

BRIEFING PAPER

The Scotland Bill

On 19 September 2014, the UK Prime Minister announced the establishment of a commission to be chaired by Lord Smith of Kelvin following the Scottish Independence Referendum held the previous day. Lord Smith's commission published its report – the Smith Agreement – on 27 November 2014, setting out the agreement reached between the five political parties represented in the Scottish Parliament who sat on the commission.

On 22 January 2015, the UK Government published a Command Paper - *Scotland in the United Kingdom: An enduring settlement* - setting out its proposals in the form of draft legislative clauses to take forward the Smith Agreement. These proposals cover:

- Constitutional matters
- Fiscal framework
- Tax
- Welfare
- Public bodies, executive agencies and the Crown Estate
- Civil protections and advice

The Scotland Bill was then published on 28 May 2015.

The Scottish Parliament's Devolution (Further Powers) Committee has been established to consider the detail of any legislative proposals designed devolve further powers to the Scottish Parliament.

See more at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86132.aspx#sthash.mzyzNjKy.dpuf>

This Briefing Paper provides an overview of the provisions contained within the Scotland Bill. For the full text of the proposed legislation, visit:

<http://services.parliament.uk/bills/2015-16/scotland.html>

Overview of the Bill

- The Scottish Government and Scottish Parliament will be made permanent parts of the UK's constitutional arrangements.
- The Scottish Parliament and Scottish Ministers will be given the power to make decisions about the operation of the Scottish Parliament and Local Authority elections.
- The Scottish Parliament will have power over setting the rates and bands of income tax, Air Passenger Duty and the Aggregates Levy.

Air Passenger Duty is the tax paid by all people over the age of two who board a flight at a UK airport. Passengers are currently charged £13 for a short-haul flight (less than 2000 miles) and £71 for a long-haul flight (over 2000 miles).

The Aggregates Levy is the tax on the commercial exploitation of rock, sand and gravel which has been dug from the ground, dredged from the sea in UK waters, or imported.

- The Scottish Parliament will have increased responsibility over welfare policy and its delivery in Scotland.
- Significant responsibility will also be devolved in respect of road signs, speed limits, onshore oil and gas extraction (i.e. Fracking) and consumer advocacy and advice.
- The Scottish Government will also be able to design schemes relating to energy efficiency and fuel poverty.

Reserved matters are areas of the law where only the UK Parliament can legislate.

Devolved matters are areas of the law where the Scottish Parliament has the power to legislate.

This Briefing Paper outlines the clauses contained within the Scotland Bill which will have an impact on women, their families and communities as a whole.

Part 1 - Constitutional Arrangements

CLAUSE 1 - The Scottish Parliament and Scottish Government

This amends the Scotland Act 1998 to provide that the Scottish Parliament and the Scottish Government are “*recognised as permanent parts of the UK’s constitutional arrangements.*”

- The **Scotland Act 1998** is the Act which established the devolved Scottish Parliament.

CLAUSE 2 - The Sewel Convention

- **The Sewel Convention** provides that the UK Parliament may not legislate for devolved matters without the consent of the Scottish Parliament.
- Motions giving consent under this convention are known as **legislative consent motions (LCMS)** or Sewel Motions.

The Bill sets out to enshrine, in legislation, the fact that the UK Parliament cannot normally legislate on devolved matters without the consent of the Scottish Parliament. This retains the sovereignty of the UK Parliament.

- **Sovereignty** is the right and power of a governing body to govern itself, without any interference from outside sources or bodies.

CLAUSE 3 - Elections

Certain matters in relation to elections for membership of the Scottish Parliament, as well as Local Government elections, will be devolved.

CLAUSE 4 - Power to make Provision about Elections

Scottish Ministers will have the power to make provision over the registration of voters, as well as the ability to limit the election expenses of candidates.

Scottish Ministers will also be able to make decisions regarding the **combination of polls** - for example where a Scottish Parliament election and a Local Government by-election are to take place on the same day, or where a Scottish Parliament by-election and a Local Government election are to take place on the same day.

Westminster will have the power to make regulations in order to combine the polls at Scottish Parliament elections with polls at certain UK Parliament and European Parliament elections. They must, however, obtain the agreement of Scottish Ministers before doing so.

CLAUSE 5 - Timing of Elections

A Scottish Parliament election cannot take place on the same day as, or within two months before, either the date of a UK Parliament election or a European Parliament election.

The Scottish Ministers will have the power to make an order specifying an alternative date on which an election can be held. An alternative date will avoid confusion and is intended not to have an impact on voter turnout. Such an order would be subject to the affirmative procedure of the Scottish Parliament.

