



HOUSE OF LORDS

Library Note

Scotland Bill (HL Bill 79 of 2010–12)

This Library Note provides information on the Scotland Bill, due to have its second reading in the House of Lords on 6 September 2011. The Note is intended to be read in conjunction with House of Commons Library Research Papers *Scotland Bill* (18 January 2011, [RP 11/06](#)) and *Scotland Bill: Committee Stage Report* (14 June 2011, [RP 11/49](#)), which provide background to the Bill as introduced in the House of Commons, and summarise proceedings on the Bill at second reading and committee stage. This Note summarises proceedings at the Bill's final stages in the Commons.

Ian Cruse
11 July 2011
LLN 2011/023

House of Lords Library Notes are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of the Notes with the Members and their staff but cannot advise members of the general public.

Any comments on Library Notes should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to brocklehursta@parliament.uk.

Table of Contents

1. Introduction	1
2. Programme Motion.....	3
3. Corporation Tax.....	4
4. Excise Duty	6
5. Capital Borrowing Powers	7
6. Barnett Formula.....	9
7. Lord Advocate: Convention Rights and Community Law	11
8. Third Reading.....	12

1. Introduction

The Scotland Bill was introduced in the House of Commons on 30 November 2010 and had its second reading on 27 January 2011. It was considered by a public bill committee across three sittings between 7 and 15 March 2011 and at report on 21 June 2011, receiving its third reading on the same day. The Bill was also considered by the House of Commons Scottish Affairs Select Committee, who published a report on 21 March 2011 ([HC 775](#)). The UK Parliament [website](#) offers a page of information on the Bill, including the text of the Bill and links to each debate at Westminster. In addition, the Bill has also been scrutinised in the Scottish Parliament and is the subject of a legislative consent motion. Before the Scottish Parliamentary elections held on 5 May 2011, the Bill was considered by an ad hoc committee, which [reported](#) in March 2011, and which recommended that the Scottish Parliament should support the Scotland Bill albeit with suggested changes. The Scottish Parliament passed a [motion](#) supporting the general principles of the Bill and invited the UK Government and the UK Parliament to consider the amendments and proposals made in the Committee's report, whilst looking forward to considering any amendments made to the Bill with a view to debating them in a further legislative consent motion before the Bill received Royal Assent. After the elections, the Bill has again been subjected to a [legislative consent motion](#) in the Scottish Parliament and a new ad hoc [committee](#) is taking evidence.

The Scotland Bill is part of the Government's response to the recommendations of the [Calman Commission](#). The Bill was accompanied by a command paper ([Cm 7973](#)), which set out how the Government was intending to respond to all of the Commission's recommendations. A Scotland Office press release published alongside the Bill outlined the key issues it would address:

Borrowing

The legislation... provides the Scottish Government with borrowing powers for the first time. The £2.7 billion capital and resource powers proposed by the UK Government go further than the recommendations of the Calman Commission.

Financial Powers

The Scotland Bill is the largest transfer of financial power from London since the creation of the UK. In future, Holyrood will have to set a Scottish income tax rate each year to 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.

When the new Scottish tax system is implemented the Scottish Parliament will be responsible for raising approximately 35 percent of the revenue it spends with the remaining 65 percent coming from the UK Block Grant.

Key elements of this part of the Bill are the transitional arrangements and phasing of new powers which are designed to manage adverse shocks to the Scottish budget. The UK Government will work closely with the Scottish Government and Parliament over the next four years to finalise all the elements of the new system.

For the first time, the Office for Budget Responsibility will begin to provide forecasts of Scottish income tax, landfill tax and stamp duty land tax.

The Scottish Parliament will also be able to introduce new Scotland-specific taxes, subject to the agreement of the UK Parliament.

Other financial powers being given to Holyrood include a new Scottish cash reserve and participation for Scottish Ministers on a new UK–Scottish Tax committee (the Intergovernmental Bilateral Committee on Fiscal Devolution).

The Commission recommended the devolution of aggregates levy and air passenger duty. The first is currently the subject of EU litigation and the second is being reviewed by the Coalition Government in the light of its stated intent to introduce a per-plane tax.

