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Scottish Affairs Committee

The Scotland Bill

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Volume III

Additional written evidence

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The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Committee staff

The current staff of the Committee are Dr Rebecca Davies (Clerk), Duma Langton (Inquiry Manager), James Bowman (Senior Committee Assistant), Gabrielle Henderson (Committee Assistant), Karen Watling (Committee Assistant) and Ravi Abhayaratne (Committee Support Assistant)

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List of additional written evidence

Written evidence

Written evidence submitted by The Scottish Wildlife Trust

1. The Scottish Wildlife Trust wishes to restrict its comments to the bill's provisions on Landfill Tax.

2. The Landfill Tax currently supports the Landfill Communities Fund (LCF), which is an extremely important source of funding for projects to support and enhance biodiversity for the public benefit. Since LCF began in 1996, £ 74,342,711 has been awarded to good causes including biodiversity enhancement in Scotland.

3. Conservation-relevant funding under two main grant headings:

— Object D—The provision, maintenance or improvement of a general public amenity.

— Object DA—The conservation of a specific species or a specific habitat where it naturally occurs (ie biodiversity projects) which was introduced in 2003.

4. The Scottish Wildlife Trust has been awarded c. £3.6 million of LCF grant aid to date, with £1.2 million of specifically DA funding (although historically many D projects encompass an element of biodiversity work).

5. Conservation projects supported by LCF over the past two years have included:

DA	Cathkin Marsh Community Wetland Project
D	Montrose Basin—Wildlife in Focus
DA	Commonhead Moss Local Nature Reserve Bog Restoration
D	Improving Visitor Access at Sourlie Wood
D	Enhancing Visitor Experience at Shewalton Woods
D	Enhancing Access at Perceton Wood
D	Improving Access at Oldhall Ponds Wildlife Reserve
D	Lawthorn Wood Enhancements
D	Corsehillmuir Wood Improvements
D	Ayr Gorge Woodlands Improvements
DA	Fife Conservation Grazing Project
D	Enhancements to Southwick Coast Wildlife Reserve
D	Cathkin Marsh Improvements
DA	Saving Scotland's Red Squirrels (North East Scotland)
D	Cullaloe Access Improvement Project
D	Bankhead Moss Restoration Project

6. Other Landfill Tax-derived funding has provided essential support to major biodiversity initiatives such as the Scottish Beaver Trial. The current system allows for the funding of projects which maximise biodiversity and conservation benefit disregarding country boundaries within the UK and this has benefited Scottish conservation.

7. Without LCF it is unlikely that projects which support public policy objectives would have gone ahead. Examples include:

— Urban mountain bike trail integrated into Physical Education curriculum of local schools.

— Enhanced access to the countryside via boardwalks, paths, interpretation.

— Coordinated efforts to conserve red squirrel.

— First (trial) reintroduction of a mammal species.

— Habitat management and creation work to protect wide range of LBAP habitat and species.

8. Biodiversity funding—already inadequate—should not suffer from any change in taxation arrangements. The Aggregates Levy, administered within the Sustainable Action Fund, was a significant source of funding for the restoration of the natural environment, biodiversity projects and a range of major projects with a general relevance to aggregates and environmental impact.

9. Since 2008, Scotland's share of the money raised by the UK Government from the Aggregates Levy is indirectly reflected in the Scottish Government's overall spending review settlement. Environmental spending is a devolved matter and the Scottish Government's plans for environmental spending are set out in its budget. The Budget published in November 2007 outlined that planned spending on Sustainable Development and Climate Change includes the new Climate Challenge Fund. This funding is far more difficult for NGOs to access and as a result funding for biodiversity projects has been reduced.

10. A change to the Landfill Tax which removes Scottish access to the LCF would therefore mean that safeguarded funding for biodiversity projects would be lost to Scotland.

11. The Scottish Wildlife Trust believes that that a Scottish LCF or equivalent mechanism should be established to ensure the continuation of this important source of funding for supporting and enhancing Scotland's biodiversity.

12. About the Scottish Wildlife Trust

The Scottish Wildlife Trust's central aim is to advance the conservation of Scotland's biodiversity for the benefit of present and future generations. With over 36,000 members, several hundred of whom are actively involved in conservation activities locally, we are proud to say we are now the largest voluntary body working for all the wildlife of Scotland. The Trust owns or manages 122 wildlife reserves and campaigns at local and national levels to ensure wildlife is protected and enhanced for future generations to enjoy.

SWT's vision for Scotland's wildlife requires a network of healthy, resilient ecosystems supporting expanding communities of native species across large areas of Scotland's land, water and seas. This can be achieved through:

- Protecting vulnerable areas from further loss.
- Restoring and enhancing degraded habitats.
- Expanding these areas to form an integral part of large-scale, wildlife-rich landscapes.
- Having a diverse range of people who are increasingly knowledgeable of, and actively engaged in, wildlife and conservation.

January 2011

Written evidence submitted by Lesley Riddoch

1. I'm a writer and journalist and I have long-standing interests in land reform, marine energy and community development. I have been a Trustee of the Isle of Eigg Heritage Trust, I chaired a Taskforce on the future of the Isle of Rum and I wrote a book about the culture and economy of the Western Isles called *Riddoch on the Outer Hebrides.*

2. I'm writing in response to your call for written evidence on the Scotland Bill 2010, and would like to make some observations about Crown property rights, the proposals in the Bill relating to the Crown Estate Commissioners (CEC), and how the Bill could modernise and improve the administration of the important public rights that are currently managed by the CEC in Scotland under the Crown Estate Act 1961.

3. I recently wrote a column in the Scotsman on the subject, arguing that lack of agreement on HOW to achieve change should not get in the way of ending Crown Commission jurisdiction in Scotland as soon as possible. That observation was based on discussion with a large number of coastal development trusts and small businesses.

4. My main interest is to free up control of natural resources so Scotland loses its unenviable reputation as the best wee feudal country in the world. I think the best way forward is that suggested by Andy Wightman—dispensing with the current Clause 18 in the Scotland Bill and replacing it with the following The Crown Estate Act 1961 is amended as follows. After Section 1(7) insert "Section 1(8) This Act does not apply to Scotland".

5. The sums collected by the Crowns Estates in Scotland haven't been vast but enough in some isolated communities to cause abandonment of old piers, enough to stop small-scale community development and enough to make coastal communities feel the power of the sea is not theirs to harness. That disempowered outlook is a particular concern for a country that seeks to exploit marine energy as a form of baseload energy. Since 1999—when the powers of other asset—owning quangos like the Forestry Commission were devolved—London-based quango control over Scotland's marine environment by the CES has been an undemocratic anachronism.

6. By 2050—when offshore renewables capacity could reach 68GW and provide a net value in electricity sales of £14 billion—it will be an unacceptable loss of potential income from Scotland's coastal communities.

7. Powers already exist to allow the Scottish Secretary to re-direct Crown Estate income. So in theory, the current SS could simply decide to send the Scottish tranche north. That might be a quick non-legislative way round the problem, but it's not a solution. A new Secretary of State might have other ideas—especially when the offshore renewable energy income starts to flow.

8. Ideally, income from marine assets must remain beyond the reach of Holyrood and even Scottish councils with the coastal communities themselves. Marine trusts could be set up in coastal communities to receive rental income—the model used in Norway where small, powerful, service-delivering, community-sized municipalities already offer a geographical template and a precedent for micro-managing funds. In Scotland, such communities would have to be recreated—carved out of the largest councils in Europe—but using old parish and burgh council boundaries it could be done.

9. Some want Westminster to legislate and ensure the Crown Estates spoils are sent directly to local communities around the UK coastline—bypassing Holyrood, Stormont and Cardiff. Others argue Westminster shouldn't micro-manage that cash and should quite simply amend the Crown Estate Act of 1961 to say it shall no longer apply to Scotland, Wales and Northern Ireland—entrusting the next step of redistribution to the national parliaments.

10. It seems to me the quickest way of starting a change process is for the Scottish Government to take over the administration of CEC rights immediately and the simplest means of achieving this is to remove the CEC from any responsibilities in Scotland.

EXECUTIVE SUMMARY

I therefore suggest the Committee recommends dispensing with the current Clause 18 in the Scotland Bill and replacing it with the following:

> The Crown Estate Act 1961 is amended as follows. After Section 1(7) insert "Section 1(8) This Act does not apply to Scotland".

January 2011

Written evidence submitted by Glasgow Prestwick Airport

Air Passenger Duty (APD) requires to be devolved to the Scottish Government for two principal reasons:

1. The dithering of the UK Government over the future of APD has introduced uncertainties in the aviation industry and its view of the UK market.
2. The Scottish market is quite different from the main (London) UK market and a "one size fits all" solution is, in the case of Scotland, no solution at all.

To deal with each in turn.

The aviation industry is, consistent with the global economy, going through a difficult period with many airlines collapsing and many airports losing money. As a part of the measures being considered or implemented to encourage economic recovery, aviation needs to be recognised as a potentially huge key driver of that process. This is the most ridiculous point in time to be threatening to increase taxation on an industry that is already heavily taxed. One only needs to examine the behaviour of airlines in the various European countries that tax and those that do not tax aviation to appreciate the severe damage that inappropriate and inconsistent taxation inflicts. By leading airlines to believe that the UK will increase APD and potentially change the method of application, airlines are reluctant to invest in the UK market electing instead those markets where there is no APD or at least some certainty and sanity over its rate.

Scotland's propensity to fly is the highest of all mainland UK regions with the exception of London. Whilst the UK Government appears keen to try to replace domestic air services with high speed rail, Scotland is decades away from being able to seriously make this transition. Air travel is therefore the only alternative for many journeys to/from Scotland. Devolving aviation taxation to Scotland would permit an appropriate regime to be put in place for Scottish air travel recognising Scotland's particular requirements. A considerable amount of Scottish air travel is UK domestic and the APD effectively double taxes these journeys increasing costs to Scottish based businesses reducing their competitiveness. Recent history demonstrates the success of the Route Development Fund (RDF) when Scotland was able to offer relatively modest financial incentives to airlines to operate new routes to/from Scotland; the economic benefits far outweighed the level of public investment. By being able to selectively tax (or not) certain and potential routes to maximise the benefits to the Scottish economy, the Scottish Government would be able to influence routes and frequencies offered by airlines. The present system makes it expensive for tourists to access Scotland by air meaning that many potential tourists are lost to other more financially attractive destinations. Finally, whilst there may be concerns about the lack of airport capacity in the London system, the position in Scotland is markedly different where the main airports, Glasgow and Prestwick in particular, have experienced significant decline in traffic and have considerable unused capacity at hand.

January 2011

Written evidence submitted by The Law Society of Scotland

INTRODUCTION

The Law Society of Scotland welcomes the opportunity to submit evidence to the Scottish Affairs Committee in respect of the Scotland Bill introduced into the House of Commons on 30 November 2010.

The Society contributed substantially to the consultative and parliamentary process which resulted in the Scotland Act 1998. The Society took the view then and takes the view now that the Scotland Act ("the Scotland Act") is one of the most important pieces of legislation to have affected the Scottish Legal System since the European Communities Act of 1972. It was central to the programme of constitutional change which began in 1997. In tandem with the Human Rights Act 1998, the Act provides much of the framework of what approaches a form of written constitution—as it underpins both logically and legally the exercise of power by the Parliament.

Competence and Vires

Together with the Human Rights Act 1998, the Scotland Act requires the courts to perform constitutional functions in a way in which prior to these Acts they only had experience of in European Union matters. The Scotland Act 1998 introduced a new way of thinking for Scottish lawyers. Prior to then, their experience of primary legislation was limited to Acts of the UK Parliament which were (subject to the European Communities Act 1972) the Acts of a sovereign legislature and were undoubted in terms of their constitutional propriety provided they had received the Royal Assent.

However, the provisions in respect of the competence of the Scottish Parliament contained in Sections 28, 29 and 30 of the Scotland Act ensure that Scottish lawyers had to consider the legislation of the Scottish Parliament in a different light. The first question which Scottish lawyers must ask themselves first and foremost is "Is an Act of the Scottish Parliament within the competence of the Scottish Parliament to enact?" The limits on the legislative competence of the Scottish Parliament are set out specifically in Section 29 of the Scotland Act which states in subsection 1 that "an Act of the Scottish Parliament is not law so far as any provision of that Act is outside the legislative competence of the Scottish Parliament". Section 29(2) provides the framework of determining criteria to guide advisers and the courts as to what is "outside that competence". Those criteria are that a provision:

(a) Would form part of the law of a country or territory other than Scotland or confer or remove functions exercisable otherwise than in or regards Scotland;

(b) Relates to reserved matters;

(c) Breaches the provisions of the restrictions in Schedule 4;

(d) Is incompatible with any of the Convention rights or with Community law; or

(e) Would remove the Lord Advocate from her position as Head of the Systems of Criminal Prosecution and Investigation of Deaths in Scotland.

Accordingly, if the Scottish Parliament legislates in a way which breaches any of these restrictions that legislation "is not law".

That new way of thinking about legislation (and about the devolved powers of Ministers under Section 54) has been adopted by Scottish lawyers on behalf of their clients in many cases.

Law Reform

One other major change which occurred with the Scotland Act coming into effect was the approach to Law Reform. Prior to the Scotland Act, many Scots lawyers complained that the process of law reform was haphazard and patchy. It was difficult for the UK Parliament to assign adequate legislative time to more than one Scotland specific Bill per session—although, of course, there were of course occasions when more than one bill was possible but that was a matter of the coincidence of parliamentary time and political will.

Furthermore, the more deep-seated complaint was that legislation was often enacted by Westminster with a UK application in mind which did not give adequate consideration to how the legislation affected the law of Scotland.

The law of Scotland may have been subject to only relatively narrow self-contained amendments during the nearly 300 years of the absence of the Scottish Parliament, but since 1999 the Parliament has certainly developed the law in many areas where it was felt that reform was needed.

The Parliament has also embarked upon many useful inquiries through the agency of its committees. Some of the most significant being from the perspective of the Society:

— The inquiry into the regulation of the legal profession;

— The inquiry into Legal Aid;

— The inquiry into the police; and

— The inquiry into the transposition of EU Directives.

Subject to the limits set out in Section 29 of the Scotland Act, the Scottish Parliament has a very wide jurisdiction for legislation. It includes agriculture, forestry and fishing, education, environment, health, housing, law and home affairs, local government, natural and built heritage and planning law, police and fire services, social work, sport and the arts, statistics and public records, tourism and economic development and transport. Since 1999 the Parliament has enacted 166 Acts of the Scottish Parliament and the broad range of legislation covers issues of such importance as reform of the criminal law, reform of the system of land tenure and agricultural holdings, legislation regarding adults with incapacity, planning law and licensing law and many other areas besides.

The interface between the UK and Scottish Parliaments

The broad range of reservations in Schedule 5 to the Scotland Act ensures that the UK Parliament (and Whitehall Ministries) have a very substantial role in making law for Scotland. The Society has tried to ensure

since 1998 that it comments constructively on consultations and bills which emanate from the UK Ministries and Parliament.

The importance of the UK Parliament's legislative role for Scots law must not be underestimated or under represented. Over the lifetime of a Parliament, around 50 Acts are passed; many of these have important provisions affecting Scotland. There should be a better understanding of the range and depth of Westminster legislation, however less publicity, lack of proximity and perceived remoteness ensure that the UK Parliament's role receives significantly less prominence than that of Holyrood.

One important function which closes the gap between the parliaments is the operation of the Sewel Convention and the need for legislative consent motions but more regular contact and exchange would be for benefit of both Parliaments, both electorates and the law of Scotland.

Inter-ministerial meetings should take place on a regular and transparent basis. The fact that joint ministerial committees are meeting more often is a great improvement on past practice.

Inter-parliamentary contact is also important and members of both parliaments should be encouraged to meet and exchange views on topics of mutual interest.

SPECIFIC COMMENTS

Part 1—The Parliament and its Powers

Clause 1—*Administration of elections*

The Society has no comment to make.

Clause 2—*Combination of polls at Scottish Parliamentary and other reserved elections*

The Society has no comments to make.

Clause 3—*Supplementary and transitional provision about elections*

The Society has no comment to make.

Clause 4—*Presiding Officer and Deputies*

The Society agrees with the proposal in Clause 4(3) and (4) that the Parliament may elect one or more additional deputies to the Presiding Officer. This is a sensible provision which the Society endorses.

Clause 5—*Scottish Parliamentary Corporate Body*

The Society agrees with the proposal to amend Section 21 of the Scotland Act to provide that the members of the corporation shall be the Presiding Officer and at least four members of the Parliament. This will help to take account of minority political interests.

Clause 6—*Bills: statements as to legislative competence*

The Society gave evidence, in writing and in oral evidence, to the Calman Commission on the role of statements by Ministers and the Presiding Officer as to their views on the legislative competence of a Bill introduced in the Scottish Parliament. In summary, the Society was of the view that the requirement for such a statement of legislative competence is an important part of the legislative process and that such statements can play an important role in informing parliamentarians and the public about the reasons why it is thought that a Bill is within (or indeed outside) legislative competence. The Society argued for greater transparency and detail in the giving of reasons—especially by the Presiding Officer—for making a statement that a Bill is within legislative competence. Fuller reasons have the potential to inform public debate about the powers of the Scottish Parliament and the appropriateness of proposed legislation.

The Society agrees with the proposal to amend Section 31(1) to ensure that any person who introduces a Bill, whether he or she is a Minister, a Back Bench MSP, a Committee Convener introducing a Committee Bill or a private individual or organisation introducing a private bill, should certify the legislative competence of the measure.

