

EDINBURGH
18/19 March

Commission on Devolution in Wales

Edinburgh Visit Briefing

18/19 March

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Travel

Paul, Helen, Eurfyl, Rob, Mike and Ben: Cardiff on the 0855, arriving 1025 (BE582)

Noel: Manchester on the 0840, arriving 0940 (BE291)

Trefor: Driving

Jane: train on the Sunday.

Mark: Gatwick on the 0700 from Gatwick, arriving 0825

Returning

Jane will be travelling by train on the Wednesday

Paul, Eurfyl, Helen, Rob, Ben and Mike fly to Cardiff on the 1800, arriving 1930 (BE585)

Noel will travel by train

Trefor will be driving

Mark will be on the 1725 to Gatwick

Accommodation

Paramount Carlton Hotel (Trefor also staying Sunday night).

North Bridge, Edinburgh EH1 1SD. 0131 472 3000.

Booking via Redfern in Ben's name, all names are known to the hotel.

Nearest parking is New Street.

Contacts

PS: 07713566581

JD: 07875606145

EaG: 07770688548

RH: 07734698063

TJ: 07785242423

NL: 07721588109

HM: 07944985151

MK: 07805734433

MP: 07564246644

BJ: 07709450369

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Day 1: Monday 18 March

| Time | Person and location | Discussing | Contact |
|--|--|--|---|
| 1130-1330 | Elaine Smith MSP, Deputy Presiding Officer; Lynda Towers, Solicitor to the Parliament; Scottish Parliament | Parliament – size and responsibilities Reserved Powers Model Inter-parliamentary relations | James Burton 0131 348 6653 |
| (Refreshments will be available at the Parliament from 1045) | | | |
| 1500-1600 | Reform Scotland: Jeremy Purvis & Ben Thompson Alex Hammond-Chambers & Co, 29 Rutland Square, Edinburgh | Devolution Plus Current settlement | jeremypurvis@btinternet.com; Rosie Nicholson (for Ben) rosie@urbicusam.com; 0131 220 7940 |
| 1630-1730 | Ken Thomson DG Strategy & External Affairs, Scottish Government St. Andrew's House, Regent Road; EH1 3DG | Limitations of Settlement Inter-Governmental relationships Civil Service Capacity | Katherine Hart; 01312440348; dgsea@scotland.gsi.gov.uk |
| 1930 | <i>Dinner at the hotel</i> | | |

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Day 2: Tuesday 19 March

| Time | Person and location | Discussing | Contact |
|---|--|---|--|
| 0900-1000 | Prof Charlie Jeffery Edinburgh University Elder Room, Old College South Bridge | Scottish Settlement European examples (Germany) Representation in EU | Charlie.Jeffery@ed.ac.uk; 0797 0619716 Lindsay.Adams@ed.ac.uk |
| <i>Travel</i> | | | |
| 1015-1100 | Willie Rennie MSP Leader of the Scottish Liberal Democrats Scottish Parliament | Settlement Lib Dem constitutional Proposals | Cheryl Krueger (Assistant) Cheryl.Krueger@scottish.parliament.uk 0131 348 5804 |
| <i>Possible meeting with Police Scotland at Scottish Parliament</i> | | | |
| 1200-1300 | Brian Taylor BBC Scotland Political Editor TG 20/21, Scottish Parliament | Scottish Settlement Political context Public views | brian.taylor@bbc.co.uk; 07850 742877 |
| <i>Lunch</i> | | | |
| 1400-1445 | Ruth Davidson MSP Leader, Scottish Conservatives Scottish Parliament | Settlement Conservative constitutional proposals Relations | Ben Rose (Chief of Staff) Ben.rose@scottish.parliament.uk 0131 348 5618 0793 075 4690 |
| 1500-1545 | Richard Baker MSP Shadow Cabinet Secretary for Capital Investment Scottish Parliament | Settlement Labour Constitutional proposals Relations | Adele Black; 01313485850; 07500102873; adele.black@scottish.parliament.uk |

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General objectives of visit

- to develop understanding of reserved powers model
- to consider practicalities of powers devolved in Scotland but not Wales eg policing
- to explore views on inter-governmental and inter-parliamentary relations; and whether Scotland gets a better “deal” from devolution than Wales
- to explore what further powers might be devolved to Scotland if there is a no vote in the referendum; and what implications for Wales might be if a yes vote.