Justice Powers

The Scotland Bill will also transfer a number of policy powers to the Scottish Parliament from Westminster. In future Holyrood will be able to legislate in areas such as:

air weapons;

drink-drive limit;

national speed limits;

Other powers;

(Scotland Office press release, [‘Moore publishes Bill to strengthen Scotland's future’](#), 30 November 2010)

On 13 June 2011, a joint written ministerial statement issued by the Scotland Office and the Treasury noted that the Government, having considered the recommendations made by the Scottish Affairs Committee in the UK Parliament and the Scotland Bill Committee in the Scottish Parliament, had decided to propose a number of changes to the Bill which involved:

Bringing forward to 2011 pre-payments, a form of “cash advance”, to allow work on the Forth replacement crossing to begin;

Removing the requirement for Scottish Ministers to absorb the first £125 million of tax forecasting variation within their budget, giving Scottish Ministers more flexibility to decide how best to respond to any variations in tax receipts compared to forecasts;

Allowing Scottish Ministers to make discretionary payments into the Scottish cash reserve for the next five years, up to an overall total of £125 million, to help manage any variation in Scottish income tax receipts compared to forecasts in the initial phase of the new system;

Introducing a power in the Scotland Bill which will enable the Government to amend, in future, the way in which Scottish Ministers can borrow to include bond issuance, without the need for further primary legislation. The Government will conduct a review of the costs and benefits of bond issuance over other forms of borrowing, and will consider extending Scottish Ministers’ powers where this does not undermine the overall UK fiscal position or have a negative impact on total UK borrowing.

... Enabling Scottish Ministers to approve the appointments of MG Alba board members;

Providing for reciprocal consultation between UK Ministers and Scottish Ministers when either makes changes to electoral administration that impact on their respective responsibilities;

Devolving the power to make an order disqualifying persons from membership of the Scottish Parliament;

Implementing the findings of the expert group appointed by the Advocate General to consider the working of the Scotland Act in relation to devolution issues concerning the Lord Advocate as head of the system of criminal prosecution in Scotland;

Strengthening inter-governmental dialogue in areas of mutual interest in welfare.

(HC *Hansard*, 13 June 2011, col [56WS](#))

For further background to the Bill and an account of the second reading debate and committee stage in the House of Commons, please consult the following House of Commons Library papers: *Scotland Bill* (18 January 2011, [RP 11/06](#)); *Scotland Bill: Committee Stage Report* (14 June 2011, [RP 11/49](#)); *Devolution of tax powers to the Scottish Parliament* (14 June 2011, [SN/BT/5984](#)). In addition, the House of Commons Library has produced a paper looking at the Calman Commission, its recommendations and the response by the previous Labour Government (4 June 2010, [SN/PC/04744](#)). This Note summarises the report stage and third reading debate in the Commons.

Box 1: New Clauses and Amendments agreed at report stage in the Commons

New Clauses: 5, 6, 12, 13 and 14

Amendments: 13, 14, 30, 31, 15 and 32 to 36

2. Programme Motion

The Parliamentary Under-Secretary of State for Scotland, David Mundell, moved a programme motion which sought to extend the amount of time allocated for the Bill to be debated at report and third reading by one hour.

However, Tom Greatrex, speaking for the Opposition, argued that the programme motion still did not allow sufficient time for the Bill to be debated adequately:

... as I am sure the Minister would acknowledge, the Government have tabled significant and important new clauses that were not part of the Calman process and were not available to us in Committee. As I recall, they were not ready by the time of our debates in Committee. A number of amendments have also been tabled by the Opposition Front Benchers and by other Members on both sides of the House, including nationalist Members, and we are keen to have them debated this evening.

(HC *Hansard*, 21 June 2011, col [220](#))

Peter Wishart (SNP) also expressed his concerns:

We have something like 26 amendments and 11 new clauses to discuss, on issues as important as the tax powers of the Scottish Parliament, corporation tax,

excise duty, the devolution of legal powers and authorities and the composition of the Scottish Parliament. Each of those deserves a full day's debate, yet we must try to shoehorn all that into approximately three hours. We have heard a lot about the respect agenda, which is a much abused and misused term, but surely it is the height of disrespect to try to shoehorn all those important matters into such a short time.