The Society is also of the view that the explanatory notes published with the Bill should give a general account of the main considerations that informed the statement on legislative competence under Section 31(1).

We remain of the view that there is a clear public interest in transparency of legislative competence reasons.

The Society also remains of the view that the Presiding Officer should be required to give reasons for a positive statement of legislative competence as well as for a "negative one".

The fact that disclosure may provide those who wish to challenge legislation with information is not a sufficient reason for non disclosure.

The Society is also concerned that amendments to a Bill are not subject to a legislative competence statement and that a Bill can be amended quite considerably at either stage 2 or stage 3 and the only check on competence then resides with the law officers.

In the Society's view, such amendments ought to be subject to a statement of legislative competence.

Clause 7—*Partial suspension of Acts subject to scrutiny by Supreme Court*

This clause provides for a new procedure under which a part or parts (rather than the entirety) of a Bill may be subject to a reference to the Supreme Court under Section 33 of the Scotland Act 1998. Such a reference may be made by one of the Law Officers. Currently, a reference of a whole Bill may be made to the Supreme Court, one consequence of which is that the Bill cannot be submitted for Royal Assent. The new procedure would allow the Bill to receive Royal Assent but would prevent specific provisions being brought into force until their competence had been ruled upon by the Supreme Court.

The Society has the following comments to make on Clause 7.

We understand that one reason for proposing this amendment is a concern that the existing s33 reference power has not been used because the effect of a reference would be to "freeze" the whole of a Bill even where only one or a limited number of provisions may be thought to give rise to a question about competence. In those circumstances a Law Officer would have to balance the desire for clarity about the competence of limited provisions against the public interest in allowing an otherwise competent Bill to proceed for Assent.

The Society regards the power of the Law Officers to refer a Bill to the Supreme Court for a ruling on competence pre-Assent as potentially valuable, allowing questions about the constitutionality of the legislation to be considered in advance of that legislation being relied upon by the public. A reference offers an opportunity for the UK and Scottish Governments to obtain a judicial determination from the UK Supreme Court on any difference of opinion as to the competence of the legislation. Such a determination would be available to the public in general and to legal advisers.

If concerns about the impact of a reference have, in the past, caused Law Officers to decide not to make a reference—despite having real concerns about the competence of one or more provisions of an Act of the Scottish Parliament—that suggests the reference power may need to be reformed.

In principle, the concept of a "limited reference" is attractive, addressing the concern discussed above. The Society would note, however, that there is no detail contained in the Bill or in supporting materials explaining how in practice the limited reference power would be used. In particular, it may prove to be difficult in practice to separate parts of a Bill—leaving some to come into force and others to await a ruling from the Supreme Court. Further detail about how such references might operate would be welcome.

Clause 8—*Members' interests*

The Society has no comment to make.

Clause 9—*Constituencies, regions and regional members*

The Society has no comment to make.

Clause 10—*Continued effect of provisions where legislative competence conferred for limited period*

Clause 10 amends Section 30 of the Scotland Act which gives Her Majesty the power by Order in Council to make any modifications of Schedules 4 or 5 which she considers necessary or appropriate. It would be possible for such an Order in Council to specify that the modification ceases to have effect at some point in the future, accordingly giving the Scottish Parliament legislative competence in relation to one or more matters for a limited period of time (a sunset provision). Clause 10 inserts new subsections 5 and 6 into Section 30 so that, where an Order in Council contains such a sunset provision, that Order in Council may also provide that any Act of the Scottish Parliament, made in reliance on the competence conferred by the Order and which is made prior to the sunset, should continue to have effect after the sunset provision takes effect. The Society does not see the necessity for this clause and would welcome further explanation of the need for it.

Clause 11—*Air weapons*

Clause 11 of the Bill brings the regulation of air weapons within the legislative competence of the Scottish Parliament. This is without prejudice to the Secretary of State retaining the power to make rules under Section 53 of the Firearms Act 1968 to make rules and orders relating to specially dangerous weapons, or to prohibit specially dangerous weapons in terms of Section 1(4) of the Firearms (Amendment) Act 1988.

The Calman Commission Report agreed (rec 5.13) that the regulation of air guns should be devolved to the Scottish Parliament. The Commission had taken into account the fact that having different regimes within the separate jurisdictions of the United Kingdom could introduce an additional layer of complexity and greater bureaucracy but that a system of mutual recognition which would allow firearm certificates issued in one

jurisdiction to be accepted in another (provided safeguards were felt to be adequate) could be created (paragraph 5.154).

The Society does not envisage any practical cross border difficulties which could not be accommodated in subsequent legislation, which would clearly require to provide for reciprocity with regard to licensing regimes should the Scottish Parliament, in terms of Clause 11 of the Bill, decide to regulate air weapons.

Clause 12—*Insolvency*

The Society agrees with this clause.

1. The Insolvency (Scotland) Rules 1986 regulate the procedure in Company Voluntary Arrangements ("CVAs") (Part 1), Administration (Part 2), Receivers (Part 3) and Winding up (Parts 4–6). Part 7 (Meetings etc) are applied variously to the procedures in Parts 1–6. There are also cross-applications among Parts 1–4, particularly in applying certain provisions in Part 4 to the other procedures.
2. The 1986 Rules were made by the relevant UK Department prior to Devolution. By the Scotland Act 1998 CVAs and Administration were reserved to Westminster (along with the regulation of Insolvency Practitioners) and Receivership and Winding Up (and Bankruptcy) were devolved to Holyrood. This had the effect that the procedures relating to insolvent companies (and LLPs) under Scots Law were governed by Rules which were partly the responsibility of the UK Parliament and partly of the Scottish Parliament. Moreover, as a result of the cross-references mentioned above the same Rule might be subject to review and amendment by both legislatives. Obviously, this was a situation in which confusion and error was a significant risk, and to that extent unsatisfactory in principle.
3. This was amply demonstrated when Parts 1 and 2 of the Scottish Rules (CVAs and Administration) were amended by the Insolvency (Scotland) Amendment Rules 2009 (SI 2009/662). These amendments facilitate the use of electronic communication and remote attendance at meetings but only in CVAs and Administration. They cannot be used in winding up procedure, notwithstanding the fact that many administrations "evolve" into winding up to enable residual funds to be distributed. Moreover, an error in the 2009 SI has resulted in the existence of two sets of rules for the submission of claims in an administration, ie the adapted rules for winding up prescribed in the original 1986 Rules and a different procedure under the 2009 amendments.
4. The Professional Bodies whose members are closely involved in insolvency matters (ICAS, the Law Society of Scotland and R3) have criticised the Scottish Rules in numerous respects and have sought improvements for the benefit (particularly) of business and trade in Scotland; the present situation generates unnecessary expense which has to be borne by the creditors of insolvent companies. The overlap of responsibility for the Rules referred to above) prompted the R3 evidence to the Calman Commission that responsibility for the Insolvency Rules applicable in Scotland should be re-reserved to Westminster. Re-reservation may therefore result in a coherent and practical set of insolvency rules for Scotland consistent with those applying in the rest of the UK.
5. The Scotland Bill proposes that the Rules on Receivers (Part 3) should remain devolved since floating charges and receivers are devolved areas (and on a strict analysis relate to the law of debt and securities therefore, not insolvency). Since Part 3 is connected in its terms to the other Parts (particularly Parts 4 and 7) this would require a complete rewrite of that Part to eliminate the cross-references and to make further improvements (such as those relating to electronic communication mentioned above).

Clause 13—*Regulation of the health professions*

The effect of Clause 13 is that the regulation of any health professions which are not regulated by the enactments listed in Section G2 is within the legislative competence of the Scottish Parliament. Sub-section 2 of Clause 13 amends the definition of the health professions in Section G2 to add to the reservation the regulation of any other profession concerned wholly or partly with the physical or mental health of individuals except any profession regulated by the Regulation of Care (Scotland) Act 2001 (Social Workers). This provision re-reserves to the UK Parliament the regulation of those health professions that are currently within the legislative competence of the Scottish Parliament. Sub-Sections 3 to 6 of the Clause make consequential amendments to the Health Professions Council professions, the General Dental Council and the General Pharmaceutical Council.

The Society has no comment to make on this clause.

Clause 14—*Antarctica*

Clause 14 re-reserves the regulation of activities in Antarctica which is governed by the Antarctic Act of 1994.

The Society has some concern about the rationale for this clause as set out in the explanatory notes to the Bill. Those notes suggest that one reason for re-reserving Antarctica is that the Scottish Parliament has never exercised its competence in this area. The Society does not consider that the failure to utilise an area of legislative competence is of itself a good reason for removing that area from the scope of the Parliament's (or Scottish Government's) powers.

The Society would welcome more detailed explanation for this proposed re-reservation.

Clause 15—*The Scottish Government*

The Society has no comment to make.

Clause 16—*Time limit for human rights actions against Scottish Ministers, etc*

The Society agreed in its evidence to the Calman Commission that (so far as time limits for raising proceedings were concerned) the position of Scottish Ministers under the Scotland Act was anomalous in comparison with the position of other public authorities in Scotland and the UK Government in respect of devolution issues arising out of actions by Ministers allegedly incompatible with the European Convention on Human Rights.

The Cabinet Secretary for Justice, Kenny MacAskill MSP, in his announcement in the Parliament on 11 March 2009 informed the Parliament of progress since the case of Somerville v Scottish Ministers [2007] UK HL44. That case concluded that in the absence of an explicit statutory time bar in the Scotland Act 1998, claims could be made under that Act against Scottish Ministers which would not be permissible under the Human Rights Act 1998 because that Act contains an explicit time bar.

The introduction of a one year time bar enabled the Scottish Ministers to draw a line under their liability in relation to claims of the kind being made in respect of the Somerville judgement.

There was no wide consultation on this issue. The Society appreciates the Scottish Government's desire to legislate but the lack of consultation on the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 and the employment of the Scottish Parliament's emergency procedure limited the opportunity to consider the total impact of the Bill. The provisions in that Act as repealed and re-enacted by this Bill are important and will have the effect of limiting the capacity of many people, who may have had their human rights infringed by Scottish Ministers, from taking appropriate action to vindicate their human rights.

Nevertheless, the Society agrees with the general proposition that there should be consistency between the time bar period for devolution issues under the Scotland Act and other devolution legislation and the time bar period under the Human Rights Act 1998.

It is questionable whether one year is the correct period for the time bar. It is also appropriate that an extension of the period of one year is permitted under new Section 100 (3B)(b) for such "longer period as the court or tribunal considers equitable having regard to all the circumstances". That provision should ensure that the strict one year period is mitigated in appropriate circumstances.

Another issue which relates to the time bar period is the point at which the year begins to run. The Bill provides in new Section 100 (3B)(a) that the period of one year begins "with the date on which the act complained against took place".

This may conform with the Human Rights Act 1998, Section 7 but is at odds with other limitation periods in Scots Law such as the three-year period under Section 22B of the Prescription and Limitation (Scotland) Act 1973. That period runs from the earliest date on which the person seeking to bring the action was aware of the basis of the action. The Society is of the view that this start point of awareness is fairer than the objective basis in the Bill.

Clause 17—*BBC trust member for Scotland*

The Society has no comments to make.

Clause 18—*Scottish Crown Estate Commissioner*

The Society agrees with the creation of the Scottish Crown Estate Commissioner.

The qualifications for this office are imprecise and it would be appropriate for this Clause to provide some further detail as to the qualifications of the Scottish Crown Estate Commissioner.

Clause 19—*Misuse of drugs*

Clause 19 amends the Misuse of Drugs Act 1971 by allowing Scottish Ministers the power to issue licences which allow some controlled drugs to be legally prescribed by doctors (and therefore held and used legally) for the purposes of treating addictions.

The Calman Commission took the view that this power relates to issues of health rather than the criminal justice system, and accordingly would be more appropriately exercised in Scotland by Scottish Ministers, on the basis that devolving the responsibility for the licensing regime under which doctors operate and report on their prescribing of controlled drugs (such as heroin) would be commensurate with the responsibilities Scottish Ministers already have for public health and drug rehabilitation.

The Society agrees with this proposal.

Clause 20—*Power to prescribe drink driving limits*

The Calman Commission, in recommending that regulation making powers relating to drink driving limits should be transferred to Scottish Ministers, considered whether having different rules applying to different parts of a shared road network with respect to the drink driving limit might create confusion among motorists, but took the view that changes would simply require re-education. The Commission cited the smoking ban being introduced in Scotland earlier than in England and Wales as an example of different rules applying in a wide variety of areas. However the Society is of the view that the residual effect of drinking and driving has not been taken into account.

The provision of different blood alcohol limits could have the effect that where a driver was breathalysed in Carlisle on a journey north and was under the limit there, he or she might subsequently be tested positive in relation to a lower drink driving limit applying in Scotland. There is an issue about whether such an outcome is desirable. Scottish Ministers, in terms of Clause 20(9) of the Bill will be required to consult with such representative organisations as they think fit before making any regulations.

Clause 21—*Speed limits*

This provision would allow Scottish Ministers the power to set speed limits on all Scottish roads without the need to consult with the Secretary of State.

Clause 21 (6) of the Bill inserts a new Section 64(2A) to enable Scottish Ministers to specify signs for a Scottish national speed limit which is defined under the new Section 64(2C) of the 1998 Act.

It should be noted that Scottish Ministers already have at present the power to make regulations with regard to speed limits in terms of the Road Traffic Regulation Act 1984, Sections 17(2) and (5), but only with respect to particular special roads, which are defined in terms of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers Etc) Order 1999 (SI199/1750)).

The Society agrees with this clause.

Clause 22—*Speed limits: supplementary*

The Society agrees with this clause.

Clause 23—*Implementation of international obligations*

Clause 23 provides that a regulation made by UK Ministers, implementing an international obligation can have effect throughout the UK, irrespective of whether or not it deals with matters which are within devolved competence.

The Society agrees with this clause.

Clause 24—*Taxation: introductory*

Ministers should be obliged to consult relevant interests on the implementation of these provisions.

Clause 25—*Amendments relating to the Commissioner for Revenue and Customs*

The Society agrees with this clause.

It will be important given the terms of Clause 25 (6) that the Commissioners are suitably qualified in relation to their functions which are conferred by acts of the Scottish Parliament and which relate to devolved taxes.

Clause 26—*Scottish rate of income tax*

Clause 26 inserts a number of sections into the Scotland Act 1998.

The Society is concerned that only a partial regulatory impact assessment has been completed in relation to the Bill and that in the explanatory notes at paragraph 232, the financial effects and the effects on public sector manpower are not detailed.

The Society is of the view that collecting the Scottish rate for Scottish taxpayers will be a considerable administrative effort. More information is needed about how the Scottish rate will be administered and the costs for taxpayers, employers and the Scottish Government. The Society notes that these costs would be incurred even where the rate set by the Scottish Government is the same as the UK rate.

In particular, the Society is concerned that payroll standards written before the Scottish rate of income tax comes into effect will take some time to test in order to confirm their capability. A considerable amount of underlying administrative work requires to be undertaken in order to ensure the proper administration of the tax in a fair and equitable way so as to give certainty to PAYE taxpayers that the tax deducted from their salary is correct and to avoid underpayments or overpayments.

New Section 80C—*Power to set Scottish rates for Scottish taxpayers*

The Society notes that the Parliament may, by resolution, set the Scottish rate for the purpose of calculating the rates of income tax to be paid by Scottish taxpayers. The Society is of the view that this mechanism will need to be related to the Scottish budget process and that the terms of the resolution will require to be consulted upon by any Scottish Government proposing such a resolution.

Section 80D—*Scottish Taxpayers*

The Society is concerned about the definition of "Scottish Taxpayers" contained in new Section 80D as amplified by new Section 80E and F particularly with reference to residence.

New Section 80D defines a Scottish taxpayer as an individual:

"(a) who is resident in the UK for income tax purposes; and

(b) who for that year meets condition a), b) or c)" these conditions are; that the taxpayer has a close connection with Scotland, does not have a close connection with any part of the United Kingdom other than Scotland and spends more days of the year in Scotland or is an elected Parliamentary representative for Scotland.

The residence qualification is not without controversy as recent cases (Gaines-Cooper v HMRC and Tucza v HMRC) confirm.

New Section 80D (when combined with new Section 80E and 80F) are difficult to interpret for those who move between jurisdictions within the United Kingdom inasmuch as they create some uncertainty and potential problems regarding compliance.

For example the definition of "close connection" contained within new Section 80E, creates difficulties of interpretation. Furthermore, what does "place of residence" mean? It appears to be different from "residence" as understood in other areas of tax law such as Capital Gains Tax. Does "place of residence" imply ownership when juxtaposed against "main place of residence" in new Section 80E(3)(b) and (c).

"Place of residence" and "main place of residence" are not defined in new Section 80E and therefore create potential problems for interpretation by those who may live in Scotland yet work in England or visa versa, including those living on the Scottish/English border, commuters from Glasgow/Edinburgh to London and a variety of public officeholders who may have a "place of residence" in Scotland yet work considerable periods in England and Wales such as members of the House of Lords (who are not included in new Section 80D(4) or UK Supreme Court judges.

New Section 80E also highlights the issue of split year residences. HMRC currently applies, in extra statutory concession A11 split year treatment to individuals who spend only part of the tax year resident in the United Kingdom. The concession means that for example an employee who comes to the UK for a secondment beginning on 1 June would be regarded as non UK resident and therefore not taxable in the UK on his or her general earnings from the same employment for the period from 6 April to 31 May of that tax year.

