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Rt Hon the Lord Lang of Monkton DL  
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c/o Antony Willott  
Constitution Committee Clerk  
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London  
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11<sup>th</sup> January 2016

I would like to thank your Committee for its Report on the Scotland Bill published on the 23rd November. I welcome the scrutiny of the Constitution Committee and your report is a valuable contribution to the scrutiny and debate on the Scotland Bill.

The Scotland Bill delivers the legislative elements of the Smith Commission Agreement. As you are aware the implementation of the Smith Commission Agreement is a manifesto commitment of the Government. It was an historic achievement that all of the 5 main parties in Scotland negotiated and agreed to. The Agreement will provide for a stronger Scottish Parliament with the strength and security of being part of the United Kingdom. For the first time, most of the money spent by the Scottish Parliament will be raised by the Scottish Parliament. This is an important change which will increase the accountability of the Scottish Parliament to people in Scotland.

On 18 September people in Scotland made a positive choice to remain part of the United Kingdom. On 19 September 2014 the Smith Commission, chaired by Lord Smith of Kelvin, was established to facilitate talks on the devolution of further powers to the Scottish Parliament. The Government committed to responding to the Smith Commission's Heads of Agreement in the form of draft legislative proposals accompanied by an explanatory text in January 2015 and, following the publication of the Heads of Agreement on 27 November 2014, the Government welcomed the Heads of Agreement and committed to publish draft clauses in January 2015 to reflect the Smith Commission Agreement. The Scotland Bill was introduced into the UK Parliament in May 2015. Throughout this process the legislation has been subject to scrutiny and debates in both the UK and Scottish Parliaments, and has continued to be scrutinised in the House of Lords since the Bill started its passage in the House of Lords in November 2015.

The discussion and debate on further powers itself emerged from lively constitutional debate ahead of the referendum. This discussion was informed by numerous reports including Scottish Labour's devolution Committee, the Liberal Democrat's Home Rule Commission and the Conservative's Strathclyde Commission, as well as academic and think tank contributions such as Reform Scotland's 'Devo plus' and IPPR's 'Devo more' reports.

The Government believes that the powers devolved in the Scotland Bill are the right balance of powers and are appropriate to be devolved to the Scottish Parliament and Scottish Government, making it more accountable to those who elect it. The Government is delivering a constitutional settlement which provides fairness, opportunity and a voice for all. The Government remains committed to ensuring that Scotland and the whole of the United Kingdom continue to prosper from our single domestic market, our social union and the strength that comes from the pooling and sharing of risks.

Wales, Scotland and Northern Ireland all have different devolution settlements, reflecting the different history, geography, culture and institutional arrangements between them. The Government is delivering on the commitments we made to the people of England, Scotland, Wales and Northern Ireland in our manifesto. We are taking forward a Scotland Bill, we have published a draft Wales Bill and are working with the Northern Ireland Executive on the 'Fresh Start' and Stormont House Agreement.

As the devolution settlements are strengthened, the Government has also addressed the longstanding issue of English Votes for English Laws, which the Committee's report refers to. English Votes for English Laws addresses the so-called 'West Lothian Question' and gives English and Welsh MPs a fairer say over laws that only affect their constituencies and are on matters which have been devolved. The change will strengthen England's voice, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within the Union.

### **The Fiscal Framework**

An important element of the Smith Commission Agreement is the fiscal framework. Paragraphs 14 -16 and 45 of the Committee's report raised the timing of the fiscal framework and its availability for scrutiny alongside the Bill, particularly in relation to taxation and welfare provisions. As you know, negotiations with the Scottish Government on the fiscal framework continue, but there is already a significant amount of detail available. The cross-party Smith Agreement makes clear what the fiscal framework needs to achieve and establishes the principles that underpin it. Further detail on what the fiscal framework will contain was published in the January 2015 Command Paper (Cm 8990). Both the Scottish and UK Governments have agreed that it would not be appropriate to offer a running commentary on the specifics of the negotiations, however after each stage in the negotiations (each meeting of the Joint Exchequer Committee) a communiqué is published and made available in the Libraries of both Houses detailing what has been discussed at the meeting. I have made the most recent of these (from the 7<sup>th</sup> December 2015 and 8<sup>th</sup> January 2016) available to the Committee and will continue to do so after future meetings. Copies of these communiqués are available in the House Library. In addition, the Government is considering the report of the Economic Affairs Committee into the devolution of public finances and will respond to the Economic Affairs Committee before 20 January.

## **Memorandum of Understanding**

In addition to the fiscal framework the Committee's report also raised the Memorandum of Understanding. Following the Plenary session of the Joint Ministerial Committee in December 2014 the Prime Minister and colleagues in the devolved administrations agreed to work on a revised Memorandum of Understanding. This work is continuing. This is an agreement between all four governments of the United Kingdom and therefore any changes will need to be agreed by all four governments by consensus. I am happy to keep the House and the Constitution Committee updated on the progress of this work.