(*HC Hansard*, 21 June 2011, col [221](#))

The programme motion was agreed to.

3. Corporation Tax

The SNP moved New Clause 9 and Amendment 25 which sought to allow for an order in council specifying corporation tax as a devolved duty. Stewart Hosie (SNP) spoke to the proposed amendments:

It is important to focus not on the dry detail of the amendments, but on what we and any Scottish Government would do with the powers. We believe that corporation tax can be a key element in the country's overall economic strategy and can promote economic growth and job creation by enhancing international competitiveness and encouraging innovation and investment.

We believe that the case for devolving corporation tax is clear. Over the past 30 years, Scotland's economy has grown more slowly relative to both the UK and the average of small EU countries than it ought to have done. We believe that for Scotland to fulfil its economic potential, additional levers are required and corporation tax is, I believe, a key mechanism. It can be an important tool in helping to support increased business start-ups, increased business research and development and investment, and in encouraging more firms to locate their headquarters in Scotland—the very reasons, I suspect, why the UK Government announced a lower corporation tax rate and a strategy for reducing it further.

(*HC Hansard*, 21 June 2011, cols [236–7](#))

He thought it could address some of the specific problems that Scotland faced:

We believe that a centralised and uniform corporation tax structure disadvantages nations such as Scotland to the benefit of London and the south-east of England. To say that is not to be anti-London or anti-south-east; it is just to say that when businesses reach a certain size, they tend, other things being equal, to be attracted to the largest conurbations. In the UK, that of course means London.

... One reason for that relatively weaker economic performance has been the relatively smaller corporate sector in Scotland relative to other parts of the UK. Business birth rates are lower, the business base is smaller and Scottish companies typically engage in less research and development.

(*HC Hansard*, 21 June 2011, col [239](#))

The Exchequer Secretary to the Treasury, David Gauke, spoke against the amendments. He said that the First Minister had agreed to provide detailed written analysis of how the proposed devolution of the tax would work, but that this had not been forthcoming. He argued that the Calman Commission had concluded that the potential

administrative impact of devolving the tax would be significant, alongside risks of tax avoidance and arbitrage and costs to the Government and the UK Exchequer. He pointed to analysis by the Calman Commission and HMRC regarding public finances in Scotland and possible reductions in corporation tax:

Calman also noted that if comparable levels of public services were to be maintained, the scope for substantive reductions in the rate of corporation tax in Scotland would be limited, unless the Scottish Government were willing significantly to increase revenues from other sources, such as income tax. The figures involved could be significant.

... Provisional HMRC analysis has indicated that losing payments from large Scottish-domiciled groups could add £600 million to the direct costs. Such tax cuts would have to be funded, either by significantly reduced levels of public spending in Scotland or by tax rises in other areas. It is worth noting that these are initial estimates, and are likely significantly to underestimate the scope for profit shifting to Scotland.

(*HC Hansard*, 21 June 2011, col [232](#))

He also suggested that corporation tax was unpredictable:

In addition, corporation tax is a very volatile tax, and would create much more revenue risk for the Scottish budget. For instance, corporate tax receipts fell by 16 percent from 2008–09 to 2009–10, while income tax receipts fell by 5 percent. Such a large volatile income stream would place great risk on the Scottish budget. Income tax, which is more predictable and less volatile, is a much more suitable candidate for devolution.

(*HC Hansard*, 21 June 2011, col [232](#))

Ann McKechnin, speaking for the Opposition, also maintained that the Calman Commission had rejected the devolution of corporation tax in its final report. She questioned what impact the proposed devolution of the tax might have:

The Scottish Government are advocating a cut in taxes for banks but not for small businesses that do not pay corporation tax. Many employers in the private sector who employ many people do not pay corporation tax, but income tax. Substantially reducing corporation tax would lead to a large cut in public expenditure or increase the burden on income tax payers.

(*HC Hansard*, 21 June 2011, col [255](#))

She also thought that the Scottish Government had not made enough use of the devolved powers it already had and that SNP members had not taken the opportunity during the debate “to provide an explanation and analysis of why they think the change would be helpful” (*HC Hansard*, 21 June 2011, col [258](#)).