The Society questions whether setting up the provisions of new Section 80D, E and F will require the creation of a similar extra statutory concession. It would seem more sensible to create a robust system which does not rely on extra statutory concessions in order to make it work, but rather that the fundamental architecture takes account of movement of people within the United Kingdom (and therefore within different tax zones) within the one tax year.

The provisions will need some amendment to deal with changes in residence status of a number of categories of employee, including those working onboard ship, in oil rigs, in the armed forces and who are neither UK resident nor employed by non-UK employers.

New Section 80G—*Supplemental powers to modify enactments*

The Society is concerned about the terms of new Section 80G which enables the Treasury, by order, to disapply provisions of the Income Tax Act 2007 or to modify those provisions in relation to any enactment.

There is no obligation on HM Treasury, contained within these provisions, to consult and it is clear that any order modifying or disapplying any enactment would be taken through the UK Parliament. The Society believes that the Treasury should be under such an obligation to consult with interested parties including the Scottish Ministers and the Scottish Parliament on the terms of such orders under new Section 80G(1) and (2).

The Society also is of the view that more information should be required from the Government about what is intended to be disapplied under new Section 80G(1). Indications have been made to the effect that elements relating to Gift Aid and pensions might fall under the terms of this provision. The Society believes that there should be more transparency about this issue. The Society also questions whether these provisions apply to income from rent where the Scottish taxpayer holds land from which he or she is obtaining rent which is located in England and Wales. It would appear that a Scottish taxpayer will pay the Scottish rate on such income where an English taxpayer who obtains rent from a property leased in Scotland, will not. This seems, at the least, to have the potential for confusion on the part of the taxpayer.

It is also a matter of concern that an order made under these provisions can take effect retrospectively. The case for such application needs to be made out.

Clause 27—*Income tax for Scottish taxpayers*

The Society has no comments to make on this clause.

Clause 28—*Scottish tax and transactions involving interests in land*

1. The Society is concerned that the enabling provision in the new Section 80I of the Scotland Act 1998 sets out the scope of what is to be a Scottish tax on Scottish land transactions using English land law terminology. An estate or interest in land, whilst not unknown to Scots law, is certainly not in common usage. The Society believes that Section 80I (1)(a) should refer to "the acquisition of land in Scotland (including any interest, right or power in or over such land)" and that "estate" should be omitted from the new Section 80I (1)(b).

2. The Society does not believe that it is necessary to include the provisions in Section 80I(2) (a), (b) and (c). It is appreciated that the scope of Scottish land tax should be set out and it is assumed that these provisions are intended to be permissive, but the Society is concerned that the inclusion of this degree of detail risks limiting the framework for the new Scottish land tax.

Clause 29—*Disapplication of UK stamp duty land tax*

The Society agrees with this clause.

Clause 30—*Scottish tax on disposals to landfill*

The Society agrees with this clause.

Clause 31—*Disapplication of UK landfill tax*

The Society agrees with this clause.

Clause 32—*Borrowing by the Scottish Ministers*

The Society has no comments to make.

Clause 33—*Maximum penalties which may be specified in subordinate legislation*

Section 113 (10) of the Scotland Act 1998 (subordinate legislation: scope of powers) prohibits the making of subordinate legislation conferred by the Act in respect of any criminal offence punishable:

(a) On summary conviction, with imprisonment for a period exceeding three months or with a fine exceeding the amount specified as level 5 on the standard scale;

(b) On conviction on indictment, with a period of imprisonment exceeding two years.

The Society notes that this provision is to be replaced with Clause 33 (2) of the Bill which in effect raises the maximum penalties in respect of which offences cannot be created under subordinate legislation conferred by the 1998 Act on summary conviction to reflect those as contained in the Criminal Proceedings, etc. (reform) Scotland Act 2007, namely 12 months imprisonment and level 5 fine on the standard scale.

Section 113 (9b) as inserted by Clause 33 (2) of the Bill applies where, if the offence is triable on indictment or on summary complaint, then the limits are 12 months imprisonment and the statutory maximum fine and Section 113 (9b)(c) as inserted by Clause 33 (2) of the Bill applies where the limit is for a period exceeding two years when triable on indictment.

The maximum penalties which may be applied to offences created in England, Wales and Northern Ireland remain the same and are provided for in terms of the new Section 113 (10) of the Act as inserted by Clause 33 (2) of the Bill.

Clause 33 (3) of the Bill creates a new Section 113(12) of the Act to allow these limits to change by Her Majesty by Order in Council.

The Society notes that such an order is subject to type A procedure as provided for in Schedule 7, Paragraph 1 to the Act which means that no recommendation to make such subordinate legislation is to be made to Her Majesty in Council unless a draft has been laid before and approved by resolution of each House of Parliament and also the Scottish Parliament.

The Society supports this proposal which in effect takes into account changes to maximum penalties upon conviction on summary complaint and as provided for at Section 5(2)(d) of the Criminal Procedure (Scotland) Act 1995 as inserted by Section 43 of the 2007 Act which raised the maximum period of imprisonment which can be imposed by a sheriff sitting as a court of summary jurisdiction from three months to 12 months.

Level 5 on the standard scale at present £5,000 (Section 225(2) of the Criminal Procedures (Scotland) Act 1995 remains unchanged.

Clause 34—*Interpretation,*
Clause 35—*Power to make consequential, transitional and saving provision,*
Clause 36—*Transitional provision for Scottish statutory instruments,*
Clause 37—*Financial provision,*
Clause 38—*Commencement,*
Clause 39—*Short title*

The Society has no comments to make on these clauses.

SCHEDULE 1—AMENDMENTS TO SCHEDULE 1 TO THE 1998 ACT

The Society has no comment to make.

SCHEDULE 2—INSOLVENCY

The Society has no comment to make.

SCHEDULE 3—SCOTTISH RATE OF INCOME TAX: CONSEQUENTIAL AMENDMENTS

The Society has no comment to make.

SCHEDULE 4—SCOTTISH TAX ON LAND TRANSACTIONS: CONSEQUENTIAL AMENDMENTS

The Society has no comment to make.

ADDITIONAL ISSUES
DEVOLUTION ISSUES AND ACTS OF THE LORD ADVOCATE

The Advocate General referred to the consultation issued by him on the application of devolution issues procedure to acts of the Lord Advocate as prosecutor (Scotland Bill Committee Official Report 14 December 2010 col 53). The issue was whether devolution issue procedure should continue to apply to the Lord Advocate and to what extent. This issue is not addressed on the Bill as the Advocate General is determining policy following on the report of the expert group. The Society is of the view that change in this area is undesirable.

January 2011

Written evidence submitted by British Aggregates Association

The British Aggregates Association is the representative association of *independent* UK quarry companies. We have seventy operating companies as members twenty of which are located in Scotland. BAA members operate some two hundred sites including asphalt, ready-mix concrete, pre-cast concrete and recycling facilities.

We welcome the opportunity to comment on the Scotland Bill and the Calman Commission's recommendations published as the White Paper *Strengthening Scotland's Future.*

THE AGGREGATES LEVY

The British Aggregates Association is strongly opposed to the Aggregates Levy and has been since its introduction in 2002 at £1.60 per tonne. It is now set at £2.00 per tonne. We do not regard the Levy as being an environmental instrument as it takes no account of the environmental performance of operating quarry companies. For the record UK quarries have an excellent record of environmental protection which is unsurpassed elsewhere in the world. Indeed, very few environmental complaints are actually received about sand, gravel or rock quarries, unlike opencast coal sites and waste disposal. The UK already had the highest recycling rate in Europe before the Levy and there has been no discernible increase since as virtually all available construction and demolition waste was already being recycled.

In 2002 the BAA made a legal challenge to the Levy as it involves illegal State Aid and distorts the market. The case is currently before the European General Court with judgment likely by the middle of this year. We also issued a legal challenge to the derogation in Northern Ireland. This was successful and the N.I. derogation was withdrawn on 1 December 2010. In short the Levy is almost certain to be found unlawful in the near future, the Treasury is aware of this and we suspect that is precisely why it has not been devolved.

There is much that is wrong with the Aggregates Levy:

1. It is a hugely complex piece of legislation which was still being added to on its introduction in 2002. Since then a large number of further changes have been made.
2. It gives unfair advantage to certain aggregate sources, such as shale and slate which are in direct competition to taxed aggregates.

3. It taxes the by-products of the aggregates industry whilst exempting the by-products of slate, china clay and coal. All of which have a much larger environmental impact than sand, gravel or rock quarries.
4. It causes the by-products of exempt industries to be transported further and causes a build up of by-products in aggregate quarries.
5. It stimulates imports as aggregate importers are free to dispose of their by-products in other countries which do not have a levy.
6. It stimulates illegal quarrying and the use of unlicensed sites.

Other key points:

— Scotland produces around thirty million tonnes per annum of virgin aggregate and we believe that in the current recession 70% of this tonnage will be going to the public sector in the form of rail, roads, schools, hospitals and housing. That means Scottish public authorities are paying Westminster £42 million per annum in Aggregates Levy. Scotland gets only £3 million back in the form of "Climate Change" grants, a poor bargain indeed.

— The Levy is a complicated and expensive way for Government to move money from one "pocket" to another and given the extensive and damaging nature of its side effects and unintended consequences, it produces a negative effect on the economy.

This Association commissioned a report by BDS Marketing which demonstrates clearly that the Levy has not achieved its Environmental Objectives and has instead become a tax on the infrastructure and its maintenance. The findings of the BDS Report are confirmed by the European Environmental Agency's own report "*Effectiveness of environmental taxes and charges for managing sand, gravel and rock extraction in selected EU countries*".

Quotes:

Country Studies—UK—Page 28

— "Analysis undertaken by the Quarry Products Association (QPA) shows that the impact of introducing the aggregate levy has been most marked in reducing sales of low quality crushed rock, which they estimate to have fallen by six million tonnes. This has resulted in the substitution of lower quality taxed aggregates by waste streams from other non-taxed extracted minerals such as shale, slate and china clay.
The QPA argue that much of this additional china clay and slate extraction would have taken place without the levy, as the by-product of premium china clay and slate production, and, as such, is not a substitution. They estimate that one million tonnes of these materials would have been extracted with or without the levy, so that the 'substitution' attributed to the levy is in the range of two to three million tonnes."

— "Neither government nor the industry have provided any evidence to show that the aggregate tax has resulted in reductions of the following: noise and vibration; dust and other emissions to air; visual intrusion; loss of amenity and damage to wildlife habitats. This is despite the tax being underpinned by a contingent valuation study that estimated the total external costs of aggregates extraction in the region of EUR 558 (or GBP 380 million) per year."

Country Comparisons—Pages 44 & 45

— **Table 5.9 Effect of tax in relation to national objective: reduce demand for aggregates and encourage recycling**
Objective: to reduce demand for aggregates and encourage recycling
United Kingdom Analysis undertaken by HM Revenue and Customs indicates a slight reduction in aggregate sales following the introduction of the aggregate tax. However, there was a lack of data to show a significant result. Industry research shows a modest substitution to alternative "untaxed" secondary waste materials eg slate, shale, china sand. Research undertaken by the Waste Resources Action Programme provides evidence of an increase in recycling activity which they predicted to continue to expand in the future.

— **Table 5.10 Unintended effects of tax**
Unintended effects
United Kingdom Claims by industry that secondary aggregate waste materials not subject to tax eg shale, waste slate, china sand have been transported over longer distances. Industry complained about stockpiles of aggregate waste material build up on site, which impacts on landscape. Northern Ireland experienced aggregate materials trade distortion across the border, due to no tax in Ireland.

Report conclusions—Page 47

— **The effects of the tax in relation to the national objective provided mixed results**
There was not any clear evidence in Italy or the United Kingdom to show that the objective of reducing environmental externalities had been achieved.

BAA Conclusions

The Aggregates Levy is a revenue raising measure which was unsuccessfully disguised as an environmental or Eco tax. It was claimed to be revenue neutral with a 0.1% point decrease in National Insurance Contribution. However NIC was shortly thereafter increased by 1% or ten times the earlier decrease. The Levy does not protect the environment, it was not designed to protect the environment and it most likely damages the environment. Scotland has lost nothing by the retention of the Levy by London, in fact it will probably benefit by not becoming enmeshed in the myriad of complications associated with a highly complex, bureaucratic and expensive money-go-round.

January 2011

Written evidence submitted by Community Land Scotland

Future Management of the Scottish Crown Estate

1. Community Land Scotland notes that both the Calman Commission and the subsequent Scotland Bill 2010 (the Bill) have highlighted the matter of the Crown Estate in Scotland.

2. Community Land Scotland believes that the time is now right to correct the change made in 1832, when the powers of administration of the Scottish Crown Estate were transferred to London. Scotland was a very different place in 1832, the time of the Reform Acts and a few years after the visit of the George IV to Edinburgh. The 179 years that elapsed since then has been a comparatively short period in the life of the Crown of Scotland.

3. While the Bill proposes that there be a Scottish Commissioner, there is no proposal on the power of direction. We believe that this power should not remain with the Secretary of State for Scotland, being remote from the management of Crown property rights. We therefore believe that the power of direction be vested in Scottish Ministers. Prior to the establishment of the Crown Estate Commissioners in 1956, the Commissioner of Crown Lands for Scotland was democratically elected, being the Secretary of State for Scotland. The situation is quite different now, following the re-establishment of the Scottish Parliament.

4. Given that the overall aim of the Scotland Bill is to "further empower the Scottish Parliament", it would seem entirely appropriate that the "Scottish Commissioner" proposed in the Bill should be entitled the "Commissioner for Scotland" and that the post-holder be the First Minister of Scotland.

5. Further, we believe that the Crown Estate Commissioners, as a body with no democratic accountability in Scotland should not be involved in the important future management of the Scottish Crown Estate. Responsibility for the management and revenues of all Scotland's Crown property rights on land and sea should come together under the full jurisdiction of the Scottish Parliament.

6. Members of the Scottish Affairs Committee are in a pivotal position that can influence the course of history and the Nation looks to you to serve us well. History awaits this decision.

January 2011

Written evidence submitted by Councillor Donald Macdonald

I wish to voice my support for the Scottish seabed to be placed under the direct control of the Scottish Government rather than the unelected Crown Commissioners. The continued development of renewable energy and oil and gas exploration is going to place considerable strain on our natural resources which include our seascape and our fisheries. The implications for our various communities along our coasts are considerable and it is essential that such development should be placed fully under democratic control. Any benefits which arise through such development require to be shared by impacted individual communities and the wider Scottish public.

The proposal to remove Scotland from the strictures of the Crown Estate Act 1961 seems the simplest procedure to adopt in these circumstances and should be explored for a speedy enactment.

January 2011

Written evidence submitted by the Church and Society Council of the Church of Scotland

1. Executive Summary

1.1 We welcome this opportunity to consider the Scotland Bill. As stated in our submissions to the Calman Commission[1], our purpose is to engage in a conversation on ten years of devolution in practice and our vision of where Scotland should be going and the constitutional arrangements that might enable this vision to become reality. We do this through 60 years of support (with other churches) for a Scottish Parliament or Assembly; through our experience of engagement with Parliaments at Holyrood and Westminster since devolution and of the process and impact of post-devolution policies on communities across Scotland. The Church has not taken a view for, or against, independence; nor do we anticipate it doing so other than in the democratically expressed views of its membership.

1.2 We find the following principles valuable in reflection upon our concerns and experiences:

1.2.1 The Scottish tradition recognises the sovereignty of God, entrusted to the community of the realm—who may from time to time establish appropriate institutions at different levels through which sovereignty may be exercised. This is a tradition that underpins the Claim of Right which underpinned the creation of the Parliament. Sovereignty thus is not located in any one institution and all political institutions are provisional, an understanding we believe helps us approach all issues from the perspective of "what best serves the people of Scotland".

1.2.2 The principle of subsidiarity, "that nothing should be done by a larger and more complex organisation which can be done as well by a smaller and simpler organisation". This seems to point to the presumption, as in the Scotland Act, that matters are within the powers of the Scottish Parliament unless there is good reason for their retention at UK level. This, we think, offers criteria for which powers should be devolved.

1.2.3 The Church believes that human society is called to carry each others burden and to live sacrificially so others may simply live. Such thinking has led the Church to move towards acting in all ways with a bias to the poor both institutionally and as members following a faith. The question "what best serves the interests of the people of Scotland?" should be answered from the perspective of those at the margins of our society.

1.3 We welcome the broad principles contained in the Scotland Bill as progress towards a more accountable system. However, we are disappointed by the emphasis on the economic processes contained in the Scotland Bill without a corresponding emphasis on social justice. The absence of proposals to further devolve welfare provisions is in our view a serious omission.

1.4 This submission addresses issues contained in the Scotland Bill to which our vision of social justice can make a contribution.

2. Tax—Raising and Financial Accountability

2.1 In the context of our commitment to tackling poverty and reducing inequality, we believe that substantial devolution of sufficient parts of the tax and benefit systems to give effect to distinctive priorities and approaches would better serve the people of Scotland. For example, if a Scottish Government were elected on a commitment to redistribute wealth, more levers should be available than the current power to vary income tax. We recognise the dangers of a devolved system focused entirely on dividing the cake, the size of which is determined elsewhere; people living in poverty deserve better than this. The proposed requirement for the Scottish Parliament to take responsibility for a proportion of taxation as well as for spending would better enable the Scottish Parliament and Government to respond to Scottish concerns and give effect to distinctive priorities.