Some possible questions

- Wales has a conferred powers model, Scotland a reserved powers model – what are your views on their relative merits and your experience with your model?
- Even prior to Calman, the Scottish settlement was wider than Wales – what is your experience of how these wider powers have been used eg has Scotland benefitted from police devolution?
- How well does devolution work in Scotland? Is the relationship with Westminster and Whitehall good? Does Scotland get good leverage?
- Calman did not go much further in non-tax areas. What are the future prospects for improving the settlement?

All meetings have been secured on the basis that they are private meetings, but that the Commission may wish to later refer to these discussions with the participants' consent and approval.

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Meeting with Deputy Presiding Officer (Elaine Smith MSP)

The Deputy Presiding Officer will be accompanied by the Solicitor to the Parliament (Lynda Towers) and the Head of Business Team (Stephen Imrie).

Issues to cover:

Reserved powers model: How easy is it to develop legislation and understand the boundaries of the Scottish settlement.

Size of Parliament: Are Parliamentarians able to fulfil their duties fully, are they over/under-stretched? Is the public comfortable with the size of the Parliament?

Parliament: Is the title of Parliament (vs Assembly) significant in public understanding?

Does Scottish Parliament have more power/effectiveness than Welsh Assembly eg scrutiny role?

Information on the Scottish Parliament

You may wish to note that the evidence submitted to the Commission by the National Assembly's Presiding Officer has been seen by the Scottish Parliament.

129 members – 73 for constituencies on first-past-post basis, 56 elected to represent the eight regions (using the same method as Wales, though with a constituency:region ratio of 1.3:1, compared with 2:1 in Wales).

At the 2011 Scottish Parliamentary election, the MSPs of each party returned to the Scottish Parliament were as follows:

- SNP: 66 (now 65, as the Presiding Officer takes no party allegiance)
- Scottish Labour: 37
- Scottish Conservative and Unionist Party: 15
- Scottish Liberal Democrats: 5
- Green Party: 2
- Independent: 4

Biographical information (from the Scottish Parliament site)

Elaine Smith Elaine was first elected to Coatbridge and Chryston [in the Central Scotland Region] in 1999 and re-elected in 2003 and 2007. Before entering Parliament she trained as a teacher, worked in various local government departments and as a volunteer's manager. She and her husband Vann live in Coatbridge with their young son.

Career History: Secondary school teacher; Volunteers manager, Scottish Office pilot project in primary health care

Lynda Towers qualified as a solicitor in 1981 and is a former Scottish Government Lawyer.

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**Meeting with Ken Thomson, Acting Director General for Strategy & External Affairs,
Scottish Government**

Ken will be accompanied by Gerald Byrne of the Elections and Constitutional Development Division.

Issues to Cover

Experience of reserved power model

Experience of powers which are devolved in Scotland but not Wales

Limitations of Scotland Act and settlement: future possible developments

Inter-Governmental relationships – how effective are current arrangements in considering Scotland in reserved matters (eg, welfare) and devolved (eg, in education or policing)

Capacity of Scottish Government

You may be interested to ask how the civil service responded to a change of government from the Labour-Liberal Democrat coalitions between 1999 and 2007, and how the Home Civil Service has adapted to serve a pro-independence Scottish Government (when some might argue that, given the constitution is reserved, it is *ultra vires*).

Ken has made the following comments in advance of the meeting:

- I've worked for Ministers of four political parties in three kinds of government (majority, coalition and minority) answering to two different parliaments (Westminster and Holyrood).

- During that time, the number of parties in power in the UK has gone from one to (currently) nine.

By way of an opening statement, here are some propositions we could explore:

- In our devolved system, governments need to co-operate and parties must compete. That's unfamiliar (here) but not unusual, and by no means impossible: but it takes time and attention.

- The broad shape of a devolved settlement should be influenced by subsidiarity, accountability and administrative coherence; and also, unavoidably, by history and politics.

- Inter-governmental relations is more than a series of meetings or events: it's a process of negotiation and relationship management.