Alan Reid (Liberal Democrat) argued that the SNP had failed to provide “back-up” papers to make its arguments regarding the devolution of corporation tax, which fell outside of the consensus that had been agreed in relation to the recommendations of the Calman

Commission. He was worried about the consequences for the UK as a whole if the Scottish Government decided to reduce its corporation tax:

... if one part of the UK were to cut corporation tax, the other parts would be forced to follow suit and there would simply be a race to the bottom, in which businesses would not be paying their fair share of taxes. That would mean either personal taxes going up or services being cut.

(*HC Hansard*, 21 June 2011, col [265](#))

Ian Davidson (Labour/Co-op), Chairman of the Scottish Affairs Select Committee, was also worried at what he saw as the “cannibalisation of UK taxes if there were a minor gain to Scotland”:

It is generally agreed that a reduction in corporation tax in Scotland would result in some drawing in of business from the rest of the UK; I have heard no serious opinion suggesting anything else. If we accept that, we can do no other than recognise that that is not likely to improve relations between the jurisdictions, and as we would hope that in the event of an independent, or further devolved, Scotland there would be an ongoing relationship, beggar-my-neighbour politics on corporation tax is not helpful. The risk of driving that divide between England and Scotland by achieving a marginal gain in corporation tax revenue in the short term is not worth the candle.

(*HC Hansard*, 21 June 2011, col [269](#))

More generally, he was concerned about how the gap in taxation would be bridged:

I have great reservations about committing, in the current economic difficulties and a time of recession, to a set of policies that give more money to the private sector and rich people and that cut services for ordinary people who depend on those public services. That is the choice we are being asked to make.

(*HC Hansard*, 21 June 2011, col [269](#))

The House divided on New Clause 9 and it was defeated by 382 votes to 9.

4. Excise Duty

The SNP moved New Clause 19 and Amendment 37, which sought to allow for the devolution of alcohol duties. Stewart Hosie (SNP), in speaking to the amendments, argued that it would help address problems associated with alcohol:

In addition to raising revenues for the Exchequer, one of the key aims of the duty is to reduce excessive consumption of alcohol, which has been proved to lead to a variety of health and social problems. In the current devolution framework, the Scottish budget typically picks up the cost of addressing those problems through police, health and some social welfare costs expenditures. That is done entirely within the Scottish block. Devolving responsibility for excise duty to Scotland would help to ensure that the tax system for alcohol consumption was consistent with the alcohol policy of the Scottish Government and equipped to tackle one of the greatest health and social challenges facing Scotland.

(*HC Hansard*, 21 June 2011, col [242](#))

In addition to targeting binge drinking, devolving such powers would also allow the Scottish Government to support “a fairer and less discriminatory system for premium products such as Scotch whisky” (HC *Hansard*, 21 June 2011, col [243](#)).

Speaking for the Government, Mr Gauke argued that, as with the proposed amendments regarding corporation tax, the Calman Commission had warned against the administrative impact of devolving alcohol duty and that there were similar problems associated with tax avoidance and arbitrage (HC *Hansard*, 21 June 2011, col [231](#)).

Ann McKechin, speaking for the Opposition, thought that the proposals regarding alcohol duty had been brought forward at a late stage and would benefit from further analysis. She was concerned about “what steps would be required to stop the inevitable cross-border traffic if alcohol were suddenly cheaper in Carlisle than in Gretna”. In addition, she was worried about products moving south of the border:

Given not only that all Scotch whisky comes from Scotland, but that Scotland accounts for 75 percent of the UK’s gin and vodka production—indeed, Diageo in Fife produces all the Gordon’s gin and Smirnoff vodka that one may see in shops throughout the UK—there are serious questions about how the proposal would work, the cost of administration and how tax avoidance and evasion would be tackled.

(HC *Hansard*, 21 June 2011, col [259](#))

She also questioned whether pricing was the only driver behind excessive drinking:

It would be much easier if we could say that a simple price escalation would lead to a reduction in consumption. However, the evidence to date has not shown that that would happen. Indeed, the medical evidence shows that the unit cost would have to be considerably higher than that in the Scottish Government’s proposals to make any impact.