- **Affirmative procedure** means that the proposed legislation/policy/measure requires the approval of the Scottish Parliament to allow the provisions to either come into force, or to remain in force.

CLAUSE 6 - Electoral Registration: The Digital Service

Certain functions relating to the Individual Electoral Registration Digital Service will be exercisable by Scottish Ministers, in conjunction with Westminster.

- **The Individual Electoral Registration Digital Service** is the method whereby each person is now required to vote individually, rather than previously where one person from each household could register everyone in a household.
- Under this system, people registering to vote must provide *“identifying information”*, such as date of birth and National Insurance number when applying.
- Digital refers to the way in which the information is stored.

CLAUSE 10 - Super-Majority Required for Certain Legislation

Certain types of legislation will require a two-thirds majority in order for it to be passed.

The Presiding Officer (PO) will decide before the final stage at which a Bill can be voted on whether the provisions relate to a matter which requires a super-majority - i.e. it is voted for by two-thirds of the Members of the Scottish Parliament.

The Advocate General, Lord Advocate or the Attorney General (Scotland’s most senior law officers) may refer to the Supreme Court on the question of whether a Bill or the provisions of a Bill relates to a subject matter requiring a super-majority.

CLAUSE 11 - Scope to amend the Scotland Act 1998

Powers to modify, or to confer powers to modify, sections of the Scotland Act 1998 which relate to the operation of the Scottish Government or the Scottish Parliament will be devolved.

Matters include those relating to the administration of the Scottish Parliament, including certain arrangements for Scottish Parliament elections; terms of office; resignation or disqualification of MSPs; members interests; the role of the PO; and certain other proceedings.

Part 2 - Tax

CLAUSE 12 - The Power of the Scottish Parliament to set rates of Income Tax

This clause provides the structure within which the Scottish Parliament can legislate to set rates of income tax, as well as the limits at which these are paid. This replaces the existing powers the Scottish Parliament has to set a rate of Income Tax.

Where the Scottish Parliament sets more than one rate of Income Tax, it must set out the limits at which those apply. A Scottish rate may not provide for different rates to apply in relation to different types of income.

CLAUSE 15 - Assignment of Value Added Tax (VAT)

The Treasury and the Scottish Ministers will identify an amount agreed to represent the standard rate of VAT. The amount will then be payable for an agreed period.

Holyrood will be given a half share in VAT revenues.

CLAUSE 16 - Tax on Carriage of Passengers by Air

This clause provides the mechanism for bringing to an end the collection and management of the UK's air passenger duty. It allows the Scottish Parliament to introduce its own tax on the carriage of passengers by air, however it deems fit.

CLAUSE 17 - Tax on Commercial Exploitation of Aggregate

This clause allows the Scottish Parliament to introduce its own tax on the Aggregates Levy. The commercial exploitation of fuel is excluded from the scope of the Scottish Tax.



Part 3 - Welfare Benefits and Employment Support

CLAUSE 19 - Disability, Industrial Injuries and Carer's Benefits

The Scottish Parliament is given legislative competence (the power to make laws) in relation to disability, industrial injuries and carer's benefits.

- **Disability benefit** is normally payable to a person who has an impairment which has a significant adverse impact on their ability to carry out day-to-day activities.
- The term also applies to a person who has an impairment to their physical or mental condition - i.e. they need attendance or supervision in order to avoid danger to themselves and to others.
- The adverse effect or the need must not be short term.
- The term '*normally payable*' is designed to provide sufficient flexibility to enable provision for exceptional cases, such as when a person is temporarily accommodated at public expense in a care home, or where a person is terminally ill.
- At present, it covers payment of Attendance Allowance, Disability Living Allowance (DLA) and Personal Independence Payment (PIP).

- **Severe disablement benefit** is normally payable to a person who is incapable of work for at least 28 weeks beginning no later than their 20th birthday, or is incapable of work and disabled for a period of at least 28 weeks in general.
- This is payable to those who could not meet the National Insurance conditions for Incapacity Benefit.
- This benefit was closed to new claims in 2001. Those who are still in receipt and are below State Pension age are currently being assessed for eligibility for Employment Support Allowance (ESA).

- **Industrial injuries benefit** is paid to a person who is or was in employment, and where they have suffered a personal injury caused by an accident which arose as a result of their employment, while they were in that employment. It is also paid to those who have a disease or personal injury due to the nature of their employment.
- This benefit covers trainees on approved relevant employment training schemes.
- 'Relevant employment' means a person who is receiving a salary/earnings which are chargeable to income tax.
- This benefit recognises the loss of earning potential and subsequent additional care needs of the claimant.
- Covers only those diseases and injuries set out in legislation, which include asthma, emphysema, deafness and asbestosis.