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Biographical Information (From the Scottish Government Site)

Ken Thomson is currently Acting Director General for Strategy & External Affairs along with his role as International and Constitution Director.

Ken has been the senior lead on constitutional policy since 2005, at times in combination with other policy areas, and prior to that was involved in work to prepare for devolution in 1997. His other experience includes work in private offices, on public health, managing legislation, on secondment to the Scottish Prison Service and to the financial services sector, and on transport, natural heritage and economic development policy.

From 1997 to 1999 he was Principal Private Secretary to the Rt Hon Donald Dewar MP MSP, as Secretary of State for Scotland and then as First Minister of Scotland, having been private secretary to Scottish Office Ministers in the early 1990s.

Ken has degrees in music and business. His interests include negotiation, programme and project management and systems thinking and practice.

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Reform Scotland: Jeremy Purvis and Ben Thompson

To discuss

Non-financial elements of 'devolution plus' – most particularly social welfare
Shortcomings of current settlement/arrangements
Prospects for 'Devo Plus' now that the independence referendum will not have a second question.

Background information

Reform Scotland is an independent, non-party think tank with its funding coming from individuals, charitable trusts or companies which share its aims. It believes the best option for Scotland's constitutional future is Devo Plus, set out in their report of September 2011. This is in effect a half way house between the Scotland Act and full independence, and would give extensive powers over taxation and aspects of social security spending.

The Commission met Reform Scotland during its Part I visit, and discussed the financial accountability aspects of Devolution Plus, which was then referred to in our report.

As part of the Edinburgh Agreement (see below), the Scottish Government and UK Government agreed that the independence referendum would have one question, with the previously-mooted question on further devolution discarded. Reform Scotland's work had attempted to set out what the further devolution might be.

The UK Government has made clear that the Scottish devolution settlement would be reconsidered in the event of a 'no' vote in the independence referendum. The Prime Ministers stated in his February 2012 speech in Edinburgh "When the referendum on independence is over, I am open to looking at how the devolved settlement can be improved further. And yes, that does mean considering what further powers could be devolved".

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Prof. Charlie Jeffery, Edinburgh University

To discuss

Reserved powers model
Views on separate jurisdiction etc
Scottish Settlement – limitations etc
European examples (Germany)
Representation in EU
Inter-governmental engagement

Biographical information (from Edinburgh University site)

Charlie was educated at Loughborough University where he completed a B.A. (Hons.) and a Ph.D. in European Studies. He was a Lecturer at the University of Leicester before moving to the University of Birmingham in 1994, where he was Deputy Director of the Institute for German Studies. He was appointed Professor of German Politics in 1999. Since coming to Edinburgh in 2004, Charlie has been Co-Director of the Institute of Governance (2004-09) and Head of the School of Social & Political Science (2009-12).

Charlie has been an advisor to the House of Commons Select Committee on the Office of the Deputy Prime Minister (2004-05), the Committee on Standards in Public Life (2002-07), the EU Committee of the Regions (2002-05), and was a member of the Independent Expert Group on Finance advising the Commission on Scottish Devolution (2008-09). He is a member of the editorial board of *Regional & Federal Studies* having previously served as Managing Editor. He was formerly a member of the Council of the ESRC (2005-11), chairing its Research Committee.

Currently, Charlie is a member of the Politics and International Studies sub-panel for the 2014 Research Excellence Framework and is one of six members of the McKay Commission convened in January 2012 to look at the issues raised by the West Lothian Question. Since 2011 he has been Chair of the UK Political Studies Association.

His research interests are Territorial politics; Regionalism; Multi-level governance; Public attitudes; German politics; EU politics and policy.

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Willie Rennie MSP
Leader of the Scottish Liberal Democrats

To discuss

Scottish settlement compared to Wales
Lib Dem constitutional proposals

Biographical Information (from Who's Who)

Leader of the Scottish Liberal Democrats and Spokesperson for Economy, Business and Infrastructure.

Stood unopposed for leader following the 2011 election, when he was first elected to the Scottish Parliament on the Scotland Mid and Fife electoral region. Was MP for Dunfermline and West Fife between 2006-2010, and briefly a special advisor to Scottish Secretaries Danny Alexander and Michael Moore.