(HC *Hansard*, 21 June 2011, col [260](#))

She pointed to measures, such as those aimed at banning drink discounting, which were already on the statute book in Holyrood, and suggested that the Scottish Government might apply these first, before seeking new powers. More generally, she argued that the “focus must be on cultural and social values as much as on simple economic powers” (HC *Hansard*, 21 June 2011, cols [260–1](#)).

Alan Reid (Liberal Democrat), also thought that if such duties were lower in England “people who lived near the border would simply travel across it to buy alcohol” (HC *Hansard*, 21 June 2011, col [265](#)).

The amendments were not voted on or accepted.

5. Capital Borrowing Powers

The SNP moved a number of amendments, which sought to enhance the Scottish Government’s powers in relation to capital borrowing. Stewart Hosie (SNP) set out why he thought that the amendments were necessary:

The Scottish Government are responsible for the vast majority of Scotland’s public investment, covering transport, water, health, education, local government, prisons, housing and so forth. There is, I hope, now widespread agreement

across the political spectrum that the Scottish Parliament should have full responsibility to determine the pace and scale of Scotland's infrastructure investment programme, within a prudent and sustainable long-term financial framework. The Scottish Parliament should have substantial capital borrowing powers to fund productive expenditure for the following purposes: for very large, discrete projects or programmes such as the Forth crossing; to provide medium-term economic stimulus similar to the accelerated capital programme undertaken in 2008–09 and 2009–10; to smooth the profile of investment in key public services; and to help to lever in additional investment, particularly from the private sector.

(*HC Hansard*, 21 June 2011, col [245](#))

He questioned what he saw as the arbitrariness of the Bill in this respect:

The annual borrowing limit of 10 percent of capital departmental expenditure limit seems arbitrary and the proposed total limit on borrowing, set at £2.2 billion, is believed to be too low to make a meaningful difference. Indeed, I think that the Scottish Parliament Scotland Bill Committee in Holyrood suggested £5 billion. The UK Government have not proposed any objective criteria to determine the path of total capital borrowing capacity over time and that builds uncertainty and discretion into the framework. The arbitrary mechanism that the UK Government have proposed for revising this is inconsistent with the basic principles of devolution. The central assumption of a 10-year repayment period for capital borrowing is inappropriate, as public capital assets will typically have a useful life of perhaps more than 30 years. Although helpful, the early implementation measures will do very little to offset the cumulative £4.1 billion reduction in capital expenditure.

(*HC Hansard*, 21 June 2011, col [246](#))

He suggested that the Bill could be improved in four areas:

First, the specification of annual limits on borrowing should be agreed between the Governments and not set arbitrarily. Secondly, the methodology for determining the borrowing capacity that is sustainable in the long term needs to be agreed. Thirdly, the terms of repayment for capital borrowing need to be agreed and, fourthly, the impact of the early implementation measures that are proposed also need to be looked at and agreed properly. We believe that should be done within the framework of a statutory agreement between the two Governments, and that is the purpose of the various amendments and new clauses we have proposed.

(*HC Hansard*, 21 June 2011, col [247](#))

Speaking for the Government, Mr Gauke argued that timing was important:

The House should be aware that, if the borrowing powers were introduced earlier in this spending review period, the UK's spending plans would be altered—plans which the International Monetary Fund recently endorsed, and plans from which I am sure hon. Members would not want to deviate and put the recovery of the UK public finances at risk and undermine the credibility of the Government's spending plans. The Command Paper allows Scottish Ministers to access partial borrowing powers in 2013, before the rest of the Bill comes into force, with the

consent of the Treasury. That power can be used to make pre-payments to fund large capital projects such as the construction of the replacement Forth crossing.

(*HC Hansard*, 21 June 2011, col [226](#))

He set out the extent of the borrowing measures that the Government had proposed:

First, the new £2.2 billion borrowing power is additional to the capital budget that Scottish Ministers will receive through the next spending review process. To give a sense of the magnitude of that sum, at the end of this spending review period, the Scottish Government's capital budget will be £2.3 billion.

Secondly, Scottish Ministers have an unfettered power to switch resource spending to capital.