2.2 The Church of Scotland believes that taxation, in whatever form it is achieved, should not be regarded as an imposition but a method of sharing what we have on the principle that we all benefit when our neighbour's life is improved. It is through taxation that justice is seen to be real and human need is met. We take the view that whatever method is chosen to provide the funding for the Scottish Parliament should be judged against these three principles:

— Do they encourage us to share cheerfully?

— Do they enshrine justice and promote the interests of the weak before the interests of the powerful?

— Do they uphold the human rights of the individual and also contribute to the well-being of the community at large?

(Church of Scotland General Assembly 2003)

2.3 As a matter of principle, we would hope that the balance of taxation could veer more towards the direct rather than the indirect. We are aware that there would be costs in devolving tax-raising powers, but we are not aware of those in detailed economic terms. We believe, however, that the greater level of accountability of

[1] http://www.actsparl.org/official-responses/church-of-scotland.aspx?page=3 and http://www.actsparl.org/official-responses/church-of-scotland.aspx?page=4

a Government that is responsible for raising as well as spending revenue and the opportunity for Government in Scotland to be able to define its own priorities to a greater extent would outweigh any disadvantages.

3. Relationship Between Taxation and Social Security

3.1 The purpose of tax, as outlined above, is about shared responsibility for our society. The Church of Scotland is concerned that by devolving part of the tax system without a corresponding change to the benefits system the Scotland Bill weakens the necessary relationship between tax and benefits. The DWP proposals for a Universal Credit increase the UK dimension of the benefits system at the expense of benefits administered by local authorities. This move is in the opposite direction to the general developments in the Scotland Bill. The current devolution settlement allows differences in social provision for example through the provision of free personal care and aspects of the additional support for learning provisions. Each makes particular demands on tax resources. The Church of Scotland regards this as the right and proper consequence of devolved decision-making. The common ground for all citizens lies in the fundamental principle of free access to those aspects of care and education which are not undermined by devolved decision-making which allows for the detail to be different. That difference should not be seen as an inequality of social citizenship (often described as a "postcode lottery") but a sign of effective devolved decision-making that reflects local need and aspiration.

3.2 We have previously made clear that we favour additional powers for the Scottish Parliament on the social security structure. Whilst a complicated matter, our perspective is in the context of our commitment to social justice which is deeply rooted and of critical concern to us. The existing devolution settlement does not adequately support our vision for social justice, which we acknowledge aims very high as a matter of principle. This is not to say that devolution arrangements are responsible for the alarming deterioration of aspects of social justice recently; the gap between the most affluent and the poorest continues to grow. Strengthening the devolution settlement so that powers can be brought to bear strategically on such issues, perhaps through fiscal policy and the tax and benefits system, may strengthen the response from all levels of Government. We would welcome the addition of such proposals to the Scotland Bill.

January 2011

Written evidence submitted by Reform Scotland

1. This written submission summarises Reform Scotland's response to the Scotland Bill. We would be happy to provide further details on any aspects of this evidence. We would also be happy to give evidence to the Committee in person.

2. **Reform Scotland is an independent, non-party think tank that aims to set out a better way to deliver increased economic prosperity and more effective public services based on the traditional Scottish principles of limited government, diversity and personal responsibility.** Reform Scotland has published two reports on this issue "Fiscal Powers" in November 2008 and an update in October 2009 (available on our website www.reformscotland.com). This evidence focuses on two of the four questions that are included in the Committee's Remit for this Inquiry.

Executive Summary of Evidence

(i) **Scotland will act as an economic drag on the UK without the powers to grow the economy but can be an economic driver**. The long-term rate of growth in the Scottish economy is 1.8%, lower than for the UK as a whole. Over the next few years, in common with the rest of the UK, Scotland (which has an economy that is more dependent on the public sector than the UK average) is facing significant cuts to public services. Under the status quo, the Scottish economy is facing years of no or very low growth.

(ii) **The Scotland Bill represents an opportunity to create a framework for the devolution of fiscal powers to Scotland**. By enhancing the enabling powers in the Bill, provision could be made for the future devolution of fiscal powers as and when there was a political majority to do so and as and when the administrative preparations for the transfers of taxes were made.

(iii) **Increasing the fiscal powers of the Scottish Parliament, beyond those proposed in the Scotland Bill, could deliver improved economic performance in Scotland**. The fiscal devolution model proposed by Reform Scotland would provide the Scottish Parliament with the financial accountability and the incentives to improve economic performance and deliver better public services.

(iv) **The fiscal powers set out in the Scotland Bill will increase the volatility of the Scottish Budget**. The proposals make the Scottish Budget overly reliant on income tax which is volatile over the economic cycle and as a result of frequent policy changes.

(v) **The recognition by the Calman Commission of the need to increase financial accountability is welcome** but the Scotland Bill does not propose the significant changes required to deliver that accountability.

(vi) **The Scotland Bill is an opportunity for the Scottish economy but one that will be missed if the proposals are not substantially enhanced.**

What are the fiscal and financial implications of the provisions in the Bill for Scotland?

Fiscal and Financial Proposals in the Bill

3. The measures in the Scotland Bill would increase the proportion of the Scottish Budget raised in Scotland. Its main fiscal and financial measures are:

— The UK and Scottish Parliaments would share the yield of income tax with the power to vary the standard rate of income tax in Scotland by 3p either way replaced by a new Scottish rate of income tax applying to the basic and higher rates. To bring this about the basic and higher rates of income tax in Scotland would be reduced by 10p in the pound and the block grant reduced accordingly, allowing the Scottish Parliament to set rates for the Scottish income tax although the structure of the income tax system, including bands, allowances and thresholds would still be decided at Westminster.

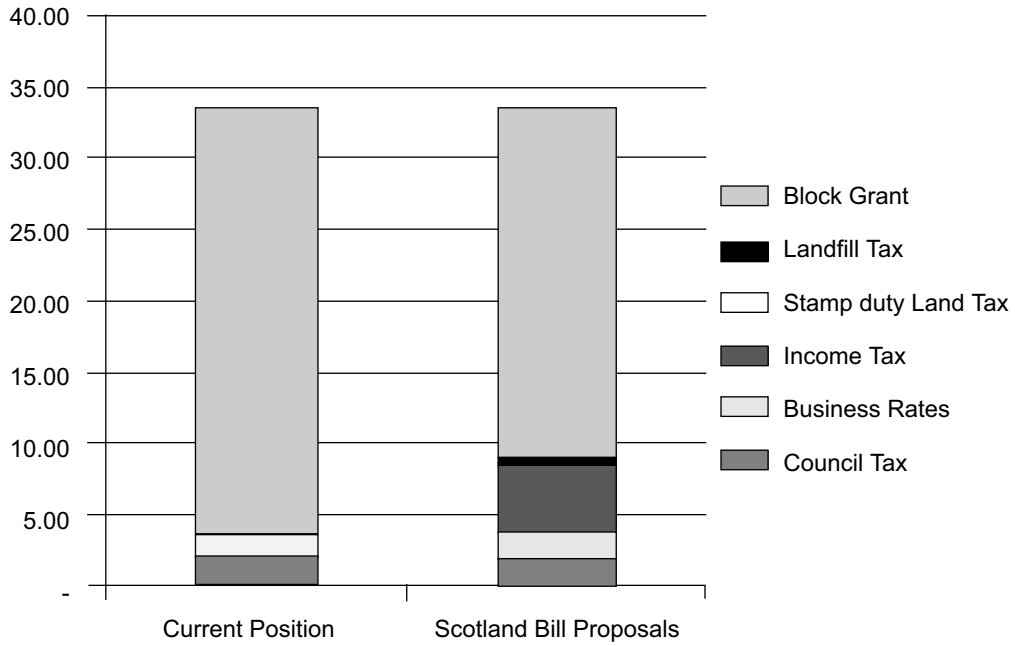
— Stamp Duty Land Tax and Landfill Tax would be devolved to the Scottish Parliament with a corresponding reduction in the block grant.

— The block grant, governed by the Barnett Formula, from Westminster would continue to make up the remainder of the Scottish Budget.

— The Scottish Government would be given new borrowing powers for capital and revenue spending.

4. The chart on the following page shows the source of the Scottish Budget before and after the Scotland Bill. These charts show that the changes proposed are modest in the context of the scale of the Scottish Budget. Based on the latest figures available (Government Expenditure and Revenue in Scotland, 2008–09), the taxation measures proposed by the Scotland Bill would increase the proportion of the Scottish Budget funded from devolved taxes from 11% to 26%.

SOURCE OF SCOTTISH BUDGET BEFORE/AFTER SCOTLAND BILL (2008–09 GERS), £BN



Financial Accountability

5. The Scotland Bill acknowledges the weaknesses inherent in the current financial arrangements and accepts that the present system, based on a block grant determined largely by application of the Barnett Formula, must change. It is unbalanced because although the Scottish Government has control over 60% of government expenditure in Scotland, it has very limited responsibility for raising the revenue required to meet those spending commitments other than the local taxes—council tax and business rates (which, together, account for around 11% of the Scottish Budget).

6. Reform Scotland has argued that the fundamental defect of the current devolution settlement is the Scottish Parliament's lack of accountability and responsibility for the way in which it raises the money that it spends. The vast bulk of the Scottish budget comes in the form of a block grant from Westminster which:

— provides no financial incentive to introduce policies which encourage economic growth and deliver value for money; and

— denies the Scottish Government and Parliament the fiscal tools which they could use to increase economic growth and help sustain the economic recovery.

7. The Scotland Bill recognises the shortcomings of the current financial arrangements and the benefits of greater financial accountability and responsibility. However, having identified the problem with lack of financial accountability, the Scotland Bill does not provide an adequate solution. It is not reasonable to argue that increasing the proportion of the Scottish Budget that is raised from devolved taxes from 11% to 26% delivers financial accountability.

8. However, even if the changes proposed by the Scotland Bill were to encourage politicians to increase the focus of political debate on improving economic performance, the Bill does not provide the tools that would allow it to introduce fiscal policies to improve the economy. That would require a broader base of taxes to be devolved, including corporation tax and other business taxes. It is interesting to note the strong lobbying from Northern Ireland to devolve corporation tax to the province so that policies to improve the competitiveness of the economy could be introduced.

Income Tax Volatility

9. There are many examples of income taxes being shared between central or federal and regional or state governments. However, due to the small number of taxes that are to be devolved by the Scotland Bill (all of the other taxes make very small contributions to overall tax receipts) the income tax proposal would make the Scottish Budget more reliant on income tax revenues than the UK Budget. Income taxes are volatile across the economic cycle and as a result of frequent changes in policy (the most recent example is the UK Government decision to increase income tax allowances).

10. One of the weaknesses of the proposed framework is that revenues associated with the Scottish rate of income tax will be based on tax receipt forecasts, which are notoriously unreliable. Variation from the forecasts would be balanced in future years. During the recent downturn it is likely that the Treasury would have over-estimated income tax receipts in advance of the recession, which would have meant that in the second year of the downturn, the Scottish Budget would have been disproportionately cut, just at the time that most developed countries were increasing spending to create a fiscal stimulus for recovery. The Scottish Government would have had no option but to cut spending at a time where an increase would have been more appropriate.

Borrowing Powers

11. Reform Scotland welcomes the borrowing powers in the Scotland Bill, which go beyond those advocated by the Calman Commission. However, the proposed borrowing powers are modest in the context of the scale of tax receipts and the size of the Scottish Budget and would not be sufficient to allow for fiscal policy in Scotland to vary from the UK's overall fiscal framework.

What further provisions could/should be included in the Bill in order to further amend and develop the Scotland Act 1998?

12. Reform Scotland would welcome further provisions for fiscal powers for the Scottish Parliament. This could be done by enhancing the enabling powers in the Bill or adding additional fiscal powers.

Enabling Powers

13. Devolution has been described as a process rather than an event and there would be merit in recognising this political reality in the Scotland Bill.

14. In particular, Reform Scotland welcomes the power to create new devolved taxes. This enabling power presents an opportunity to deliver the kind of change advocated by Reform Scotland. There is merit in widening the definition of the devolved taxes that could be created and also to allow general powers to remove the application of certain taxes to Scotland (similar to the specific powers proposed over Stamp Duty Land Tax).

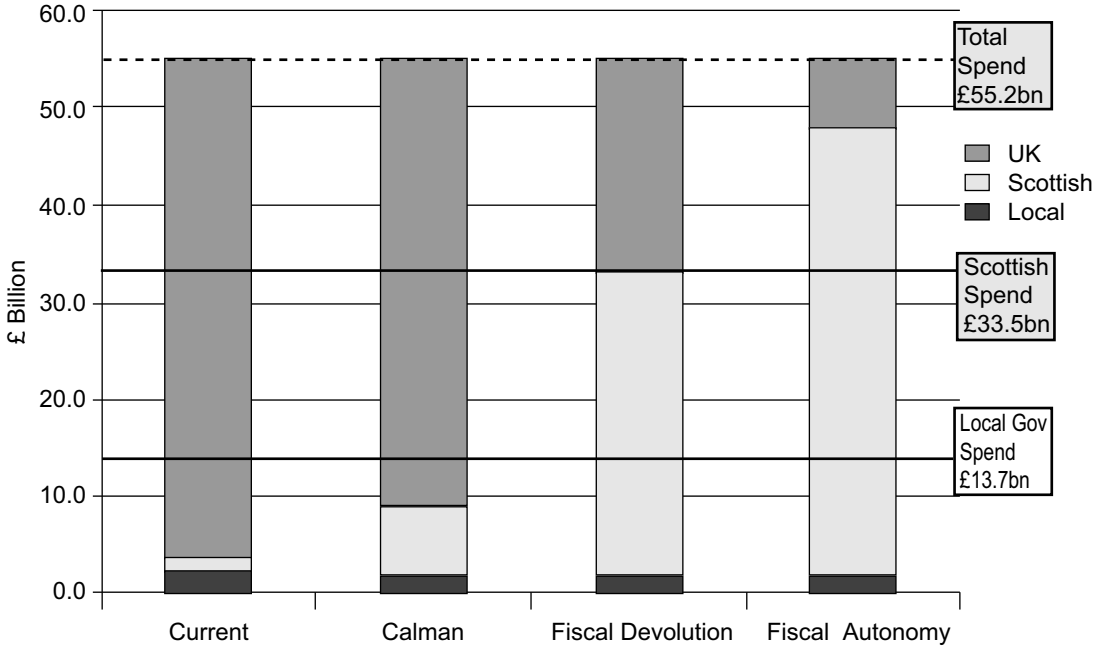
15. Such enabling powers would allow the future devolution of additional fiscal powers to Scotland as and when there was a political majority to do so and as and when the administrative preparations for the transfers of taxes were made.

Additional Fiscal Powers

16. Significant changes are required to make a difference. The long-term rate of growth in the Scottish economy is 1.8%, lower than for the UK as a whole. Over the next few years, in common with the rest of the UK, Scotland (which has an economy that is more dependent on the public sector than the UK average) is facing significant cuts to public services. Under the status quo, the Scottish economy is facing years of no or very low growth.

17. The issue of the financial responsibility of the Scottish Parliament needs to be resolved as a priority. The Scottish Parliament should be responsible for raising the money that it spends. There is a range of alternative options available, including fiscal devolution and fiscal autonomy. The graph below shows the taxes raised by the different levels of government at the minute, under the Scotland Bill proposal, under Reform Scotland's proposals for fiscal devolution and under fiscal autonomy.

THE OPTIONS: TAXES RAISED BY UK, SCOTTISH & LOCAL GOVERNMENT (2008–09 GERS), £BN



18. Reform Scotland's proposals go further and set out a workable scheme to enable the Scottish Government to raise the money it spends while remaining within the United Kingdom. Our proposals (set out in detail in our Fiscal Powers reports at www.reformscotland.com) would give Westminster control over taxes which would enable it to raise its 40% share (around £22 billion in 2008–09) of government spending in Scotland. Likewise, Holyrood would have control over taxes which would raise the 60% (around £33 billion in 2008–09) of public spending in Scotland for which it is responsible and would also have borrowing powers.

19. This would create a link in Scotland between economic performance and the revenues accruing to the Scottish Government and would change the whole nature of the debate in Scotland for the better. Further, it would give the Scottish Government the fiscal tools to improve the growth rate of the Scottish economy.

20. Reform Scotland's view is that fiscal powers do not, in themselves, improve economic performance. However, increasing the fiscal powers of the Scottish Parliament would:

— provide the tools that could be used to improve economic performance; and

— deliver the financial accountability required to provide the incentive to do so.

21. The Scotland Bill does not provide sufficient financial powers to provide the incentive to focus on economic performance nor does it provide the tools required.

January 2011

Written evidence submitted by Scottish Community Alliance

With particular reference to the future role and lines of accountability of Crown Estates Commissioners (CEC) in Scotland.

The Scottish Community Alliance is comprised of Scotland's leading community sector networks and intermediaries with an active interest in local economic development, housing, transport, energy, land management, allotments, food production, financial services and the environment.

The control over Scotland's foreshore and seabed is of crucial interest to our sector and we therefore wish to support the position as set out in the response by Mr Andy Wightman in his submission to the Committee and in particular his recommendation that the Committee dispenses with the current Clause 18 in the Scotland Bill and replaces it with the following "The Crown Estate Act 1961 is amended as follows.

After Section 1(7) insert 'Section 1(8) This Act does not apply to Scotland.'" Crown Estate properties in Scotland should be the responsibility of the Scottish Parliament. Responsibility for these property rights would encourage much more effective coordination of the Scottish Government's efforts in relation to safeguarding the future prosperity of Scotland and would ensure that the anticipated growth in income from marine renewable energy accrues directly to communities across Scotland.