Education

Paisley Coll. of Technol. (BSc 1989)

Career

Agent for Paul Tyler, MP, 1990-94; Campaign Officer, Liberal Democrats, 1994-97; Chief Exec., Scottish Liberal Democrats, 1997-2001; self-employed consultant, 2001-03; Account Dir, McEwan Purvis, 2003-06; self-employed communications consultant, 2010-11. MP (Lib Dem) Dunfermline and W Fife, Feb. 2006-2010; contested (Lib Dem) same seat, 2010

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Brian Taylor
BBC Scotland Political Editor

To discuss

Scottish settlement compared to Wales
How well devolution has worked in Scotland and future prospects

Biographical Information (from BBC site)

Brian has been a journalist since 1977. He covers politics for BBC Scotland in all of its guises - UK, European but mostly Scottish.

Before joining the BBC he spent six years as a lobby correspondent at Westminster.

He has lectured on politics and identity across Europe and the USA and has written two books - and co-written a handful of others.

At St Andrews University, he studied literature. He is married with two sons.

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Ruth Davidson MSP
Leader of the Scottish Conservatives

To discuss

Scottish settlement compared to Wales
Conservative constitutional proposals

Biographical information (from Scottish Conservatives site)

Ruth was elected Conservative MSP for Glasgow [Region] in May 2011, and became leader in November of the same year.

For most of her adult life Ruth has lived and worked in Glasgow and her parents are both proud Glaswegians. Ruth's father used to play for Partick Thistle so, apart from politics, sport has always been an important part of her life.

She worked as a presenter, a news journalist and a documentary maker for the last nine years, mostly with BBC Scotland and REAL Radio in Glasgow.

Outside of work and politics, Ruth is an avid sports fan. She enjoys hillwalking, kickboxing, socialising with friends, walking the dogs and is a fully paid up member of the official Scotland Supporters' Club and goes to all the home games at Hampden.

Ruth was in the Territorial Army for nearly three years but had to leave after breaking her back in a training exercise. She was also a Sunday School teacher and over the years has done a lot of voluntary work, from helping deliver charity envelopes to volunteering with a radio station for the blind.

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Richard Baker MSP
Shadow Cabinet Secretary for Capital Investment and Infrastructure

Mr Baker will be accompanied by Ross Christie, a researcher in the Scottish Labour Group in the Scottish Parliament.

To discuss

Scottish settlement compared to Wales
Labour constitutional proposals

Biographical information (from Scottish Labour site)

Richard Baker is a regional MSP for North East Scotland.

Born in 1974 in Edinburgh, Richard is married to fellow MSP Claire Baker and they have a young daughter.

Educated at Aberdeen University, gaining a MA (Hons) in English Literature. He was a Research Officer Scottish Parliament Labour Group and he also worked as a Scottish Press Officer for Help the Aged. Richard is a past president of NUS Scotland.

Commission Topics – Scottish Context

The following sets out how the areas the Commission has indicated it will consider more closely are handled in the Scottish context

1. **Elections:** devolved in Scotland (local authority and Scottish Parliament)
2. **Assembly Arrangements:** Scottish Parliament tends to have more control/scrutiny than Welsh Assembly, and is bigger (129 members). Most Scottish Parliament arrangements decided by itself, rather than legislation.
3. **Capacity:** Scottish Government is historically considered to have greater capacity than Welsh Government. But no Scottish Treasury yet
4. **Transport:** wider powers particularly in relation to rail, bus regulation and speed limits. Aviation not devolved
5. **Policing:** devolved
6. **Administration of Justice :** devolved
7. **Separate Legal Jurisdiction:** devolved
8. **Natural Resources (Energy and Water):** some wider powers e.g. renewable energy. Scottish Water is a SG public corporation
9. **Broadcasting:** regulation not devolved but SG funds Gaelic language TV
10. **Economy and employment programmes:** broadly similar to WG
11. **Health:** devolved, similar to WG
12. **Interrelationships (consumer affairs, defence, research councils, Europe, Cross-border):** broadly similar although SG has more powers over consumer affairs
13. **Model of devolution:** reserved model: and not specified in such detail
14. **Mop Up (teachers pay, civil service):** teachers pay and some aspects of public sector pensions (health and teachers) devolved. Probably fewer jagged edge issues

Commission Topics – Scottish Context

The Scottish independence referendum

The main constitutional issue in Scotland is the independence referendum next autumn.