- **Carer's benefit** is normally payable in respect of the care by a person aged 16 or over who is neither in full-time education nor employment.
- Care must be of a 'regular and substantial' nature and provided to someone who normally receives a disability benefit.

CLAUSE 20 - Benefits for Maternity, Funeral and Heating Expenses

The Scottish Parliament will have legislative competence to make provision for the type of payments currently under the scope of the regulated Social Fund. They will be able to make provision for the payment of the Sure Start Maternity Grant, Funeral Payment, Cold Weather Payment and Winter Fuel Payment, or replace them entirely.

- **Sure Start Maternity Payment** is a one-off payment of £500 for women expecting their first child, or expecting a multiple birth and have children already, and who claim certain benefits. These benefits include income-based ESA, Jobseekers Allowance (JSA), child tax credits at a higher rate and working tax credits which include a disability element.
- Grants may also be available to those who are adopting or who are becoming surrogate parents.
- **Funeral Payment** is a grant available to those on a low income, which has to be paid back, usually from the estate of the deceased person.
- The claimant must be responsible for the funeral and must be in receipt of certain benefits and tax credits. They must be the partner of the deceased, or a close relative, friend, parent of a stillborn baby born after 24 weeks, or the parent of a deceased child under the age of 16 (or 20 if not in full time education).
- The benefit requirements are the same as those for the Sure Start Maternity Payment.
- **Cold Weather Payment** is payable to those in certain benefits (pension credits, income-based ESA, JSA, Income Support (IS) or Universal Credit (UC)).
- Payments are to be made when the local temperature is recorded as, or is forecast to be, an average of zero degrees Celsius or below over seven consecutive days.
- **Winter Fuel Payment** is a payment of between £100 and £300, tax free, to those born on or before 05/01/1953. It is automatically available to those in receipt of the State Pension.

CLAUSE 21 - Discretionary Payments: Top-up of Reserved Benefits

The Scottish Parliament will be able to introduce discretionary top-up benefits to people in Scotland who are entitled to claim one of the benefits which remains reserved to Westminster. For example, JSA, ESA or UC.

This could be provided on an individual, case-by-case basis, or to provide ongoing entitlement to specific, or to all, claimants.

Where a person is subject to a reduction in their benefit (for example, as a result of a sanction), a discretionary top-up payment cannot be made.

CLAUSE 22 - Discretionary Housing Payment

The Scottish Parliament will have the power to set up its own legislative scheme in relation to Discretionary Housing Payment (DHP).

This is administered by Local Authorities and is a flexible, local mechanism for providing additional financial assistance for housing costs to Housing Benefit (HB) and UC claimants. Claimants apply to their local authority and a decision is made based on their policy.

Local Authorities can only provide assistance to those who are in receipt of either HB or another reserved benefit, which includes payment for rental housing costs.

Where DHP assistance is provided on a regular basis, the amount cannot exceed either the claimant's housing benefit or the total amount towards their housing costs that could be met by another reserved benefit. It also cannot be provided to offset any loss of benefit as a result of sanctions.

CLAUSE 23 - Discretionary Payments and Assistance

The Scottish Parliament will be able to introduce discretionary payments to help alleviate a short-term need for people whose wellbeing is at risk. It expands upon the current power to make exceptional payments under certain circumstances through the Scottish Welfare Fund.

- **The Scottish Welfare Fund** provides two types of grant. Crisis Grants provide a safety net when someone experiences a disaster or emergency situation, such as a fire or flood, and there is an immediate threat to health and safety. Community Care Grants (CCGs) enable people to live independently or continue to live independently, preventing the need for institutional care. A CCG may also be able to help a family facing exceptional pressure.

There will be no need to prove that the person's need has to be immediate or has to have arisen out of an exceptional event or circumstances.

Payment cannot be made to offset a reduction brought about by sanctions. It can, however, be made if the need arises due to some other exceptional circumstance or event not related purely to the reduction in benefit.

CLAUSE 24 - UC: Cost of Claimants who Rent Accommodation

Scottish Ministers will be able to make regulations in respect of the housing costs within UC for those who rent their home. This means the Scottish Ministers will be able to state that housing costs can be paid to someone on behalf of the claimant, such as directly to the landlord.

The Scottish Ministers must consult with Westminster regarding the implementation of this policy and obtain agreement as to when any changes made will come into force.

CLAUSE 25 - UC: Persons to Whom, and Time when, Paid

Scottish Ministers will be able to make regulations to provide for alternative payment arrangements for UC. They will be able to decide who payments are made to, for example whether the benefit should be paid to a household overall or individual claimants. They will also have the power to decide the frequency of the payments, for example whether money should be paid on a weekly, or a four-weekly, basis.