January 2011

Written evidence submitted by the Church and Society Committee of the United Free Church of Scotland

The Church and Society Committee of the United Free Church of Scotland welcomes this opportunity to comment on the Scotland Bill.

In our two submissions to the Calman Commission we recommended that the general principles adopted by the Scottish Constitutional Convention of OPENNESS, ACCESSIBILITY, PARTICIPATION and ACCOUNTABILITY were of value and "should be maintained or strengthened".

We suggested further that following the initial experience it was important that the powers of the new Scottish Parliament be ENTRENCHED in some way. We also feel that although power to amend the legislation would remain with the Westminster Government, this power should only be exercised with the support and consent of the Scottish Parliament and that this would be in accord with the principle of SUBSIDIARITY, which has been accepted within the European Union. So our recommendation was "that this practice should apply for the current review and should be written in to any new legislation".

We are not economists and are therefore not in a position to comment in detail regarding fiscal policy. However, we suggest that although the present method of funding the Scottish Parliament by means of a block grant determined by the Barnett formula has worked well, it has inevitably led to complaints of unfairness arising from both sides of the border. It could also be argued that power to spend without the equivalent power to raise money inevitably leads to irresponsibility. For these reasons we feel that it is important that power to levy taxes either in part or in whole be given to the Scottish Parliament. We recognize that it would not be easy to arrive at an equitable system but feel it is essential that there be movement in this direction. So we recommended, "that the Scottish Parliament be given tax-raising powers sufficient to satisfactorily fulfil its remit in the government of Scotland.

We further recommend that in assessing the total amount of revenue raised in Scotland all the various sources be considered including those from oil to avoid miscomprehensions and accusations of unfairness."

The remit of the Calman Commission was to "to enable the Scottish Parliament to serve the people of Scotland better, to improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom". The impression is given in the Commission's report is that the third aim, ie "to secure the position of Scotland within the United Kingdom", has been given priority over the earlier two. Our view is that attempts to limit the powers of the Parliament and to restrict its financial accountability are likely to cause a continuing sense of resentment and weaken the position of Scotland within the United Kingdom.

Dealing specifically with the financial accountability of the Parliament, the Calman Commission took the view that there is an existing state of shared social citizenship in the United Kingdom and that this would be harmed by tax devolution. We agree that a state of shared social citizenship in the United Kingdom, and indeed in the European Union or the wider world is highly desirable but suggest that it is most likely to be nurtured and encouraged when the population feels that it is being fairly treated. So tax devolution which gives the Scottish Government sufficient fiscal freedom to fulfil its duties in a responsible manner is surely more likely to encourage wider social citizenship than a situation in which its freedom to act is controlled and restricted from Westminster.

The current situation whereby the Scottish Government receives the bulk of its revenue from the block grant limits its accountability. Also it fails to provide much incentive to come up with innovative ideas to boost economic growth because there is little linkage between the performance of the economy and the income to the Scottish Government.

We do not feel qualified to prescribe how tax-raising powers should be divided between Westminster and Holyrood other than to say that the division should be such that both Governments have sufficient flexibility to meet their spending needs. If both were free to modify the elements of taxes under their control they would be properly accountable to their electorates for the financial decisions taken.

With regard to the question of borrowing powers for the Scottish Parliament, we believe that such powers have already been devolved to the Northern Ireland Assembly and can see no valid reason to deny similar powers to Holyrood. Such powers would allow the Scottish Government to embark on large-scale public projects in a responsible manner.

Although it may not be strictly within the remit of the Committee we note that our observations on the funding of the devolved Governments would apply equally to the funding of local government. The present position whereby local Councils have discretion over only some 9% to 10% of their income stream is surely undesirable. It would appear desirable to move to a position where councils had control over a wider range of taxes. The replacement of the Council Tax with a more progressive Local Income Tax might be a useful first step.

It is our hope that the Committee will keep the need of having an efficient government in Scotland and the interests of the nation to the fore in all their discussion rather than scoring political points.

January 2011

Written evidence submitted by The Highland Council

1. Introduction—Provisions Regarding The Crown Estate

Highland Council has long campaigned for reform of the Crown Estate in Scotland. The Council led the Crown Estate Review Working Group (CERWG), which consisted of the Highland and Islands local authorities, HIE and COSLA (as observer). For a full and authorative account of the Crown Estate in Scotland, the Council directs the Bill Committee to the CERWG report of 2007, titled: *"The Crown Estate in Scotland—New Opportunities for Public Benefit"* Highland Council remains fully supportive of the findings of this report; that there should be a properly constituted review of the Crown Estate in Scotland.

As a contribution to their respective enquiries the Council has previously provided evidence on the Crown Estate in Scotland to the Scottish Parliaments Rural Affairs and Environment Committee, the Calman Commission on Scottish Devolution and the UK Parliament Treasury Sub Committee.

The Highland Council supported the recommendations of the Treasury Sub Committee, particularly where it referred to the need for greater partnership with partners in the marine environment, management arrangements in Scotland, the need for clarity on the public benefits delivered by the Crown Estate and that a future Government should commission a wide ranging review of the management of the Crown Estate. However the Council could not support the recommendation of the Calman Commission on the Crown Estate in Scotland. The Commission's recommendations were considered very weak and likely to result in very little additional benefits for Scotland.

2. The Scotland Bill: Part 2

Clause 18: Scottish Crown Estate Commissioner

Subsection (2) of this clause amends paragraph 1 of Schedule 1 to the Crown Estate Act 1961 so as to require that one of the Crown Estate Commissioners be appointed as the Scottish Commissioner. Subsection (3) inserts a new paragraph 1(4A) into Schedule 1 which requires the Chancellor of the Exchequer to make any recommendation to Her Majesty as to whom to appoint as the Scottish Commissioner, and to consult the Scottish Ministers before making that recommendation.

The Highland Council is firmly of the view that Clause 18 of the Scotland Bill does not go far enough. The Council believes that the **only** way to ensure improved accountability and that direct benefits are delivered to Scottish communities is through fully devolving the management, administration and revenues of the Crown Estate in Scotland to Scottish Ministers in the first instance. Given the new management, regulation and planning roles of Marine Scotland, the case for full devolution is even stronger.

Securing a wide range of benefits from offshore renewable energy developments is a major policy area for The Highland Council which, with its Highland and Island partner authorities has been discussing how community benefits can be delivered via the Crown Estate Commissioners current role as marine landlord, regulator and revenue income generator. The H&I partners wish to maximise:

- Skills development and training opportunities;
- Available infrastructure, including the contribution made by local harbours and testing facilities to the offshore energy sector;
- The involvement of local companies in the offshore sector;
- Ownership of seabed within harbour areas by harbour authorities;
- Employment during the construction and maintenance; and
- Wider community benefits, including community ownership or assets and resources.

The current arrangements can been seen as being unaccountable and have placed constraints in relation to harbour developments and aquaculture. While discussions regarding joint projects have been helpful, little headway has been made in terms of agreeing the procedures for collecting and distributing community benefit contributions under the present arrangements.

This is a major stumbling block to securing future benefits from renewable energy developments in the marine environment. It is an issue that The Highland Council has raised in its response to the Scottish Governments current consultation: "Securing the benefits of Scotland's Next Energy Revolution". A copy of the response, which includes the Council's thinking on the collection and distribution of community benefit from offshore renewable energy projects, is available to the Committee on request.

The Highland Council would therefore recommend that Clause 18 be amended to make provision for devolving the management, administration and revenues of the Crown Estate in Scotland to Scottish Ministers.

The Highland Council would very much welcome the opportunity to provide oral evidence on this part of the Scotland Bill if invited to do so.

January 2011

Written evidence submitted by the federation of Small Businesses

INTRODUCTION

The FSB is Scotland's largest direct-member business organisation, representing around 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

We welcome the opportunity to submit evidence to the Scottish Affairs Committee's inquiry.

With regard to the Scotland Bill, the FSB takes no position on constitutional matters, our concern being more with the quality and content of decisions, rather than where they are made. We do broadly welcome the principle of linking the amount Holyrood has to spend with Scotland's economic performance, as this approach has the potential to help hard-wire economic considerations into the decision-making process.

With this in mind, we comment only on the potential impact of the Bill's implementation on business with regard to income tax.

FISCAL AND FINANCIAL IMPLICATIONS

The FSB notes the proposal to implement changes to the block grant and income tax arrangements in Scotland via a transitional period. This is a welcome safeguard in view of such significant changes which carry a risk for businesses.

While the details of how the Scottish Income Tax will be implemented are still under consideration, the FSB has made the following recommendations:

— The UK Government should work closely with the Scottish Government to ensure a seamless transition to the new tax system.

— All devolved agencies with direct contact with businesses, such as Business Gateway, must be able to dispense accurate advice and information in response to enquiries from employers. The Scottish Government should ensure it is liaising with HMRC on this at an early stage.

The FSB is currently represented on the Calman High-Level Implementation Group and its technical sub-group on Income Tax. The aim of our involvement is to help ensure that any changes—especially those surrounding the introduction of a Scottish Income Tax—have no or minimal cash and time costs for Scotland's small businesses.

However, recent feedback from our representative on the technical sub-group suggests that there are several significant issues, which will need to be resolved prior to implementation if impact on business is to be kept to a minimum. Not least, it is the intention of HMRC that a Scottish-domiciled person moving outwith Scotland during the tax year will continue to be classed as a Scottish tax payer for the remainder of that year and the same will apply to employees moving to Scotland from other parts of the UK. This will have implications on a far greater number of businesses than might originally have been envisaged, as more businesses will be required to navigate different tax codes and accompanying processes (costs of software updates etc). We are also concerned that the burden of identification may be shifted from HMRC to businesses.

We will continue to contribute through these working groups and are keen to maintain contact with the UK and Scottish Governments, as well as other agencies, to ensure the new system does not unduly burden employers.

January 2011

Written evidence submitted by the Association of British Insurers

1.1 The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 24% of the UK's total net worth and contributing the fourth highest corporation tax of any sector. Employing over 275,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with a fifth of its net premium income coming from overseas business.

1.2 The interests of the ABI's members are primarily around the Scottish Affairs Committee's question: *what are the fiscal and financial implications of the provisions in the Bill for Scotland?*

2. Executive Summary

2.1 There are a number of issues arising out of these fiscal proposals that directly and indirectly affect the savings products insurers offer their customers, as well as insurers as employers and the administrators of pensions, annuities and other savings products. There will also be an impact on insurers' customers. The key concern for ABI members is the responsibility for identifying and tracking Scottish Income Taxpayers ("SIT-payers"). This affects them as UK employers and payers of annuities (to which the Pay As You Earn ("PAYE") system applies) and as providers of pensions savings (on which they operate tax relief at source).

2.2 As HMRC have the information to identify SIT-payers (whilst insurers and pensions providers do not), the ABI believes it is right that HMRC is responsible for this on a transitional and ongoing basis. This will be the best outcome for the customer and the industry. Requiring insurers to gather customers' information to identify whether they are SIT-payers would lead to:

— **Increased burden on customers**. Currently, customers are not responsible for updating their insurer on their tax status. If the HMRC were not to take responsibility for identifying and tracking SIT-payers on an ongoing basis, companies would have to rely on their customers to inform them of their tax status. As an indication, insurers already struggle to get confirmation of scheme members' addresses, let alone their tax status.

A significant amount of customer communication and marketing would be required to make people aware that they would now be responsible for updating their insurer with their correct tax status. This would add to the significant costs already involved.

— **Increased cost to consumers**. The costs of the systems changes required would inevitably be passed on to customers.

2.3 HMRC has distinguished between PAYE and relief at source. HMRC has indicated that they will have responsibility for PAYE and payroll matters. It has provided no similar reassurances for relief at source for pensions where possible solutions are tied up with the issue of the rate at which relief will be given on pension contributions.

2.4 The ABI will be seeking clarification from the UK Government on the intended responsibilities of HMRC. The ABI and its members will be arguing strongly for HMRC to take on these responsibilities on an ongoing basis to avoid additional costs and burden to the industry's customers. More detail on implications for pensions, tax and savings and other tax issues can be found below

3. Pension Issues

3.1 *Relief at source*

As stated in the introduction it is currently Government's view, which is in accordance with HMRC's Scottish Variable Rate ("SVR") proposal, that pension contributions made by Scottish taxpayers should attract relief at the SIT marginal rate. This option would give SIT-payers tax relief at a rate appropriate to them and preserve the current net pay arrangement but is accompanied by additional costs and administrative burdens to Scheme operators who will need systems capable of applying relief at source at different income tax rates. There is also the issue, already referred to, of identifying SIT-payers on a timely basis. Alternatively the approach could be to maintain the status quo and collect net of the standard UK basic rate of tax. Any subsequent adjustments should then be made between the members and HMRC.

3.2 *Grossing up of contributions*

The identification of Scottish taxpayers and the notification of this information is critically important to insurers who operate pension tax relief at source. Currently Schemes, on receipt of a contribution, gross it up and credit it to the member's arrangement straight away, and claim the tax relief from HMRC later. They will not necessarily know at what rate to gross up the contribution. Schemes would need information on a member's tax position before they make a relief at source claim. We propose that this task is undertaken by HMRC.

3.3 *Deduction of tax from pension annuity payments*

Insurers are particularly concerned with this issue as they are major annuity providers applying PAYE to annuity payments. The issues here are similar to those for employers generally who operate PAYE—the costs and timeframes for updating systems to handle the Scottish Income Tax and the identification of those who must pay the Scottish Income Tax. For the reasons given above we believe the identification must be the responsibility of HMRC.

3.4 *Pension tax charges*

There is uncertainty as to whether the rates that pension tax charges are set at (such as the unauthorised payment charge) would be different in Scotland, or whether the annual allowance charge to come in from 2011 would be charged at different rates depending on location.

3.5 *Costs*

A key cost would be mitigated if HMRC undertake the task of identifying and subsequently tracking SIT-payers and notifying this information to Scheme operators. Apart from this, extra costs will be incurred relating to cost of system changes (i.e. enabling systems to cope with multiple rates of tax), the cost of material notifying changes to current Scheme members and marketing material for future customers.

3.6 *Forecasts*

Pension forecasts would be more difficult because of the added uncertainty over tax rates applying in the future.

3.7 *Fairness*

It is recognised that if the Scottish rates were lower than the rest of the UK, Scottish taxpayers would have to pay more from their taxed income to achieve the same amount of pension saving as a scheme member elsewhere in the UK but this is balanced by the fact that members would receive a higher post—tax income provided they retain their Scottish residence on retirement.

3.8 *Appropriate Personal Pensions*

An issue arises in respect of HMRC contributions to personal pension schemes of individuals contracted out of S2P if the SIT is different to the UK basic rate. We believe that this will be an issue of declining importance after 2015–16 as contracting out on a defined contribution basis ends from April 2012.

3.9 HMRC's SVR proposal was that HMRC should make up any minimum contribution to the SVR / SIT where the employee is liable at that rate, with HMRC being reimbursed by the Scottish Parliament for any additional expenditure incurred where the SVR / SIT is higher than the UK basic rate.

4 Tax and Savings

4.1 *General observations*

The Scotland Bill as currently drafted will not extend the SIT to savings income. Whilst life policies do not generate income, many life companies are part of a financial services group that would include, for example, a fund management business. Deducting tax from fund income distributions at different rates depending on residence would be costly to implement and to maintain. We agree that the SIT should not apply in these circumstances.

4.2 *Capital gains tax*

The Scotland Bill as currently drafted will tax personal capital gains at UK rates. *"The rate of corporation tax on a policy holder's share of capital gains of Life assurance companies and Friendly Societies"*. Currently this is linked to the UK basic rate of income tax. If Life assurance companies and Friendly societies do not fall within the definition of "Scottish taxpayer" then the UK basic rate should still apply to this rate of tax. HMRC's SVR proposal was that the UK basic rate of tax would continue to apply to this rate of tax.

4.3 If it were necessary to tax policyholder income and gains at different rates depending on the individual policyholder's residence this would not be possible with current systems. Income and capital gains would have to be traced and separated at individual policy level and the appropriate rate of tax applied. If this was imposed it would require extremely costly system changes or indeed completely new systems. We therefore agree that continuing to apply the UK basic rate is appropriate. Furthermore, as gains on life policies are included as savings income within the Bill these gains should continue to be taxed at UK personal tax rates.

4.4 *Partnerships*

Under self assessment, the individual partners are liable to tax on their own share of the partnership's income. Where a partner is a Scottish taxpayer, such income will potentially be subject to the Scottish tax.

4.5 *Trusts and personal representatives*

Trusts and estates of deceased persons have a residence for tax purposes. There are different rules for each and different rules for income tax and capital gains. The introduction of "Scottish residence" would add further complexity to this for trustees and personal representatives.

4.6 Furthermore the interaction rate of tax payable by trusts on their income and gains (where applicable) and the rate of taxation of that income in the hands of beneficiaries (who going forward may be Scottish taxpayers) will need to be clarified (particularly in mind here the reclaim, or "topping up", of income tax suffered at source in the trust and subsequently distributed to the beneficiary).

4.7 *Income from which tax is currently deducted at source*

The issue is how the introduction of the Scottish tax will impact on the current uniform UK rate of deduction (including the tax liability recipients of such payments). This issue includes:

(i) Payments to sub-contractors.

(ii) Payments of certain annuities and royalties.

(iii) Charitable covenants and Gift Aid.

(iv) The scheme for payments to non-resident landlords.