The 2012 Scotland Act, which implemented most of the Calman report, was supported by the Scottish Parliament, but only against a background that the referendum was in prospect.

Both the UK and Scottish Governments are publishing papers setting out the costs/benefits of the Union and independence.

A further scenario, which we discussed with Jim Gallagher, is that there might be a no vote but the UK Government might offer further powers beyond the Scotland Act, possibly in the areas of taxation and aspects of social security. This is the area which to varying degrees the Unionist parties are exploring in Scotland, along with policy analysts such as Reform Scotland.

This debate is relevant to us to the extent that our report is likely to be implemented after the referendum.



DEVOLUTION IN SCOTLAND

Introduction

1. The purpose of this paper is to describe the current devolution settlement in Scotland. The paper sets out the historical context of Scottish devolution and developments since 1997, indicates some key differences from the Welsh settlement and ends by discussing the impending referendum on Scottish independence.

Overview

2. Scotland operates under the reserved powers model of devolution, with Westminster retaining the power to legislate in specific areas detailed in the Scotland Act 1998. The powers devolved to Scotland are not listed in statute, only those that are not.
3. Constitutionally, as with all devolved administrations, the Scottish Parliament is a subordinate elected body. The UK Parliament is sovereign and has the power to legislate in any area whether devolved or not. The Scottish Parliament and Government are bound by their enacting legislation to restrictions on their competence in relation to international or European obligations of the United Kingdom and the Human Rights Act 1998.

Historical Context

4. Scotland was joined with England (and Wales) in 1707 through the Acts of Union passed by their respective parliaments to form Great Britain. The treaty between the two countries included extensive terms that are still relevant today. In the main these were the continuation of Scottish private law, the Scottish courts, the Scottish education system and the Church of Scotland. The treaty has been described as an 'incorporating union' because it did not establish a federal system and it did not maintain any role for the superseded Scottish and English legislatures. The Act's extensive guarantees to Scottish institutions is particularly important in the context of the Commission's work as there are a number of fundamental constitutional differences rooted in the history of the union.
5. For much of the eighteenth and nineteenth centuries the Lord Advocate, the Crown's chief law officer for Scotland, was the dominant figure in Scottish politics and government, managing the affairs of Scotland on behalf of the Crown. From the late nineteenth century there were demands for home rule in Scotland, which the Government responded to in 1885 by establishing the Scottish Office as the department responsible for Scottish affairs as a form of administrative devolution. This was headed by the Secretary for Scotland, a post that was elevated to Cabinet status and retitled Secretary of State for Scotland in 1928.



6. The functions of the Scottish Office, which increased over time, included agriculture and fisheries, education, the environment, health, housing, local government, police, prisons, roads, social services, transport (except road freight, rail and aviation), tourism, some aspects of industrial policy and economic development and town planning.
7. Administrative devolution allowed uniform social and economic standards on some matters throughout Great Britain but different levels of service were accepted in other matters and Scottish initiatives in administration could be taken.
8. Following the growth of pressure for home rule and the 1973 Kilbrandon report on the UK Constitution, the Scotland Act 1978 set out a conferred powers model of devolution for Scotland, subject to a post-legislative referendum. A referendum on devolution was held in Scotland in 1979, though the vote in favour of devolution failed to meet the threshold of 40% in the 1978 Act. The Scotland Act 1978 was repealed in June 1979.
9. In 1989 the Scottish Constitutional Convention in favour of devolution was established by political parties and religious and civic groups, culminating in the 1995 report “Scotland’s Parliament, Scotland’s Right”, which formed the groundwork for devolution in 1998.

The 1997 referendum

10. The Labour Party’s manifesto in 1997 pledged to devolve a measure of self-government to Scotland and Wales, and as the incoming government, quickly set in motion the process of a referendum on devolution in Scotland. The September 1997 referendum asked two questions: first, whether there should be a Scottish Parliament; secondly, whether a Scottish Parliament should have tax varying powers. The turnout in the 1997 referendum was 60.2%, of these 74.3% voted in favour of a Scottish Parliament and 63.5% voted in favour of tax varying powers. This affirmative vote in the referendum led to the introduction of the Scotland Bill in January 1998.