(*HC Hansard*, 21 June 2011, col [226](#))

However, he noted that because UK borrowing would increase as a result of increased Scottish borrowing it was "surely right that the limit is determined by this House—first through its considerations of the Bill, and subsequently through the approval of any order to alter the limit". He said that the Calman Commission and the Scottish Parliament agreed that Scottish Ministers should receive new borrowing powers as part of their increased responsibility and accountability, but had also recommended that the Treasury should have the ability to set conditions and a cap on the amount that Scottish Ministers could borrow in a year. He stated that the limit in the Bill was set initially at £2.2 billion, because that "represents an acceptable risk for the UK finances that does not crowd out other priorities in the next spending review period", though it could be "increased to more than £2.2 billion with the approval of the House". He also noted that "should Scottish Ministers choose to do so, the Bill gives them the power to borrow by way of a commercial loan when that represents value for money" (*HC Hansard*, 21 June 2011, cols [227–8](#)).

He asked for the relevant amendments not to be pressed to a division. The amendments were not voted on or accepted.

6. Barnett Formula

Frank Field (Labour) moved New Clause 8 and Amendment 23. The proposals sought firstly to allow the Chancellor, within six months of the Scotland Bill being enacted, to lay a report before the Commons on the operation of the formula for allocating funds from the Consolidated Fund to the Scottish Government and on alternative ways for calculating the sums to be paid. Secondly, they would require that within six weeks of that report being laid, proposals would be brought forward by the Government for a new formula that would ensure that "the funds allocated to the Scottish Government are no more than 5 per cent. below or above the equivalent figure for each of the other nations of the UK".

Mr Field set out the rationale behind his proposals:

My new clause 8... makes a plea: that we should move as quickly as we can to a position from which those on the Treasury Bench can spell out what the basis of the allocation of the main grants between the constituent parts of the United Kingdom should be, and, if there are differences, how we can defend them to our

constituents on the basis of fairness—something that they feel in their guts—which is not possible at present.

(*HC Hansard*, 21 June 2011, col [263](#))

Responding for the Government, Mr Gauke set out why he did not think that the proposals were appropriate:

Reforming the Barnett formula is an entirely separate issue from those we are considering in the Bill, and one that the Calman commission did not make any recommendations on. The current formula is an administrative procedure and does not appear in legislation. It is not specific to Scotland, but is a mechanism for allocating funding across all four countries of the UK, so it would not be appropriate to legislate to alter it for Scotland in isolation. The Bill would not be an appropriate place for that.

(*HC Hansard*, 21 June 2011, col [229](#))

He added that the Government's "priority is to stabilise the public finances and reduce the deficit before making any changes to the Barnett formula" (*HC Hansard*, 21 June 2011, col [231](#)).

Iain Stewart (Conservative) called for a considered analytical approach to how spending was distributed not just amongst the four nations of the UK but also amongst the regions. He thought that because of this, a longer-term approach than that advocated by Mr Field was required:

... there should be a process of evolution, not revolution. If we rush too hastily into the argument on the basis of misinformation, we risk splitting the Union asunder.

... Before we start recalibrating the Barnett formula or developing some other formula or mechanism, we need hard facts on the fiscal relationship between each part of the kingdom. Once we have that, we can move forward on a sensible basis towards having a stable and fair system in the UK.

(*HC Hansard*, 21 June 2011, cols [250](#) and [253](#))

David Mowat (Conservative) wondered whether a needs-based formula could be devised which properly reflected the fact that since the Barnett formula had been introduced, populations in Wales and England had increased more rapidly than in Scotland. He thought that the Bill might be the right place to start:

The question might arise why we need to fix the problem now. There are a number of reasons—not just the fact that the Bill would be a convenient place to do it, although that is true, and not just because of the resentment that is felt in England and Wales.

... The Bill for the first time equates Scottish levels of income tax to the level of the grant. I am concerned that unless we make the necessary reform to the block grant, it will become almost impossible to do in future.

(*HC Hansard*, 21 June 2011, col [272](#))

He did not follow the logic that addressing the deficit precluded action on the formula and as such he did not see why a commission could not be set up to look at a needs-based formula for the nations of the UK. However, though he supported the general line of Mr Field's amendment, he disagreed with a limit of plus or minus five per cent. on the amount (HC *Hansard*, 21 June 2011, col [273](#)).