### **Clauses 1 and 2**

Turning to the provisions in the Bill, the Committee commented on clauses 1 and 2 in the Scotland Bill. On clause 1, the Smith Commission's intention was not that the constitutional position be changed, but that legislation should accurately reflect what the political understanding already is: that the Scottish Parliament and Scottish Government are permanent parts of the United Kingdom's constitutional arrangements. The Government's amendments at Report Stage in the House of Commons strengthened the provision, but the principle of parliamentary sovereignty remains; constitutionally the UK Parliament cannot bind a successive Parliament. The Government's approach to the clauses recognises this.

The Committee's Report commented on Clause 2 of the Bill. This clause delivers paragraph 22 of the Smith Commission which sets out that "The Sewel convention will be put on a statutory footing." The Sewel convention was never intended to change the sovereignty of the UK Parliament, nor was it intended to prevent the UK Parliament from making laws across the United Kingdom. As with Clause 1, the intention of the Smith Commission was not that the constitutional position be amended, but that legislation accurately reflect what the political understanding already is. Clause 2 simply sets out that where legislation in the UK Parliament relates to a devolved area, consent will normally be obtained. The use of the word 'normally' in clause 2 replicates the language of the Sewel convention.

Since the Scottish Parliament came into existence, the UK Government has consistently adhered to the Sewel convention. A legislative consent motion has always been sought before the UK Parliament passes legislation for Scotland in relation to devolved matters. It is expected that the practice developed under Devolution Guidance Note 10 (DGN10) will continue. DGN10 has no legal effect but sets out guidance on how the UK Government handles legislation affecting Scotland.

The Committee's Report also considered the issue of whether the Sewel Clause is justiciable. The Sewel Convention is a political convention which does not give rise to justiciable rights. The sovereignty of the UK Parliament remains and, to use the language of section 28(7) of the Scotland Act 1998, the provision does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

### **Elections**

The Committee's report also raised queries in relation to the timing of elections and franchise. The Government has included provisions within the Bill that deliver the Smith Commission Agreement in relation to timing and considers the provisions in the Bill are an appropriate representation of the Agreement. In relation to the elections powers it will be for the Scottish Parliament to determine how to use these powers, and the franchise for elections within devolved competence will be a matter for the Scottish Parliament to decide.

## **Welfare**

The Committee also queried how the boundaries of devolved competence will be regulated under Clause 26 (power to create new benefits). In addition to the work that is underway to revise the Memorandum of Understanding, the Joint Ministerial Working Group on Welfare is discussing the welfare provisions in the Scotland Bill and will play a key role in ensuring that areas of devolved responsibility set out in the Scotland Bill transfer effectively to the Scottish Government. We will continue to discuss this with the Scottish Government as they develop their policies.

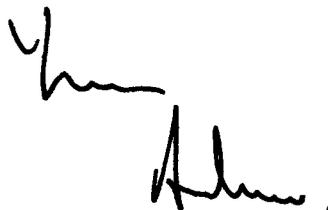
## **Equalities**

The Constitution Committee also queried the extent to which the provisions in the Bill may have an impact on private, rather than public bodies. Clause 35 (equal opportunities) does not enable the Scottish Parliament or Ministers to impose any direct requirement on the private (or voluntary) sector. Only Scottish public bodies would be required to comply with the socio-economic duty, which Scottish Ministers can implement under Clause 36. This duty is not being introduced through the Bill – it has been on the statute book since 2010 and the Bill simply allows for commencement in Scotland.

## **Power to make consequential, transitional and saving provision**

Paragraph 52 of the Committee's response queries the powers in Clause 68. The Bill contains consequential amendments identified as necessary during the course of its preparation. However, the nature of the Bill means that it affects both the UK and Scottish Parliaments' legislation, and it is possible either administration may in future identify additional necessary amendments to either primary or secondary legislation. In addition, the provisions made by Part 3 of the Bill affects a significant amount of social security legislation, which can be complicated in nature. Although extensive checks have been carried out as to the effect of the provisions of this Bill and the interaction with social security legislation, it is possible that, during implementation, consequential amendments are found to be necessary to fulfil Parliamentary intention. We have received the report from the Delegated Powers and Regulatory Reform Committee and will consider the points raised by the Committee carefully.

I am grateful to the Constitution Committee for its thorough scrutiny of the Scotland Bill to date and I look forward to your continued scrutiny in its remaining stages. I am copying this letter to the Secretary of State for Scotland and the Chief Secretary to the Treasury.



**LORD DUNLOP  
PARLIAMENTARY UNDER SECRETARY OF STATE FOR SCOTLAND**