The Scotland Act 1998

11. The Scotland Act 1998 created the Scottish Parliament and the Scottish Executive (now known as the Scottish Government). The Act created a 129 member Parliament, of which 73 members would be elected according to the first past the post system (one from each of the then Westminster constituencies¹) and 56 by the additional member system. This is the same system that is used to elect members of the National Assembly for Wales.

¹ The number of Scottish MPs was reduced to 59 at the 2005 election, following the removal of Scotland’s guarantee of at least 71 seats in the Scotland Act 1998

12. The Act withheld or reserved certain legislative powers to Westminster. These “reserved” powers are listed in Schedule 5 of the Scotland Act 1998. There are two types of reservation, general and specific. The general reservations contain policy areas such as the Crown, foreign affairs, defence and all macro-economic policy. The specific reservations vary widely; they can include topics such as “betting, gaming and lotteries” or powers that exist under specific acts such as “The subject matter of the Firearms Acts 1968 and 1997”. In some cases there are also interpretation notes attached to a reservation to help explain the reservation further.
13. Given the Scotland Act follows the reserved powers model the areas devolved to the Scottish Parliament are extensive. There is no list of these powers: the principle of “if it is not reserved then it is devolved” applies to all law making in Scotland.
14. In general, the scope of what was reserved reflected the ambit of the pre-devolution Scottish Office, which was wider than the pre devolution Welsh Office; if a policy had been devolved to the Scottish Office it was also devolved to the Scottish Parliament.
15. While the limits to Scottish devolution is defined in legislation, another useful source of information is HM Treasury’s Statement of Funding Policy, which sets out in detail which elements of public spending are devolved. This is summarised in the table below, which compares the extent of devolution in Scotland and Wales:

| | Wales | Scotland | Key differences |
|------------------|--------------|-----------------|---|
| Education | 100% | 100% | |
| Health | 99% | 99% | |
| Transport | 73% | 98% | Mainly devolution of the rail network in Scotland. |
| DCLG | 99% | 99% | |
| Local Government | 100% | 17% | There is a technical explanation for the differences: the low Scottish comparability factor reflects that business rates are not part of the devolved Departmental Expenditure Limit, but treated as Annually Managed Expenditure. In our Part I report we recommend that Wales should be treated like Scotland |
| BIS | 78% | 79% | Small differences eg Companies House, consumer protection, insolvency service |
| Home Office | 0% | 76% | Most Home Office functions |

| | | | |
|--------------------------|-----|------|--|
| | | | devolved in Scotland, although not immigration or serious organised crime agency |
| Justice and Law Officers | 0% | 100% | Justice system devolved in Scotland |
| DECC | 21% | 21% | SG also has renewable energy powers |
| DEFRA | 92% | 93% | Water devolved in Scotland |
| DCMS | 90% | 96% | Was a consequence of DCMS directly funding S4C |
| DWP | 0% | 0% | |
| Chancellor's departments | 1% | 1% | |

16. The Scotland Act 1998 also created the Scottish Executive, rebranded as the Scottish Government by the Scottish National Party minority administration formed in May 2007. The Scottish Government is comprised of the First Minister, appointed by the Crown, other Ministers appointed by the First Minister, and the Lord Advocate and Solicitor General for Scotland. The Scotland Act also gave Scottish Ministers the executive powers to match their legislative powers. Most of the responsibilities carried out by the old Scottish Office were transferred to Scottish Ministers. Scottish Ministers do occasionally hold executive powers in reserved areas such as Consumer Protection; however these are few and far between. On the whole Scottish Ministers hold the executive powers for those areas that are not listed as reserved.
17. Since 1999, 192 Acts of the Scottish Parliament have been passed, of which three have been contested on the grounds of legislating outside competence. It is important to note that none of these challenges were brought by the UK Government or any Government body or agency. All three challenges were unsuccessful at the Supreme Court.
18. The Scottish Parliament can legislate on anything that is not listed as reserved, but the UK Government (as is the case with all other devolved administrations) can legislate on anything whether it is reserved or devolved. As with the other devolved administrations there is a convention whereby the UK Parliament will seek the approval of the Scottish Parliament to legislate in a devolved area. This process is known as a Sewell Motion (known as a Legislative Consent Motion in the rest of the UK). However, the UK Parliament does not have to abide by the decision of the Scottish Parliament in these matters and can legislate regardless of the outcome of the Motion.
19. The legislative competence of the Scottish Parliament has been extended though Orders under section 30 of the Scotland Act e.g. in relation to railways; and there



have been executive devolution orders under section 63 eg in relation to electricity from renewable resources.

