December 2010\]](#)

⁴⁹ [Ibid, cm31363 \[Accessed 10 December 2010\]](#)

⁵⁰ [Ibid, cm31366 \[Accessed 10 December 2010\]](#)

He added that:

The Scotland Bill is not a panacea for all the challenges that Scotland faces. Many of the key responsibilities are already here and have been since 1999, but some are not. I genuinely look forward to a finance minister introducing a budget in which he or she must set out the tax rates that Scotland will have and why, with no more blame game—a little less of it, anyway—but a real debate in our Parliament here in Scotland about the right spending levels, about the taxes that are necessary to raise the money for schools, hospitals and possibly snow-clearing equipment, about a competitive business environment, about corporate headquarters and about new and dynamic industries that will create jobs.⁵¹

The Bill will now be debated in detail by the [Scotland Bill Committee](#) of the Scottish Parliament which has a remit to consider the Bill and report to the Parliament on any relevant Legislative Consent Memorandum. No reporting deadline has been provided to date.

A Second Reading debate will also take place in the House of Commons on a date to be confirmed. Further information about the Bill's progress through both Houses of Parliament is available on the [UK Parliament website](#).

5. Implications for Wales

There are no direct implications for the National Assembly for Wales or Welsh Ministers in this Bill. The constitutional developments in Scotland however are of interest to Wales, especially given the following commitment provided by the UK Government in their statement on the Comprehensive Spending Review on 20 October 2010:

Depending on the outcome of the forthcoming referendum, the Government will consider with the Welsh Assembly Government the proposals in the final Holtham report, consistent with the work being taken forward in Scotland following the Calman Commission.⁵²

This commitment was a revised version of what was included in the Coalition Agreement between the Conservative Party and Liberal Democrats, which stated that the UK Government would “establish a process similar to the Calman Commission for the Welsh Assembly”⁵³ depending on the outcome of the forthcoming referendum on further powers.

Under questioning from Assembly Members during a meeting of the National Assembly's Finance Committee on 22 November 2010, the Chief Secretary to the Treasury, the Rt. Hon Danny Alexander MP, explained that the commitment was revised due to the work completed by the Holtham Commission in relation to devolution funding in Wales:

⁵¹ [Ibid \[Accessed 10 December 2010\]](#)

⁵² [HM Treasury, *Spending Review 2010*, October 2010 \[Accessed 15 December 2010\]](#)

⁵³ [Cabinet Office, *The Coalition: our programme for government*, May 2010, p.28 \[Accessed 3 December 2010\]](#)

... the coalition agreement refers explicitly to a Calman-like process, which was a commission that was established to take forward the question of fiscal devolution, tax powers, and so on. In a sense ... the language in the spending review had evolved slightly. Given the second Holtham report and the work that has taken place in this area, some people took the language of 'a Calman-like process' to imply that we would somehow require a new commission to be established to do the same work again before this issue could be addressed. Given the work of the Holtham commission, I do not think that that is a requirement that we would put on at all, which is why the language has evolved slightly.⁵⁴

In relation to suggestions that the Barnett formula should be replaced by a new funding arrangement between the UK Government and Welsh Government, the Chief Secretary told the Finance Committee on 22 November that:

... our principal priority in terms of economic and fiscal policy is the need to tackle the deficit, to get public spending under control, and to ensure that the country has financial stability going forward over the next few years. I do not believe that this is the time to open up what would be a technical, detailed and lengthy discussion about replacing the Barnett formula.⁵⁵

The Chief Secretary did however suggest that he would "respond positively"⁵⁶ should a consensus emerge in the National Assembly "that would welcome those sorts of greater financial freedoms in relation to taxation and borrowing".⁵⁷ He added:

There is a strong case to look at those issues of fiscal responsibility positively in the context of a strengthening devolution settlement, which will potentially be strengthened further by the referendum that has been mentioned by other members of the committee. However, it is very much a matter for you to come forward with proposals, either now or in the future. I, for one, would respond positively to that discussion being opened up.⁵⁸

The Chief Secretary also stated that the UK Government would continue to discuss the possibility of fiscal devolution in Wales even in the event of a 'no' vote in the forthcoming referendum on further powers, providing there was consensus in favour of such a development amongst all parties in the National Assembly:

If, in the light of a decision by the people of Wales to say 'no', it was nonetheless a matter of consensus across the entire Assembly that it wanted to continue the discussion about the sort of fiscal devolution that the second Holtham report is talking about—taxation and borrowing powers and so on—as I said, I would be willing to respond positively ... It seems reasonable to allow space and time for that discussion to take place.⁵⁹