4.8 We assume the annuities referred to in (ii) above are non-pension annuities eg purchased life annuities. If that is so then we would regard that as savings income and hence not subject to the SIT rate. In the hands of the recipients the HMRC's SVR proposal was that this income should continue to be taxed only at UK rates and The Scotland Bill would also seem to tax this at UK rates as saving income. The exception to this general proposal is retirement annuity contracts, where to ensure consistency with the tax treatment of other types of pension payments (see above), the SIT rate will apply per the current drafting of The Scotland Bill.

4.9 *Interest relief for loans to buy life annuities (home income plans)*

Relief is currently given at UK basic rate. Issues for borrowers and plan administrators would arise if there was a differential between the Scottish rate and the UK rate. HMRC's SVR proposal was that relief at the UK basic rate should continue to apply to all borrowers.

5. Other Taxes

5.1 A number of other taxes are devolved under the Calman proposals:

(i) Stamp Duty Land Tax.

(ii) Landfill Tax.

5.2 The ABI has no particular comments on these taxes. The Scotland Bill allows for the prospect of introducing new taxes to become devolved to the Scottish Parliament. We note that this would be subject to appropriate scrutiny by the UK Parliament.

January 2011

Written evidence submitted by The Low Incomes Tax Reform Group (LITRG)

Who we are

1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

1.2 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it—taxpayers, advisers and the authorities.

Introduction and Summary

2.1 The focus of this submission is on Part 3: FINANCE of the Scotland Bill, so we are responding to the third bullet point in the Committee's terms of reference: "what are the fiscal and financial implications of the provisions in the Bill for Scotland?".

2.2 It is often thought that people on low incomes have simple financial affairs. As a general rule, the lower one's income:

— the more difficult it is to find one's way around the intricacies of tax at various rates and benefits, let alone the interactions between the two;

— the more government departments one has to deal with, whether central government or local authority, with different rules, practices and cultures;

— the less one can afford to overpay tax, or to reimburse tax underpaid in error; and

— the less accessible is HMRC or any form of independent advice on tax.

2.3 In addressing the fiscal proposals in the Scotland Bill, as with any new policy, it is therefore necessary to consider what would be the effect on low-income, unrepresented Scottish taxpayers if any of the systems set up to deliver the mechanics of the policy were to go wrong.

2.4 The current proposals introduce new complexities into the tax affairs of Scottish taxpayers, not helped by uncertainties as to which income is to be subject to the Scottish rate of income tax ("the Scottish rate").

Such complexities will bear most harshly on those Scottish taxpayers who are on lower incomes and unrepresented by professional agents.

2.5 In the worst such cases, if anything went wrong with the computer systems intended to collect the Scottish rate, taxpayers could be left with overpayments and underpayments of tax. In the former case, they would pay extra tax which they could ill afford; in the latter, they might be required to repay underpaid tax many years after it had accrued and at a time when they had every reason to think their tax affairs for the year in question had been finalised.

2.6 As the universal credit gradually takes over from the existing welfare regime of tax credits and numerous working age social security benefits, and entitlement to welfare is assessed on the basis of net income, the introduction of the Scottish rate of income tax will bring a new level of complexity for Scottish benefit claimants.

2.7 As HMRC will doubtless expect residents of Scotland to work out their own tax and decide for themselves whether or not they are Scottish taxpayers, clear comprehensible and accurate official guidance on which the general public can rely will be crucial if the mechanics of the new rate are to work.

Uncertainties Inherent in Definition of Income Subject to the Scottish Rate

3.1 Clause 27 of the Bill provides that the Scottish rate of income tax should apply to non-savings income. There is a definition of savings income in section 18 of the Income Tax Act 2007, to which there is a link. Thus tax professionals should be able to follow the legislation to determine which part of their or their clients' income is to be subject to the Scottish rate, although areas of doubt remain such as whether pension income is properly part of savings income or non-savings income, or part one and part the other.

3.2 However, if a lay Scottish taxpayer wished to check their tax bill, how would they know to distinguish between savings income and non-savings income, and what guidance would be available to help him or her in the task?

3.3 There are uncertainties even as regards who is liable for the Scottish rate. The Bill defines a "Scottish taxpayer" but there are lacunae, for example are personal representatives included in the definition? What will be the status of students who study in Scotland for more than half the year but their home is elsewhere in the UK?

Complexities in the Collection of Tax at the Scottish Rate

4.1 While UK taxpayers already have to contend with six different rates of income tax, these proposals will add a seventh rate which Scottish taxpayers will have to take into account when computing their tax liability.

4.2 It is intended that the Scottish rate should be collected through the PAYE system via the new Real Time Information (RTI) computer program. Therefore, all should work well provided the only income subject to the Scottish rate is PAYE income. But non-savings income, which is subject to the Scottish rate, is not co-terminous with PAYE income—for example, income from self-employment and property will have to be accounted for separately.

4.3 There seems much scope here for both taxpayer and official error, with the result that Scottish taxpayers will be more likely to pay too much, or too little, tax to the extent that the Scottish rate varies year by year from the basic rate of tax for UK taxpayers.

4.4 If for any reason a Scottish taxpayer paid too little tax, and it took several years for HMRC to notice the resulting underpayment, the unsuspecting taxpayer would be expected to make good the loss to the Exchequer, most likely in a lump sum, as HMRC has shown itself reluctant to forgive any tax in such circumstances. There is a widespread belief that the PAYE system somehow ensures that one's tax is accounted for accurately and on time—it does not, as the events of the last few months have shown. Yet HMRC take the view that it is up to the individual taxpayer to ensure that they are paying the right amount of tax, irrespective of their familiarity or lack of familiarity with the tax system.

Self-assessment

5.1 For self-assessment taxpayers, the tax calculation will inevitably be more complex than it is at present. It will be necessary to ensure that not only will the online tax calculation software work properly, but also that paper filers will have access to straightforward and accurate directions as to how to calculate their liability—separating out non-savings income and applying the right rate for any given year.

5.2 It is unclear as yet whether Scottish taxpayers will be able to use the short tax return, but it is conceivable that the systems associated with the short return will not be able to process the Scottish rate, and that useful simplification will become a thing of the past in Scotland.

5.3 We hope the facility for small businesses to return a three-line set of accounts will remain in place for Scottish taxpayers.

Tax/Benefits Interaction

6.1 Another area of major concern for us is the interaction between tax and benefits. Para 3.95 in Sir Kenneth Calman's report[2] recognises this issue—but notes that the devolved administration will be able to make or receive payments to UK Government departments directly in respect of such costs. Given the complexity of such interactions, that can only be a partial solution.

6.2 Under a new Section 80G of the Scotland Act, the Treasury has power to make an order excluding or modifying the effect of the Scottish rate of income tax, for example (per the explanatory notes) in calculating gross or net rates of tax for the purposes of certain tax reliefs and deductions. Clearly any such statutory instrument should be laid in draft with sufficient time for comment and consultation before coming into force.

6.3 It will also be important for any such order to take account of the fact that entitlement to most welfare benefits (excluding tax credits) is calculated by reference to income net of tax, and from 2013–14 onwards universal credit will follow the same pattern (also being progressively withdrawn by reference to a taper rate based on net income). This concerns us particularly given the lack of certainty in how Scottish taxpayers are defined for social security purposes (cf Sch 3, para 1(2)). Page 41 of *Strengthening Scotland's Future* suggests that the effect of the Scottish rate will be taken into account when determining benefits entitlement—but exactly how is as yet unknown.

Cost and Impact Assessments

7 The White Paper indicates that impact assessments cannot yet be fully comprehensive, but without them the cost of these measures to government, taxpayers and businesses cannot be easily quantified. To the extent that the fiscal proposals will bear heaviest on low-income taxpayers unable to afford to pay for advice, it would also seem appropriate to carry out an equality impact assessment under the Equality Act 2010. Yet there are already funding restraints on HMRC and on welfare, and doubtless some of the costs of administering the additional rate through the PAYE system will fall upon employers on both sides of the border. In our view, it is essential—indeed obligatory under the Equality Act—to carry out the appropriate impact assessments well before any part of the policy is implemented.

Guidance

8 As HMRC will doubtless expect residents of Scotland to work out their own tax and decide for themselves whether or not they are Scottish taxpayers, clear comprehensible and accurate official guidance on which the general public can rely will be crucial if the mechanics of new rate are to work.

January 2011

Written evidence submitted by The Institute of Chartered Accountants of Scotland

Introduction

1. The Institute of Chartered Accountants of Scotland welcomes the opportunity to submit evidence to the Scottish Affairs Committee on the Scotland Bill 2010.

2. The Institute is the first incorporated professional accountancy body in the world. The Institute's Charter requires it to act primarily in the public interest, and our responses to consultations are therefore intended to place the general public interest first. Our Charter also requires us to represent our members' views and protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

3. The Institute is apolitical in its responses and considers merely the practicalities of the implementation and the technicalities of any proposed legislation. Our membership includes people covering the whole political spectrum.

4. In our response to the questions in the call for evidence, we cross-reference our answer to question 3 on the financial and fiscal implications of the Bill to the written evidence we submitted to the Scotland Bill Committee of the Scottish Parliament. We believe it is appropriate for us to provide the Scottish Affairs Committee, in full, with the written evidence we submitted to the Scotland Bill Committee. We gave further oral evidence to the Scotland Bill Committee on 25 January 2011 on the proposals within the Scotland Bill on taxation and corporate insolvency procedure.

5. We were actively involved in the work of the Commission on Scottish Devolution—the Calman Commission—providing both written and oral evidence over the period of its review. We are also actively involved in the process instigated by the UK Government to develop a detailed framework for implementing the proposals on income tax arising from the work of the Calman Commission, now included in the Scotland Bill 2010. We are represented on the High Level Implementation Group which is jointly chaired by the Exchequer Secretary to the Treasury and the Secretary of State for Scotland.

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[2] Serving Scotland Better: Scotland and the United Kingdom in the 21st Century (June 2009)

6. Along with the Chartered Institute of Taxation (CIOT), we have encouraged debate on the tax proposals. On 30 September 2010, the Institute hosted a roundtable event with CIOT at the Scottish Parliament. This event was an opportunity for key stakeholders, including accountants, tax advisors, politicians and civil servants, to consider the wide range of practical issues which need to be addressed. The notes from this meeting are included within the evidence we submitted to the Scotland Bill Committee of the Scottish Parliament.

Key Points

7. Our engagement with this reform process is focused around three key issues:

— The proposals on the introduction of a Scottish rate of income tax which are to be taken forward by the Scotland Bill.

  Our comments on income tax comprise the majority of our response to question 3 of the call for evidence. We recommend that the definition of "Scottish taxpayer" in the Bill is reconsidered and a statutory definition introduced which will give greater certainty to all. Certainty is needed as to who is a Scottish taxpayer in order to keep the costs of compliance as low as possible.

  The welfare reform programme currently being taken forward by the UK Government will have a direct bearing on the implementation of a Scottish rate of income tax. The welfare reforms are expected to devolve elements of the welfare system which will add complexity. A clear plan is needed as to how the reserved and devolved elements of the tax system and reserved and devolved elements of the welfare system will interact and operate in a cohesive manner.

— The proposal to re-reserve powers to set procedure for corporate insolvency, which is to be taken forward by the Scotland Bill.

  We believe that the re-reservation of responsibility for corporate insolvency procedure, excluding Receivership, is beneficial as it will ensure consistency throughout the UK. Scotland will also benefit from legislative change being introduced at the same pace as the rest of the UK. Our detailed comments on corporate insolvency are set out in our response to question 11 of the Scotland Bill Committee's call for evidence.

— The desirability of a single definition of "charity", including consistent "charitable purposes", across the UK for both regulatory and tax purposes.

  This matter is taken up within the White Paper *Strengthening Scotland's Future* and we support the approach which has been set out therein, including the intention of seeking change through engagement with the Scottish Government and consent for any changes from the Scottish Parliament. We believe it is appropriate that reform of the law in this area should be dealt with separately from the Scotland Bill.

Responses to the Scottish Affairs Committee's Key Questions

Question 1: *Which of the recommendations of the Calman Commission on Scottish Devolution are not implemented by the Bill, and why?*

Response

8. The Calman Commission made the following two recommendations about charities:

— There should be a single definition of each of the expressions of "charity" and "charitable" purposes throughout the United Kingdom. This should be enacted with the consent of the Scottish Parliament. (Final report recommendation 5.2)

— A charity duly registered in one part of the United Kingdom should be able to conduct its charitable activities in the UK without being required to register separately in the latter part and without being subject to the reporting and accounting requirements of the regulator in that part. (Final report recommendation 5.3)

9. We support these recommendations and the UK Government's intention, as stated in *Strengthening Scotland's Future*, to examine these issues as part of a planned review of the Charities Act 2006 (which applies in England and Wales) and agree with plans to involve charities across the UK, the Scottish Government and the Scottish Parliament in the review. The changes to the law which would be required to address these recommendations are a matter for charity law and therefore we consider that it is entirely appropriate that these recommendations are not implemented through the Scotland Bill.

10. We recommend that any discussions in this area include the Northern Ireland Executive. The Charities Act (Northern Ireland) 2008 includes a further expression of "charity" and "charitable purposes": this is currently under review with consideration being given to aligning the definition with the Charities Act 2006.

11. Should agreement be reached among all UK jurisdictions on a single UK-wide definition further consideration will be needed as to how the new definition is brought into statute.

12. We support the Calman Commission's recommendations for two key reasons. Firstly, we believe that charities across the UK should have the same access to charity tax reliefs and a single definition of each of the expressions of "charity" and "charitable" purposes would give certainty to charities about their tax status.

Secondly, we believe that the regulation by more than one charity regulator is an administrative burden which does not appear to us to provide any additional comfort to the public about the stewardship of charitable funds or the achievement of charities' objectives.

Question 2: *What provisions are made in the Bill, which were not recommended or considered by the Commission on Scottish Devolution?*

Response

13. We understand that there are a number of provisions, highlighted in *Strengthening Scotland's Future*, which deal with issues which were not considered or recommended by the Calman Commission. We have not included any comments on these matters within this submission.

Question 3: *What are the fiscal and financial implications of the provisions in the Bill for Scotland?*

Response

14. Our response to this question cross-refers as follows to our submission to the Scotland Bill Committee, which is included as an Appendix. Our views on:

- financial accountability are set out in question 1;
- the definition of a "Scottish taxpayer", the potential costs of establishing a register of Scottish payers, the importance of the tax being accepted are set out in question 3. We also highlight a number of complex issues which will need to be managed;
- powers to introduce new forms of taxation are set out in question 5; and
- the regulatory impact assessment process are set out in question 7.

Question 4: *What further provisions could/should be included in the Bill in order to further amend and develop the Scotland Act 1998?*

Response

15. We have no suggestions for additional provisions to be included in the Scotland Bill.

January 2011

Written evidence submitted by The Scottish Retail Consortium (SRC)

1.0 The Scottish Retail Consortium (SRC) is the trade association of the Scottish retail sector and is the authoritative voice of the industry to policy makers and to the media. The SRC brings together the whole range of retailers across Scotland, from independents to large multiples and department stores, selling a wide selection of products through centre of town, out of town, rural and online stores. The SRC is based in Edinburgh and is supported by its parent company, the British Retail Consortium, based in London and Brussels.

1.1 The Scottish retail sector employs nearly 250,000 people, equating to one in nine of the workforce. The sector contributes 7% of Scotland's Gross Value Added (GVA) and just under 10% of enterprises in Scotland are retailers.

1.2 The sector's presence in Scotland, as an employer and as a financial contributor, means we are particularly interested in the overall framework in which it operates. Retailers require the correct conditions for growth for them to continue to recruit, invest and trade in Scotland. Additionally, for multiple retailers operating across the UK, a degree of regulatory constituency between England, Scotland, Wales and Northern Ireland is important. It is for these reasons we are interested in the devolution settlement and the changes the Scotland Bill could implement.

1.3 This evidence relates only to those aspects of the Bill and the Calman Commission's findings that directly affect retailers.

2.0 *Which of the recommendations of the Calman Commission on Scottish Devolution are not implemented by the Bill, and why?*

2.1 The SRC is particularly concerned that the Government has not included the Calman Commission's recommendation to re-reserve powers over food content and labelling.

2.2 Recommendation 5.11 of the Calman Commission's final report stated:

2.3 "The Scottish Parliament should not have the power to legislate on food content and labelling in so far as that legislation would cause a breach of the single market in the UK by placing a burden on the manufacturing, distribution and supply of foodstuffs to consumers, and Schedule 5 to the Scotland Act should be amended accordingly."

2.4 The SRC believes that this is a sensible recommendation. The current situation has led to a lack of clarity about the Scottish Parliament's powers on issues related to food content and labelling due to the current devolution of these powers and the inclusion of public health as a devolved matter on the one hand and the fact that these matters are, largely, the responsibility of Europe, with the UK, not Scotland, the Member State.

2.5 The vast majority of grocery retailers operate throughout the UK and their products are the same, with the same labelling, in each locality. This is hugely beneficial for the consumer. Customers recognise the products and the information displayed on packs, thereby fostering confidence in the food they buy. However, this also means that the efficient and effective supply and distribution of goods is possible, helping to keep products affordable.

2.6 We agree with the Calman commission that a requirement to label or produce food differently in different parts of the UK will place a heavy burden on retailers, producers and manufacturers and could breach the single market. We do not believe this is in the best interests of Scotland, or the rest of the UK.

2.7 Looking to the future, we believe that there is potential for the current settlement to produce considerable activity in this area. For example, environmental labelling is an area where the Scottish parliament could seek to introduce legislation applicable only in Scotland. Progress on this issue would be far better at a UK-wide level and different requirements in Scotland and other parts of the UK would place considerable financial and administrative burden on the food industry.