20. Some specified functions can still be exercised either by a UK or Scottish Minister (but not both), known as shared or concurrent powers. These are of limited significance within the generality of the devolution settlement, with the exception of the power to implement by subordinate legislation EC obligations, where the general function has been transferred to Scottish Ministers but UK Minister can still do so where agreed by Scottish Ministers.

Inter-governmental and inter-parliamentary relations

21. Under devolution, Scotland has similar intergovernmental arrangements as Wales, with the main formal forum being the Joint Ministerial Committee system.
22. The role of the Scotland Office is broadly similar to the role of the Wales Office, with a somewhat wider function reflecting the role of the Advocate General for Scotland as the UK Government's chief legal adviser on matters of Scottish law.
23. As in Wales there are relatively few inter-parliamentary mechanisms beyond the Sewell Convention.

The Calman Commission

24. The Calman Commission originated in a Scottish Parliamentary debate of 6 December 2007, wherein the Labour, Conservative and Liberal Democrat parties passed a resolution to support "the establishment of an independently chaired commission to review devolution in Scotland". This was an alternative to the Scottish Government's National Conversation on Scotland's constitutional future, launched in August 2007. The Scottish National Party did not participate in the Calman Commission.
25. The Commission gained the support of the UK Government and started work in May 2008 with the remit "*to review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom.*"
26. The Commission's final report was published in June 2009. Its main constitutional recommendations (aside from recommendations on tax devolution and borrowing covered in our Part I report) were:
 - that devolution has been a success, and is "here to stay"



- that responsibility for the regulation of airguns, the administration of elections to the Scottish Parliament, drink-driving limits and the national speed limit should be devolved
- that the regulation of health professions and corporate insolvency, currently largely reserved, should be fully reserved; and that there should be single UK definitions of "charity" and "charitable purposes"
- greater involvement of Scottish Ministers in key decisions and appointments relating to UK bodies such as the BBC Trust, the [Crown Estate](#) and the [Health and Safety Executive](#)
- that there should be better inter-parliamentary dialogue and communication, including through removing barriers to joint working of committees, having Scottish Ministers attending UK Parliament committees and UK Ministers attending the Scottish Parliament (including to outline the implications of the annual Queen's Speech), and establishing a joint liaison committee between the Parliaments to oversee relations
- enhancement of the Joint Ministerial Committee (JMC) structure, including by creation of new sub-committees, and the production of an annual report
- development of the existing [Sewel Convention](#), including through entrenchment in Westminster standing orders, Scottish MPs being represented on committees scrutinising Bills that engage the Convention, and better communication between the Parliaments, including on "legislative consent motions" under the Convention
- the creation of a new mechanism to enable the Scottish Parliament to legislate on reserved matters with the UK Parliament's consent (by order)
- enhanced procedures for Scottish Parliamentary scrutiny of Bills, including splitting the existing Stage 3 into two stages, and creating a presumption that amendments at Stage 3 to introduce substantial new provisions will be referred back to committee
- a requirement that anyone introducing a Bill (not just a Minister) needs to state that the Bill is within the Parliament's legislative competence, and give reasons for that view.

We will produce a fuller paper on the Calman report for discussion at our February meeting.

The Scotland Act 2012

27. In response to the Commission recommendations the UK coalition Government issued a white paper in November 2010. The paper contained proposals for a Scotland Bill to amend the Scotland Act 1998 that would devolve new powers in relation to the recommendations of the report from 2015; it also contained provisions to alter some of the executive powers of the Scottish Ministers.