CLAUSE 26 - Employment Support

The Scottish Parliament will be given powers in relation to creating employment schemes to help those at risk of becoming long-term unemployed, and to help disabled people into work. They will also be able to put in place schemes which can help employers find suitable employees.

This clause means that the Scottish Parliament can re-design the current Work Programme to provide facilities, support or services to help people into work. It could include, for example, payments to employers as wage incentives. It could also include payments for claimants to cover travel expenses incurred when using services to enter and sustain employment.

Arrangements could help claimants through assistance and support when searching for work, skills and training, community placements and any other techniques. Any support put in place must assist the claimant for at least one year.

Part 4 - Other Legislative Competence

CLAUSE 31 - Crown Estate

- **The Crown Estate** concerns property managed by the Crown Estate Commissioners, which is an independent commercial public body. The Crown Estate is the property portfolio of the Crown.

At present, management of the Crown Estate is a reserved matter. Under this clause, the assets owned in Scotland will be devolved, as will the revenue arising from these assets.

Commissioners currently have a duty to manage the Crown Estate on a commercial basis - i.e. as a business. Scottish Ministers would be able to take a different approach, for example by less of a focus on the way it is run at the moment and perhaps more emphasis on the role of social enterprise.

CLAUSE 32 - Equal Opportunities

The Scottish Parliament will be given more competence to legislate for equalities. It may, for example, impose socio-economic duties on public authorities in Scotland which exercise devolved or mainly devolved functions.

It is worth noting that one of the key recommendations put forward in the Smith Commission is omitted in the Bill. It stated:

“The [equalities] powers of the Scottish Parliament will include, but not be limited to, the introduction of gender quotas in respect of public bodies in Scotland.”

CLAUSE 33 - Tribunals

The Scottish Parliament will not be able to legislate for tribunals in relation to the exercise of functions relating to reserved matters.

There are currently two tribunal systems in Scotland.

- Those reserved to the UK Government and which are, in most cases, dealt with by Her Majesty’s Courts and Tribunal Service (HMCTS), such as social security and immigration; and
- Those already devolved in Scotland and administered by the Scottish Courts and Tribunal Services (SCTS), such as the Lands Tribunal for Scotland.

Tribunal functions which relate to reserved matters in Scottish cases will be exercised by specific tribunals in Scotland. What constitutes a ‘Scottish case’ will be set out in an Order in Council.

- An **Order in Council** is a type of legislation which is formally made in the name of the Queen by the Privy Council.

Reserved tribunals which are expected to be transferred to Scotland range from those dealing with individuals challenging decisions of the State on personal welfare benefit claims, to claims against employers for breach of contract.

CLAUSE 34 - Roads

CLAUSE 35 - ROADS: Traffic Signs Etc

Power will be devolved over traffic regulation on special roads, pedestrian crossings, traffic signs and speed limits.

Scottish Ministers will be able to make regulations in respect of pedestrian crossings, placement of traffic signs, removal of traffic signs etc.

CLAUSE 40 - Onshore Oil and Gas

The Scottish Parliament will have the power to legislate for the granting of licences to search and bore for petroleum within the Scottish onshore areas - i.e. they will be able to give permission, or not, for fracking to go ahead.

Part 5 - Other Executive Competence

CLAUSE 46 - Gaelic Media Service

At present, members of this service are appointed by Ofcom and the approval of both Westminster and the Scottish Ministers is required. This will change so only the approval of the Scottish Ministers is necessary.

- **Ofcom** is the communications regulator in the UK.

CLAUSE 49 - Rail: Franchising of Passenger Services

At present, public sector transport operators are not able to tender for rail passenger services, meaning it must be a private company. This clause will change that, so public sector operators will be able to tender for the ability to run rail passenger services.

CLAUSE 50 - Fuel Poverty: Support Schemes

Scottish Ministers will have the power to create support schemes which aim to reduce fuel poverty. This will be done through obligations on gas and electricity providers.

CLAUSE 50 - Fuel Poverty: Support Schemes

Scottish Ministers will be given powers to impose obligations on gas and electricity suppliers, for the purposes of promoting reductions in carbon emissions and home heating costs. They will be able to specify how suppliers may meet their obligations through measures carried out in Scotland.



The full text of the Bill, as well as the explanatory notes, can be found at: <http://services.parliament.uk/bills/2015-16/scotland/documents.html>

The recommendations put forward in the Smith Commission can be found at: <https://www.smith-commission.scot/>

The SWC response to the initial draft clauses can be found at: <http://www.scottishwomensconvention.org/userfiles/files/Response%20to%20UK%20Government%20Draft%20Clauses.pdf>