2.8 The SRC would urge the Scottish Affairs Committee to press the Government on why it has not taken this recommendation forward.

2.9 In addition, the Calman Commission made several recommendations on improving the communication between Holyrood and Westminster and for making changes to the Scottish parliament's legislative process. With particular reference to the former, the SRC would welcome improvements to the communication between Government and Parliaments, not just between Holyrood and Westminster but also between Holyrood, Westminster, Cardiff and Belfast.

2.10 Increasingly we are seeing four different regulatory regimes implementing very similar policies. This situation creates considerable burdens for businesses implementing these proposals with no clear benefit; the changes are not due to particular evidence to suggest nuanced changes are required. Better communication may alleviate the worst of these instances and would be of considerable value to the UK as a whole.

2.11 Whilst accepting these changes may not require legislation to bring forward, it would be useful to understand the Government's response to this recommendation and how it proposes to take them forward, if at all.

3.0 *What provisions are made in the Bill, which were not recommended or considered by the Commission on Scottish Devolution?*

3.1 The SRC has no comment.

4.0 *What are the fiscal and financial implications of the provisions in the Bill for Scotland?*

4.1 The fiscal and financial aspects of the Scotland Bill are the most significant provisions at this stage and have considerable implications for Scotland.

4.2 The SRC broadly supports the objective of giving the Scottish Parliament greater financial accountability. Since devolution significant policy decisions across a very wide range of issues are determined by the Scottish Government and Parliament. The SRC supports the conclusions of the Calman Commission that these powers should be accompanied by powers to raise an increased proportion of the revenues necessary to enact the policies of the Scottish Government. It is for the Scottish electorate to decide on the financial accountability of the Scottish Parliament and Government. As for any other government, a responsible Scottish Government will need to take account of the competitiveness of Scottish business and the implications for the Scottish economy in making decisions on fiscal policy.

4.3 That said, the new regime will need to be structured such that the revenue sources available allow a balanced approach to be taken so that the fiscal levers chosen to do not impact on a single economic sector, such as retail, disproportionately. For example, retailing is a people and property intensive sector, employing one in nine of the total Scottish workforce (nearly 250,000 people) and paying around 25% of all Business Rates despite generating 7% of Scotland's Gross Value Added Domestic Product (GVA). Any fiscal measure that bears on employment or property costs will bear disproportionately on the retail sector and have unintended consequences for retailing and its suppliers in the food, drink, consumer products, distribution and construction sectors.

4.4 With regards the proposed changes to income tax, we have some concerns regarding the implications of different income tax regimes operating in Scotland and the rest of the UK.

4.5 Retailers need Scotland to be a competitive and attractive place to do business so that they can continue to invest in local communities and generate more jobs. While over 98% of Scottish retailers employ fewer than 50 people, over two thirds of retail jobs and three quarters of turnover are within the large multiples. These

businesses make investment decisions based on maximising their return on the capital invested across their whole portfolio, throughout the UK and internationally. Fiscal policy decisions which reduce the competitiveness of Scotland compared with other jurisdictions would harm the investment in and growth of the Scottish economy.

4.6 There are two aspects to income tax policy that could impact on the competitiveness of Scotland as a place to do business:

— The effect on wage demands of staff, and hence total wage costs in Scotland versus other jurisdictions in which retailers operate;

— The complexity of administration of a different income tax regime in Scotland and the effect on retailers' administrative overheads.

4.7 The proposals give the Scottish Government powers to vary the rate of income tax up or down as well as retain the same level as elsewhere in the UK. A reduced rate could enhance Scotland's competitiveness and attract businesses and potential employees wishing to benefit from it. A reduced rate could increase household disposable incomes and, since one third of consumer spending goes through retail, would benefit the sector in Scotland through improved sales volumes as well as holding down wage costs. Retailers see this is an opportunity for Scotland to increase its ranking as a good place to do business.

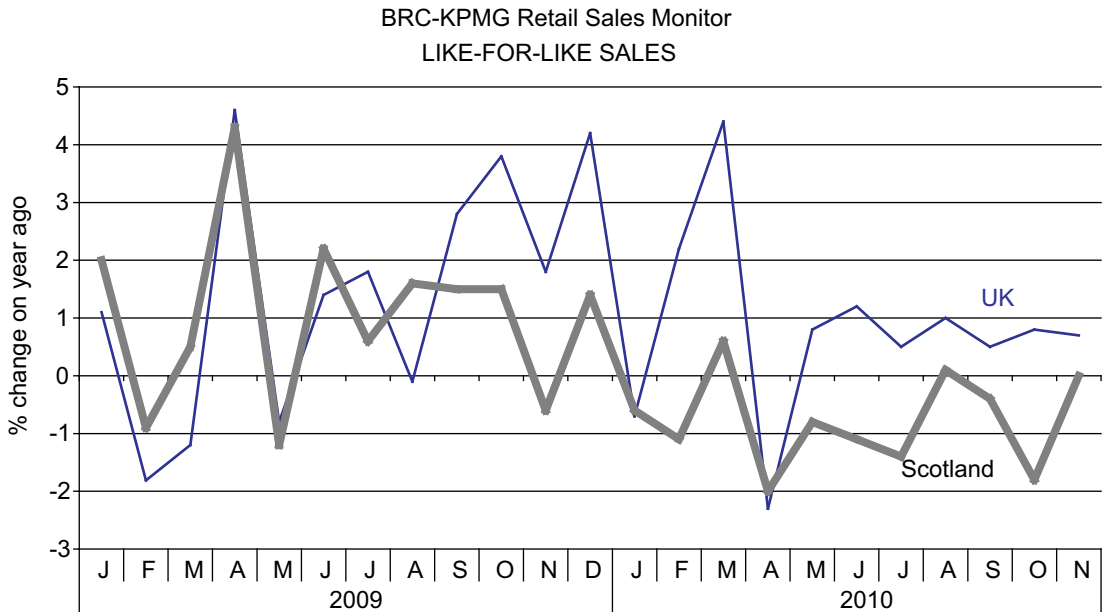
4.8 Were the Scottish Government to increase income tax levels beyond those elsewhere in the UK this might lead to increased pressure to adjust wage rates in order to maintain disposable incomes, and hence increase employment costs. This would reduce Scotland's competitiveness as a place to base both shop-floor and back-office staff.

4.9 Where Scottish income tax rates vary, in either direction, from those elsewhere in the UK there will be additional administrative complexity and cost, particularly for those staff who move in either direction across the border. Retailers' operating systems (in common with other Scottish employers) will have to be modified to administer the changes, imposing IT, legal, administrative and training requirements. This could place considerable burden on head office personnel, especially at the point of first introduction, handling different taxation regimes once this is implemented.

4.10 Currently the Scottish Government has few independent sources of revenue beyond charges for services, Council Tax and Business Rates. As a result, in setting a budget for 2011/12, the Scottish Government has proposed a large retailers levy as an additional charge on Business Rates in order to avoid public sector cuts. Following a successful motion to annul the order bringing this in, it is to be debated in the Scottish Parliament (w/c 31 January 2011). This not only impacts entirely disproportionately and unfairly on the retail sector, it distorts competition within the sector by distributing costs according to retail format. For example, a number of fashion retailers operating from department or flagship store formats will be hit by the new charge which represents up to a 30% increase in Business Rate costs, whereas their competitors operating from smaller format stores in the same shopping area will not face this charge. This comes on top of the Scottish Government's decision not to provide a transitional period when the Business Rate uplift came into effect, unlike the UK Government.

4.11 A broader range of fiscal tools would give the Scottish Government a greater range of options in setting and balancing its budget.

4.12 The SRC/BRC's own retail statistics show that Scotland has traded below the rest of the UK for the last few years (see figure below), suggesting the economic downturn (and government responses to it) has been particularly difficult for the Scottish economy.



4.13 As a result the gap in performance of the sector in Scotland compared with the UK as a whole is widening. Retailing accounts for 7% of GVA compared with 9% in the UK, rising by 85% since 1998 compared with 126% in the UK as a whole. This impeded growth is all the more important since retailing accounts for 20% of turnover and 15% of Services Sector GVA in Scotland as against 15% and 11%, respectively, across the whole UK. In other words, retail is more important to the Scottish economy but is failing to thrive in the same way as elsewhere in the UK. Fiscal policy choices by the Scottish Government will be critical to turning this state of affairs around.

4.14 The retail sector has had significant concerns over the way in which the Scottish Government has supported businesses during the economic downturn. We are concerned that despite broadening the Scottish fiscal base, the proposed framework may not be robust enough to cope with the differing cost pressures across the economic cycle, particularly given the heavy reliance on public sector jobs within the Scottish economy. The new arrangements should, therefore, include some provision to deal with exceptional economic circumstances.

4.15 The SRC believes that careful and balanced decisions need to be made in addressing the structural deficit in public finances and the shortfall resulting from the economic downturn. The recovery is reliant on private sector growth, providing increased employment, and supporting skills development and regeneration. Instead of encouraging this growth and incentivising business, the Scottish Government is imposing further costs on a sector that has continued to invest and recruit whilst many business sectors have stalled. Retailing operates in every community of any size, unlike any other business sector.

4.16 With regards the other taxes proposed to be devolved, the SRC is, again, broadly supportive. The proposals to devolve Stamp Duty Land Tax and Landfill Tax as part of a broader suite of fiscal instruments would enable more rational and business-friendly decisions by the Scottish Government. A broad and balanced tax base has to be set against the need to avoid complexity, perverse incentives and a punitive tax burden.

4.17 However, we would be concerned if proposals in the Bill gave rise to a plethora of new devolved taxes and we are concerned by Clause 80B in the Bill. We would welcome further detail to understand the full implications of this proposal.

4.18 Overall, any additions to the tax burden would be ill-advised.

5.0 *What further provisions could/should be included in the Bill in order to further amend and develop the Scotland Act 1998?*

5.1 As per our answer to the first question, the SRC is of the view that this Bill should be amended to include the Calman Commission's recommendation to re-reserve powers over food content and labelling.

January 2011

Written evidence submitted by the Scottish Council for Development and Industry (SCDI)

Introduction

1. SCDI is an independent membership network that strengthens Scotland's competitiveness by influencing Government policies to encourage sustainable economic prosperity. SCDI's membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.

2. SCDI welcomes the opportunity to contribute to the Scottish Affairs Committee's inquiry on the Scotland Bill, which will have a considerable impact on the operations of the Scottish Parliament, the devolution settlement and future direction of Scotland.

Executive Summary

3. SCDI's submission to the Scottish Affairs Committee's inquiry highlights the following areas:

- SCDI's history of engagement on the future of the devolution settlement (paragraph 5).
- The priority economic issues for the Scottish Parliament (paragraph 6).
- SCDI's budget principles (paragraph 8).
- The requirement for economic modelling of the proposes taxation system (paragraph 12).
- The creation of a Scottish Office for Budgetary Responsibility (paragraph 14).
- Sufficient borrowing limits needed to manage the capital investment programme (paragraph 15).
- Concerns raised at the High Level Implementation Group (paragraph 16).
- Possibility of underestimating the number of tax-payers in Scotland and ease of transferring country of taxation (paragraph 19).
- Proposals for further changes to the Parliament's powers (paragraphs 23–27).

Background

4. In SCDI's *Blueprint for Scotland*[3], published in June 2010, we call for the strengthening of the Scottish Parliament's responsibility for tax and spending decisions which promote sustainable economic growth. Following the announcement from the coalition Government that it would legislate on the Calman Commission's proposals, SCDI has continued to be involved in the debate, holding discussion forums for our members and participating in the Scotland Office's High Level Implementation Group for the Scotland Bill.

5. SCDI's contribution to the debate reflects recommendations which were agreed by members after discussion of the report *Scotland's Economy: The Fiscal Debate*[4] which was commissioned by SCDI and published in 2007. These included the following:

- The current financial arrangements do not provide sufficient incentive or discipline on the Scottish Parliament regarding spending decisions, due to its lack of responsibility for raising substantial revenue.
- The current arrangements, as represented by the "Barnett" process, are unsustainable in the long term, and an evidence base must be built to ensure good quality information is ready and available to feed into consideration of any new system which may be established.
- Any new funding mechanism must provide benefit to Scotland.
- The Scottish Parliament should commission an independent, comprehensive review of Scotland's fiscal arrangements, which should aim to identify a small number of key fiscal policy measures that would promote sustainable economic growth in Scotland and address some of the weaknesses in accountability and transparency present in the existing arrangements:
  - It should be conducted by a panel of independent academics, including members from outside the UK who have not previously engaged in the Scottish debate.
  - It should consider Scotland as a discrete economy within the larger UK and EU economies, but should not assume either independence or continued membership of the UK. Instead, where Scotland's political status is a key factor in assessing a particular fiscal measure, the options with and without independence should be set out.
  - The review should also pay close attention to the implications of recent European Commission and ECJ decisions on the legality of different proposals for fiscal autonomy within Member States.
- A new comprehensive needs assessment for the regions of the UK, identifying appropriate English regions for comparison with the territories of Scotland, Wales and Northern Ireland is required.
- There is mixed evidence that devolving greater powers to sub-national governments to raise and spend their own public funds is in itself enough to promote economic growth.

[3] Blueprint for Scotland, www.scdi.org.uk/blueprint

[4] Scotland's Economy: The Fiscal Debate Discussion Paper, www.scdi.org.uk/pi/2007/2584.pdf, Statement of Findings, www.scdi.org.uk/pi/2007/2687.doc

— The majority of SCDI members that participated in consultation discussions regarding the fiscal debate were not convinced by the arguments either for the status quo or for different models of either fiscal autonomy or further devolution. The key problem is the lack of independent evidence which might help inform the decision. There is a strong case for more independent research into the pros and cons for small countries like Scotland of adopting different fiscal powers.

6. SCDI has a broad membership which has no single position on the Scotland Bill or wider fiscal proposals. However, members believe that the economy and Scotland's global competitiveness should be central to the fiscal debate and the possible impact of the Scotland Bill on these issues should be uppermost in the Committee's deliberations. However, feedback from SCDI members indicates that, in their view, the highest priority economic issues for the Scottish Parliament continue to be:

— Improving the skills of the workforce and increasing productivity.

— Encouraging greater private sector research and development.

— Ensuring an effective contribution from the public sector in support of growth.

— Improving transport and IT infrastructure to help attract and stimulate growth.

— Attracting inward investment and increasing Scotland's exports.

Greater Financial Responsibility Leading to Economic Growth

7. SCDI members have expressed the view that greater financial responsibility for the Scottish Parliament should be considered within the context of policies for sustainable increases in Scotland's comparatively sluggish long-term economic growth rate. Information gathered by SCDI does not show a clear and consistent link between taxation and expenditure decisions following devolution and this over-arching economic priority. The interest of SCDI's members is principally in whether new financial powers and accountability will further encourage and enable increasing sustainable economic growth via a competitive and stable environment for business growth and more closely aligning Scotland's economic performance with the Scottish Parliament's revenues.

8. The outlook for public spending in Scotland is the most challenging since devolution. SCDI has recently published six Budget principles[5] and urged that these are applied to current and future decision-making by the Scottish Government and Parliament:

(1) Increasing sustainable economic growth is now an even higher priority for the Scottish Government and public services.

(2) Scottish budgets should ring-fence priority outcomes, rather than departmental budgets.

(3) The core functions of public sector bodies must be identified and resourced. This represents an opportunity to develop new models and partnerships for public service delivery.

(4) Public spending should be subject to a "Scottish Exports Test".

(5) The capital investment programme is a high priority, but business cases should be re-evaluated rapidly to ensure that projects are prioritised with current economic opportunities.

(6) Scotland's public spending should be reviewed to ensure inter-generational equity and funding to create new education, training and job opportunities for young people.

9. A number of questions arising from these principles should be considered by the Scottish Affairs Committee when reviewing the Scotland Bill:

— Do the proposals encourage and better enable the Scottish Government and Parliament to prioritise increasing sustainable economic growth?

— Will the proposals safeguard and/ or create a more competitive economy, which supports higher business investment and net exports?

— Will the Scottish Parliament's revenues and grant allow for resourcing of priority outcomes, and long-term planning in and reforms to public service delivery?

— Will they support a higher level of investment in enhancing Scotland's infrastructural assets?

10. In relation to the Second Principle, SCDI has also suggested that, in view of the rising cost-pressures on public services, demographic changes and increasing public expectations of services, a national debate should be encouraged on the public priority outcomes and on the overall level and form of taxes which could deliver them.

11. SCDI would be very concerned if future changes in the rate of income tax in Scotland were to have the effect of discouraging entrepreneurs or companies from opening, retaining or expanding a presence in Scotland or make it harder to retain and attract people. We would, of course, discuss these issues with future Scottish administrations.

[5] Six Budget Principles for Scotland, http://www.scdi.org.uk/pi/2010/SCDI_Budget_Principles.pdf

Performance of the Proposed System

12. The original Calman Commission proposals, on which the Scotland Bill is based, were developed prior to the recent global economic downturn. SCDI seeks reassurance, through economic modelling, including Scottish and UK Government facilitation for independent economic modelling, that the proposed taxation system would support the Scottish economy through a period of economic volatility and/ or fiscal contraction.

13. SCDI members strongly believe there is a need for more evidence of how the Scotland Bill would impact on the economy and public spending, particularly in the event of a future economic downturn, where stability of public spending is essential.