28. The Scotland Bill was enacted in 2012. The main part of this Act amended the fiscal powers devolved to Scotland. These changes included powers to set a new Scottish rate of income tax; new borrowing powers; and the devolution of stamp duty land tax and landfill tax.
29. In addition the Act amended the following other areas of the Scotland Act 1998:
 - The Administration of Elections to the Scottish Parliament
 - Issues around the Scottish Parliamentary corporate body and legislation made by the Scottish Parliament
 - The adoption of the name of Scottish Government and the administration of the Government
 - Constitutional issues including the expansion of powers relating to air weapons and the adding of Antarctica to Schedule 5
 - BBC Trust members for Scotland
 - The Misuse of Drugs
 - Powers relating to drink-driving limits.
30. In addition to devolving new powers the Act also made a number of technical amendments to the Scotland Act 1998 that were unrelated to the Calman Report but which updated the operation of the devolution settlement.
31. The most important thing to note about the Scotland Act 2012 is that its intention was to amend the original devolution Act of 1998. It did not repeal the Scotland Act 1998, the system of devolution in Scotland has therefore remained largely unchanged since 1998 with the main exception being the implementation of tax devolution and borrowing powers. It is also important to note that Scotland continues to have in own legal jurisdiction, legal system and education system in line with terms of the 1707 Act of Union.

The future of Scotland in the Union

32. Following the 2011 Scottish Parliament elections the SNP formed a majority Government. One of their primary policy aims was holding a referendum on Scottish Independence. In January 2012 the consultation on Scottish independence was launched, *Your Scotland, Your Referendum* set out the Scottish Government's proposals for the question to be asked and the rules governing the campaign and the vote. A draft Referendum Bill was set out as an appendix to the document. The consultation ended in May 2012 and attracted more than 26,000 responses.
33. In October 2012 the Edinburgh Agreement, on the terms of the referendum, was signed by the UK Government and the Scottish Government. Both governments agreed to work together to ensure that a referendum on Scottish independence can take place.



34. The governments agreed that the referendum should:
- have a clear legal base
 - be legislated for by the Scottish Parliament
 - be conducted so as to command the confidence of parliaments, governments and people
 - deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect
35. The governments agreed to promote an Order in Council under Section 30 of the Scotland Act 1998 in the United Kingdom and Scottish Parliaments to allow a single-question referendum on Scottish independence to be held before the end of 2014. The Order will put it beyond doubt that the Scottish Parliament can legislate for that referendum (given that it is on the constitution, a reserved matter).
36. It would then be for the Scottish Government to introduce legislation in the Scottish Parliament for a referendum on independence. The governments are agreed that the referendum should meet the highest standards of fairness, transparency and propriety, informed by consultation and independent expert advice. The referendum legislation will set out:
- the date of the referendum
 - the franchise
 - the wording of the question
 - rules on campaign financing
 - other rules for the conduct of the referendum
37. The referendum will take place in the autumn of 2014. Whatever the result of the referendum there is no doubt that it will have a significant impact on the constitution of the United Kingdom and the future of the Union.

Following the referendum

38. If the Scottish people vote in favour of independence, Scotland will leave the Union, although the precise terms are not yet clear. If the Scottish people vote to stay in the Union, the UK Government has indicated that there may be further changes to the devolution settlement in Scotland, although the details remain unclear. While some commentators consider that further changes may be quite modest, others such as Reform Scotland advocate more radical changes along the lines of “devo max”, under which for example some aspects of the social security system might be devolved.

Conclusions



39. This paper makes no recommendations; it is for Commissioners' information only. The main conclusions of the paper are:

- Unlike Wales, Scotland operates under the reserved powers model of devolution.
- Scotland's devolved functions in 1998 were wider than Wales's reflecting the wider previous powers of the Scottish Office e.g. in relation to policing and justice.
- Further powers were devolved through the Scotland Act 2012, although these were limited other than in relation to tax devolution and borrowing.
- 192 Scottish Acts have been passed since 1998; three of these Acts have been challenged in the Supreme Court. However none of these challenges were brought by a Government body.
- The Scotland Act 2012 was designed to amend the Scotland Act 1998 and mainly increased the financial powers of the Scottish Government; it did not repeal the original devolution Act.
- Scottish devolution is currently again under the microscope given the agreement of the UK Parliament that a referendum on Scottish independence will be held in the autumn of 2014

Commission Secretariat, January 2013