The amendments were not moved to a vote and were not accepted.

7. Lord Advocate: Convention Rights and Community Law

On 14 June 2011, the Government announced that it would table an amendment on report that would seek to:

Remove acts of the Lord Advocate in his capacity as head of criminal prosecutions in Scotland that are incompatible with any rights conferred by the European Convention on Human Rights or Community law from the category of "devolution issues" for which special court procedure is provided for in the Scotland Act;

Create a statutory right of appeal from the High Court of Justiciary to the Supreme Court in relation to matters where it is alleged that the Lord Advocate has acted incompatibly with any such Convention right or Community law.

(Scotland Office press release, '[Scotland Bill will support human rights role of Supreme Court](#)', 14 June 2011)

The Government tabled New Clause 13, which was accepted. The new clause was not debated during report, but it was referred to during the Bill's third reading.

The Minister argued that the new clause sought to implement the findings of the [Expert Group](#) appointed by the Advocate General, which he said had highlighted problems regarding the dual roles undertaken by that office holder. He also welcomed what he saw as "the broad support for the idea that people in all parts of the United Kingdom should enjoy the same rights under the courts" (HC *Hansard*, 21 June 2011, cols [283–4](#)).

Ann McKeichin, speaking for the Opposition, acknowledged that the Government had tabled amendments relating to the relationship between Scotland and the UK Supreme Court and hoped that the House of Lords would be able to debate them, as there had not been time at report. However, she stated:

Labour fully agrees that the UK Supreme Court should retain a role in determining human rights and European law issues. The UK Supreme Court enables Scots to access justice without the expense and delay of having to go to Strasbourg, and without having to wait for years to have their cases heard. We believe that no one living in Scotland should have less access to the enforcement of their human rights than any other citizen living elsewhere in the UK.

... I believe that the Human Rights Act enhances our legal system, and it is important that people in Scotland should receive the same level of protection as everyone else. The Act is a UK-wide piece of legislation, and it is important that judgments should be made consistently. Accordingly, it is right that there should be one ultimate Court of Appeal that makes important decisions on key points of principle.

(HC *Hansard*, 21 June 2011, cols [285](#) and [288](#))

Pete Wishart, speaking on behalf of the SNP, was against the new clauses tabled regarding the Supreme Court: “the amendments concerning the Supreme Court are totally unacceptable to the Scottish Government, and will be unacceptable to the Scottish Parliament too”. He recommended that the Government and others should await the final recommendations of Lord McCluskey’s independent [Review Group](#) which had been set up on 5 June 2011 by the First Minister, Alex Salmond. He said that if these clauses had been debated he would have suggested a sunset clause, so that nothing could have been done until the Review Group had reported (HC *Hansard*, 21 June 2011, col [291](#)).

8. Third Reading

The Secretary of State for Scotland, Michael Moore, began by stating:

The Bill delivers the key coalition commitment, set out in our programme for government, to implement the proposals of what we know as the Calman commission. The commission, established in the last Scottish Parliament, had the support of a wide cross-section of society in Scotland. Its membership included representatives of the three main United Kingdom political parties, local government, experts in Scots law, business, education and the trade unions.

... The Bill is not about transferring power for power’s sake; it is about creating accountability. By taking on the responsibility for raising the taxes required to fund the spending decisions that they take, the Scottish Parliament and Scottish Ministers will be more accountable and better equipped to respond to Scotland’s needs within the UK.

(HC *Hansard*, 21 June 2011, cols [281–2](#))

He highlighted the scrutiny that the Bill had received on the floor of the House Commons and from the Scottish Affairs Committee, but also from the Scotland Bill Committee of the Scottish Parliament. However, the Secretary of State indicated that there was room for further debate:

Today’s debate marks the end of the first stage of debate on, and scrutiny of, the Bill in the House of Commons, but it is by no means the end of the process. There will be further opportunities to consider, debate and amend the Bill in their lordships’ House.