During a meeting of the Welsh Grand Committee in the House of Commons on 1 December 2010, the Economic Secretary to the Treasury, the Rt. Hon Justine Greening MP, reiterated that the UK Government together with the Welsh

⁵⁴ [RoP, Finance Committee, 22 November 2010, paragraph 152 \[Accessed 13 December 2010\]](#)

⁵⁵ [RoP, Finance Committee, 22 November 2010, paragraph 119 \[Accessed 13 December 2010\]](#)

⁵⁶ [Ibid, paragraph 111 \[Accessed 13 December 2010\]](#)

⁵⁷ [Ibid \[Accessed 13 December 2010\]](#)

⁵⁸ [Ibid \[Accessed 13 December 2010\]](#)

⁵⁹ [Ibid, Paragraph 148, \[Accessed 13 December 2010\]](#)

Government “will consider the proposals in the final Holtham report”⁶⁰ and added that “we hope that that approach will be consistent with the one taken in Scotland following the Calman commission”.⁶¹

In response to a question from Elfyn Llwyd MP, the Economic Secretary told MPs that the UK Government will wait until the outcome of the referendum on further powers in March before deciding on the nature of future discussions in relation to fiscal devolution for Wales:

We are, of course, looking at aspects of the Holtham report and we will no doubt want to set up a process to see how we can take forward discussions on it. I am aware that there will be a referendum in Wales in the spring. There is another aspect from Holtham on legislative powers for primary legislation. We will be looking at what happens in Wales, and on that basis we will get some direction on what the Holtham report might mean for policy going forward.⁶²

Following the Economic Secretary’s comments, Kevin Brennan MP, asked for further clarification from the Secretary of State for Wales, the Rt. Hon Cheryl Gillan MP, on whether the future of the Barnett formula would be tied to the result of the referendum on further powers. In response, the Secretary of State told MPs that:

I believe that no such direct linkage was made. However, he is well aware of the wording of the coalition agreement, which says that we will look at a Calman-like process for Wales following the outcome of the referendum that will be held on 3 March.⁶³

Further insight into the UK Government’s position on whether they would look at changes to the current funding system in Wales was provided by the Minister for Business and Budget, Jane Hutt AM, during a meeting of the Finance Committee on 6 December 2010:

I had observed the scrutiny of Danny Alexander in this committee, and I felt that the Chair summed up very well the disappointment with regard to the Chief Secretary to the Treasury’s interpretation of what we felt was a commitment made, not only in the coalition agreement, but in the framework for the comprehensive spending review, which clearly said that the recommendations of the Holtham commission would be looked at after the referendum, and as part of the delivery. I met him straight away and said, ‘I think you’ve got it wrong, Mr Alexander’. What we are concerned about in Wales is that we get our fair funding, which was the first major part of Gerry Holtham’s recommendations, recognised as the key point of a commitment by the UK Government to recognising that we are underfunded. I said that the easiest way to start that process was through recognising that we need to implement a funding floor and asked whether I could ask his officials to start to work with my officials on that. He agreed to that, and I wrote to him following that meeting and I emphasised, as I said earlier, our unanimous commitment to the implementation of a funding floor, and said that, given the importance of this issue, I was keen for discussions to start soon and would

⁶⁰ [Welsh Grand Committee Debate, 1 December 2010, c6 \[Accessed 13 December 2010\]](#)

⁶¹ [Ibid \[Accessed 13 December 2010\]](#)

⁶² [Welsh Grand Committee Debate, 1 December 2010, c11 \[Accessed 13 December 2010\]](#)

⁶³ [Ibid, c15 \[Accessed 13 December 2010\]](#)

welcome his confirmation of this to share with finance spokespersons and the Finance Committee. I welcomed his confirmation that he is still open to official-level discussions on how a floor could be made to work. I have put my head on the line here; that is what I said and what I believe that I have secured a commitment from him to look at.

I said that, as far as the referendum is concerned, this is not about part 2 of the Holtham commission's recommendations. I said very clearly that the second part of Gerry Holtham's final report recognised that the fair funding issue had to be dealt with before we went into tax-varying powers, and also highlighted that this should be a matter for the next Government after the elections. So, I hope that we managed to put the record straight in my private meeting with him, and I am very happy to come back to this committee with my correspondence and the response to it. He agreed that he would now look at the funding floor as a result of our interchange.⁶⁴

⁶⁴ RoP, Finance Committee, 6 December 2010, paragraphs 296-297