However, as hon Members will be aware, the Scottish Government have asked for further amendments to the Bill. We have made it clear that we will listen and that we are willing to consider further amendments if they satisfy some key tests. First, any further amendments must be based on detailed proposals. We must be convinced, by evidence and detailed analysis, to support any amendments to a package that we believe provides Scotland with the right balance of responsibility and accountability. Secondly, any further amendments must demonstrate that they will deliver clear benefits to Scotland, without prejudice to the rest of the United Kingdom. Thirdly, any further amendments must generate cross-party consensus, which the measures set out in the Bill have achieved.

(HC *Hansard*, 21 June 2011, col [284](#))

Mark Lazarowicz (Labour/Co-op) asked for an assurance, following Mr Moore’s remarks concerning further possible changes to the Bill, that if amendments were to come forward from the Scottish Government, the House of Commons would be able to debate them properly. Mr Moore replied that the Leader and Deputy Leader of the House had

indicated that adequate time would be made available should such amendments be forthcoming (HC *Hansard*, 21 June 2011, cols [284–5](#)).

Ann McKechin, responding on behalf of the Opposition, indicated their support:

Labour welcomes the Scotland Bill because we believe that it will enhance the devolution settlement. As the Secretary of State mentioned, the Bill was the consequence of a lengthy, evidence-based, serious consultative process that sought cross-party consensus from the very beginning. It reflects many of the recommendations made by the Calman commission, which was established by the then Labour Government following the direct call from the Scottish Parliament for such a group to be set up. Important issues of constitutional change should not be marked by megaphone diplomacy and a never-ending series of demands. Constitutional change must always be based on hard evidence, consensus and consultation, and it should be clearly shown how it will improve the devolution settlement. It is not, for us, a marker on the route to separation.

(HC *Hansard*, 21 June 2011, col [285](#))

She thought that the Bill importantly sought to “improve legitimacy and accountability to the Scottish electorate” while encouraging the use of the “extensive range of powers granted in the Scotland Act 1998, for Scotland’s benefit” (HC *Hansard*, 21 June 2011, col [285](#)).

Alan Reid (Liberal Democrat) commended the Bill:

The Bill brings about a substantial increase in the powers that are devolved to the Scottish Parliament, especially those relating to taxation and borrowing. As such, it represents a substantial event in the process of devolution. I congratulate Professor Calman and his commission on bringing forward the proposals after detailed consultation, and on achieving consensus among three political parties. His proposals were subject to detailed scrutiny in the Scottish Parliament Bill Committee and by the Scottish Affairs Committee here.

(HC *Hansard*, 21 June 2011, cols [288–9](#))

Pete Wishart, speaking for the SNP, said that he was pleased that, “in a number of areas, this is a better Bill today than the one presented on second reading” and he welcomed “the acceptance of the amendments on borrowing as well as the devolution measures on airguns, speed limits and drink-driving, which will make Scotland a safer place” (HC *Hansard*, 21 June 2011, cols [289–90](#)). However, the Bill left out key issues:

The most critical aspect of the Bill, however, involves not the unpalatable measures that we have discussed today, but the measures that the Bill omits: measures for which the Scottish people voted when the Bill was last considered by the Scottish Parliament. What they want are job-creating powers and control over the Crown Estates so that we can further the renewables revolution in Scotland.

(HC *Hansard*, 21 June 2011, col [291](#))

He finished by stating that the Scottish Parliament would revisit the Bill and that the Bill was a staging post on a longer constitutional journey:

Once the Bill has completed its passage in the House of Lords it will return to the Scottish Parliament, and a further legislative consent motion will be required because of the many amendments passed by the House of Commons. I know that colleagues in all parties in the Scottish Parliament will want to look closely at a number of those amendments, and I know that the Secretary of State and the House will respect the views of the Scottish Parliament. I know they will accept that the Scottish Government have a massive mandate.

... This is the second major Bill on devolution to have come before the House. The devolution story will continue to unfold, and we will continue to go down that road, but a new story is now also starting to emerge. It is about a new journey that Scotland is about to embark upon, because at some point over the next few years we will have a proper referendum on the future of Scotland—a proper, constitutional referendum that will be about independence, and I am absolutely sure that the Scottish people will make the right choice and that Scotland will once again join the nations of the world.

(*HC Hansard*, 21 June 2011, col [292](#))