14. In an operating environment of greater fiscal powers, it will be of increasing importance for Scotland to have greater independent analysis of public spending. SCDI proposes the establishment of a Scottish Office for Budgetary Responsibility. A Scottish OBR could take a lead role in making an independent yet informed assessment of the public sector balance sheets, have control over forecasting and inform spending decisions.

15. SCDI broadly supports increased borrowing powers for the Scottish Parliament. As a result of the UK Comprehensive Spending Review, capital expenditure is due to fall in real terms by 35.9% from 2010–11 to 2014–15. SCDI is deeply concerned about the impact on plans to improve Scotland's infrastructure, particularly its connectivity, and the vital construction sector, especially when the need for a new Forth Crossing and Southern General Hospital will account for the vast majority of its capital budget. SCDI believes that borrowing limits must be sufficient for the Scottish Government to manage its capital investment programme effectively and flexibly, and fluctuations in revenue arising from the substitution of a portion of the block grant with income tax revenues, within acceptable UK debt levels.

Implementation

16. Despite being re-assured through our participation in the High Level Implementation group, we would like the Scottish Affairs Committee to be aware of the concerns raised there throughout the deliberation process on the Scotland Bill. These concerns mainly relate to the definition of a Scottish tax-payer, and the additional burden to companies, individuals and the Scottish Government through the potential need to establish a Scottish Treasury function.

17. In particular, SCDI is keen to ensure that the Scotland Bill is implemented as smoothly as possible. This requires the publication and promotion of a full timetable of implementation, including achievable deadlines for Scottish businesses to adapt their systems and processes and an outline of all the changes large and small businesses and individuals on Self Assessment are required to make.

18. To minimise any extra burden on employers, the impact must be kept under constant review as the changes are implemented, and SCDI will offer regular input to HMRC from members. The Scottish and Westminster Governments should work closely together as the Scotland Bill is implemented and provide sufficient resource to HMRC and business advice agencies to ensure a seamless transition.

19. We seek further assurance that the rules for designation as a Scottish tax-payer do not underestimate the number of tax-payers in Scotland, and are sufficiently robust to ensure individuals are not easily able to switch their home for income tax purposes should the rate of income tax in Scotland vary from the rest of the UK. This issue has received considerable attention on the High Level Implementation Committee and we continue to seek assurances that he Scottish budget would not be adversely impacted by the Scotland Bill.

20. The designation of individuals as a Scottish/Rest of UK tax-payer should be a matter for HMRC and The Government, not a matter for individuals or employers.

21. Tax tables and software used by many organisations has in many cases been updated to accommodate the Scottish Variable Rate when the Scottish Parliament was formed. It is important that the new Scottish Rate is compatible with these systems to avoid the need for further investment from employers. Many small businesses and sole traders do not have specialist software to calculate PAYE levels. The new system should not force the many organisations in this position to face increased accountancy costs for payroll management.

22. Other anomalies raised at the High Level Implementation Group include the issues of mobile workers, foreign workers living and working in Scotland, those moving in or out of Scotland mid-year and those gaining income from land or property in Scotland but living elsewhere in the UK. These are all areas where additional work is required to make certain Scotland does not lose out on its share of the tax take, whilst ensuring that the regulations do not prove a disincentive for people to work in Scotland.

Further Changes to the Scottish Parliament's Powers

23. The Calman Commission proposed that air passenger duty should be devolved to the Scottish Parliament. SCDI understands that this is on-hold due to the Coalition Government's plans to replace air passenger duty with an aviation tax. Air connectivity is especially important to the Scottish economy and our ambitions to grow our exports and tourism industry. It also provides lifeline services in the Highlands and Islands. If powers in this area are devolved to the Scottish Parliament, the competitiveness of Scotland in sustaining and growing

its air route network must be a priority, and the existing exemptions for air services in the Highlands and Islands should be maintained and, potentially, extended.

24. Scotland has a different labour market from the rest of the UK and a demographic outlook which means our working age population needs to expand to enable growth in key sectors of the Scottish economy. However, as analysis by the Migration Advisory Committee has shown, it has attracted a lower than average share of highly skilled and skilled migrants to the UK. SCDI believes that should support the UK Government's policy of enabling more balanced regional economic growth. Most of the migrant workers coming to Scotland under Tier 2 do so after meeting the resident labour market test and Scotland has not experienced the same impacts of migration which have been felt in parts of south-east England. Overall, highly-skilled and skilled migrant workers in Scotland have made a positive contribution to the Scottish economy and its local economies, local taxation, and the delivery of public services in communities. SCDI recommends that the UK Government should take a flexible approach in Scotland and introduce a regional variation which attracts skilled migrants to work in the Scottish economy. We strongly support the call for the introduction of a *Scotland Skilled Workers Flexibility* so it is provided with a distinct annual allowance in relation to Tier 2, at a level which is responsive to Scotland's economic needs. We also consider that a lower qualifying salary level for Intra-Company Transfers would be appropriate for Scotland.

25. SCDI also calls for flexibility for Scotland's universities and colleges. These institutions are a cornerstone of Scotland's international reputation and major export earners. Scottish institutions should have the opportunity to succeed in the highly competitive global market for higher education. International students contribute nearly £188 million in fees and £231 million in spending to the Scottish economy each year, providing diversity within the education system and promoting Scotland's global reputation for high-quality education. Each year, a number of international graduates choose to stay in Scotland, supporting our population and delivering new skills essential to the success of the Scottish economy. Scotland's different economic and demographic circumstances require a different approach to immigration regulations.

26. In SCDI's *Blueprint for Scotland*, we called for a more localised approach to support people claiming out-of-work benefits into work and employment. This included a call for local devolution of responsibility for delivery of New Deal for the disabled, and greater cross-parliament work to develop benefit and student support mechanisms that work together to take full account of the differing student support systems in use across the UK.

27. With greater fiscal powers, Scotland will require independent analysis of public spending. As mentioned previously, SCDI proposes the establishment of a Scottish Office for Budgetary Responsibility to take a lead role in making an independent yet informed assessment of the public sector balance sheets, have control over forecasting and inform spending decisions.

January 2011

Written evidence submitted by the Scottish Property Federation

1. The Scottish Property Federation is pleased to submit written evidence to the Scottish Affairs Select Committee of the House of Commons on the UK Scotland Bill. We are happy for our comments to be made public by the Committee.

The Scottish Property Federation

2. The SPF is a representative body for the Scottish commercial property industry and speaks for over 115 corporate members. Included within our membership are commercial property developers, landlords, property managers, fund managers and long term investors in both commercial and residential property. We are an integral part of the UK-wide British Property Federation which represents most of the UK and Scotland's largest property investors, developers and professional property industry advisers and property consultants.

The Property Industry in Scotland

3. Commercial property values in Scotland are estimated to have fallen by over 40% since their peak in mid-2007. In this context it is needless to say that the contribution of our industry to economic performance in Scotland is much reduced from its 2006–07 levels. The value of commercial property sales is down from a level of £6.2 billion per year in 2006–07 to just £2.3 billion in 2009–10[6]. Official figures from ONS portray a continuing decline in the value of new construction orders achieved by the commercial property sector in the period January to December from 2008 to 2009. In 2008 the sector accounted for just over £1 billion of new construction orders while by end 2009 this had fallen to £626 million per year.

4. Of the questions put by the Committee we will refer to the third question, what are the fiscal and financial implications of the provisions in the Bill for Scotland? Specifically we will address those areas relating to Stamp Duty Land Tax and borrowing powers.

[6] Registers of Scotland data obtained by SPF

Stamp Duty Land Tax

5. In Scotland a particular problem for the property industry has been the interplay between Scottish-based property land law and the administration of SDLT. Given that property and land law is almost wholly devolved territory, the addition of SDLT powers to Holyrood may be said to have a certain appeal. MSPs will be able to tailor the property and land transaction tax to meet certain policy requirements and in theory the Scottish Parliament should be able to establish a more straightforward administration of the tax in Scotland, as opposed to HMRC considering SDLT administrative policy principles for the wider UK and then having to work out how this will apply in the Scottish legal context.

Competitiveness

6. The commercial property investment market in particular operates in a competitive market where major investors transact assets not just across the UK but globally. If we get our business taxes wrong then we may deter potential investment and economic activity. We consider this and other issues in greater detail below.

7. Unlike the domestic housing market perhaps, the commercial property industry operates in an environment where investors can easily choose where to invest their property funds. This is particularly difficult for Scotland with one of the most highly prized property markets in the world existing in London, where the vast majority of property investment in the UK takes place. It is vital therefore that the Scottish Parliament understands this point and applies its SDLT powers responsibly. Potential increases in revenue will amount to little if investors simply use their funds elsewhere. Indeed given the difference in the recent performance of the Scottish and UK property markets it will be important, arguably, to redress this gap through a competitive SDLT policy.

8. We do not underestimate the challenges facing the Scottish Government with a limited arena of taxes, but this deepens our concerns that a future Scottish Government could seek to raise tax revenues through enhanced property taxation, citing the constraints imposed on other methods of revenue. Until the recent budget proposals for a large retailer business rates levy we believe Scotland had pursued a competitive agenda in relation to business rates. However, the hike in rates of up to 35% for large retail stores whether in-town or out of centre has shaken confidence in the competitiveness of Scotland, not only for the size of the tax increase but also its unpredictability and we are already seeing potential consequences for the Scottish economy in terms of potential investment and jobs from the major retailers.

The SDLT Baseline

9. The first crucial issue relating to the potential transfer of SDLT to Holyrood is to establish its revenue baseline. This will equate to the amount to be withdrawn from the Scottish Government's current budget and therefore it is important to establish a realistic expectation of revenue that might be expected to be raised from SDLT in Scotland. If this baseline is too high then the consequence will be a budgetary shortfall for the Scottish Government. The revenue attributable is of course closely linked to the performance of the markets and the property industry has clearly been one of the hardest hit sectors of the economy. Indeed it is possibly a case of "first in" and last out for the sector. The latest UK Government figures of which we are aware identifies that £250 million is raised by SDLT in Scotland (we are not certain that this includes leases duty but we will assume that it does and in any case, lease duty applicable to Scotland will be a very low total).

10. The Scottish SDLT yield is on a declining trend and may well be expected to fall some way further in the next few years given the continued weakness of the property and finance markets. It will be very much in Scotland's interests to ensure that we do not get stuck with an unfeasibly high baseline SDLT yield that will result in a high withdrawal of UK budget allocation to Holyrood.

11. The yield of SDLT is clearly lower than a number of years ago—but those times are past and we do not expect the market to return to such levels of activity within the foreseeable future. It will be crucial that officials and political decision-makers understand that the current levels of market activity and consequent SDLT revenues are likely to be far closer to the "norm" that has perhaps been assumed. It will be important therefore for Scottish Ministers to recognise that Scottish SDLT is likely to be a relatively small revenue basket.

Additional Borrowing Powers for Holyrood

12. We welcome the proposals for wider borrowing powers for the Scottish Parliament. In the current fiscal climate private finance is unlikely to re-emerge for property related development and investment, especially for regeneration projects. The public sector has now begun to see cutbacks and these are a concern for the property industry too, but the UK commercial property industry faces finance issues that arguably outweigh those of the public sector. By 2012 some £160 billion of commercial property loans are due to mature, although we would expect many of these loans to be extended.[7] Private investment will be difficult to obtain therefore for development and investment.

13. It will be vital for the new borrowing powers to be used wisely, for the purposes of economic investment that will produce real returns to the Scottish economy. It is probably true that the Scottish Parliament will reap perhaps only indirect or limited revenue returns for this borrowing (perhaps some additional income tax,

[7] Extrapolated from annual de Montfort University property lending report (2010)

SDLT and business rates or council tax), but the powers will nonetheless hopefully be used to boost the Scottish economy.

Conclusion

14. In summary in relation to the property industry in Scotland the UK Scotland Bill transfers significant powers to Holyrood. SDLT liabilities are a key part of property transactions and can infer significant costs for property purchasers and tenants. The current regime of SDLT administration is also highly complex and involves significant compliance costs and the experience of members in Scotland is that the interplay between the UK SDLT regime and Scottish property and land law has not always worked efficiently.

15. The enhanced ability of Holyrood to borrow and control a key property tax (SDLT) will offer improved potential for longer term infrastructure investment. It will be vital to ensure that if these enhanced borrowing powers are utilised, then they are applied with a view to securing significant economic returns for the wider Scottish economy.

16. The Scotland Bill imposes a delicate balance of new tax powers and responsibilities for Holyrood. Clearly the Bill envisages a more intricate fiscal relationship with the UK Government that brings both risk and reward for the Scottish Government. We urge the Scottish Parliament to ensure that when these powers are implemented they are used wisely with a view to ensuring Scotland is perceived to be open to economic investment and business growth. Without employment growth and in the face of continuing squeezes on private and public finances, the long term prospects for Scottish Government revenue are limited. Holyrood must use any enhanced powers to drive the economy if aspirations for sustainable economic growth are to be achieved.

17. The SPF would be pleased to explain our comments in greater detail at the Committee's convenience.

January 2011

Written evidence submitted by Consumer Focus Scotland

Introduction

1. Consumer Focus Scotland welcomes the opportunity to provide written evidence to the Scottish Affairs Committee on its Scotland Bill inquiry. Consumer Focus Scotland is the independent consumer champion for Scotland. We work on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level. As part of a UK body, we focus also on ensuring that consumers in Scotland are treated as fairly as those elsewhere in the UK. Where there are differences between Scotland and other parts of the UK (for example owing to our different demographic make-up) that mean uniform treatment would lead to significantly different results, we seek to highlight these and to secure proportionate benefit for consumers in Scotland.

2. Consumers in Scotland are generally very similar to consumers in the rest of the UK. But on occasion, Scotland's different geography and demography needs to be taken into account if fairness is to be achieved. Much more of Scotland is rural than is the case for the UK as a whole, for instance; and in particular the special circumstances of those who live and work on islands is more of an issue in Scotland. Greater remoteness from urban centres often means fewer choices for consumers: eg in terms of energy supply, transport, telecommunications and retail services.

3. Consumers in Scotland are also more likely to be economically disadvantaged than UK consumers in general. They are less likely to be in employment, less likely to be high earners, more likely to be in poor health, more likely to be in fuel poverty and more likely to need benefit support. Consumers in Scotland also differ from UK consumers overall in being more loyal in their habits, often favouring Scottish service providers as a matter of principle and being less likely to switch providers to save money.[8]

4. Rather than comment on the provisions of the Bill itself, we will focus primarily on issues which are likely to affect consumers in Scotland most directly. We do support the Bill's provisions in two respects, however. Firstly, we support the requirement on UK Ministers to reach agreement with Scottish Ministers before making a recommendation for appointment of the BBC Trust representative for Scotland. As a result of devolution, a wide range of key political, economic, social and cultural decisions affecting people in Scotland are taken at Holyrood rather than Westminster. There is therefore a distinct Scottish news agenda, and the BBC has a critical role to play in offering the Scottish public in-depth information, coverage and opinion about the key political issues affecting many important areas of their lives.

5. Secondly, we welcome the Bill's provisions in relation to the regulation of healthcare professionals. We support the general principle that this should be reserved, ensuring consistency and clarity throughout the UK in relation to all groups of professionals working within the health sector. Those who use healthcare services in Scotland should be able to expect the same standards to apply to such professionals as service users who live elsewhere in the UK.

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[8] Scottish Consumer Council, Making markets work for consumers in Scotland-everyone benefits, consumer switching behaviour and attitudes in key markets, May 2008

6. The remainder of our comments relate to the last question within the committee's terms of reference, namely: *What further provisions could/should be included in the Bill in order to further amend and develop the Scotland Act 1998?*

The Consumer Perspective

7. From a consumer perspective, although we consider that the Bill presents an opportunity to increase the Scottish Parliament's powers in some respects, we do not believe that this is the primary issue. We consider that what is more important is how the Scottish Parliament and Government exercise the powers and influence which they already have, and how the UK and Scottish governments and relevant regulators work together to take full account of Scottish issues, regardless of whether they relate to reserved or devolved responsibilities.

8. Although consumer protection law in its narrowest sense is reserved to Westminster[9], the breadth of the consumer interest is at the heart of devolved policy, including legal services, health, transport, food and diet, social care, energy efficiency, water, digital communications, housing and education. However from the consumer perspective, these issues are often dealt with in a way which can be piecemeal or disjointed.

9. We are aware of many instances where there has been a lack of clarity as to whether an issue is reserved or devolved. While the regulation of energy is reserved, for example, fuel poverty and energy efficiency are devolved. Another example is consumer protection for buyers of new build housing: while consumer protection law is reserved, the devolved law of property governs the contract between the builder and the buyer.

10. There are also areas of policy which are reserved to Westminster, but which raise particular issues within a Scottish context. The fact that the regulation of communications and other basic services is reserved to Westminster, for example, does not detract from the fact that these are a crucial component of Scotland's social, environmental and economic fabric, cutting across a range of devolved responsibilities. How best to improve rates of internet access in deprived areas, for example, is a matter for Scottish policy on social inclusion. Broadband roll-out in rural areas of Scotland is also a crucial issue, which has implications for policy on devolved matters such as economic development, lifelong learning, public service delivery and cultural issues.

11. This principle cuts both ways. Water policy, for example, is devolved in Scotland, but water is a basic essential that everyone must be able to access and afford. Any approach to ensuring that this happens must recognise that this element of social justice can only be achieved by acknowledging the need to look outwards to reserved areas of public policy such as social security, consumer protection, competition law and human rights.

12. There are three particular areas where we wish to comment on possible further changes to the powers of the Scottish Parliament, as set out below.

(1) *Consumer enforcement, advice, education and advocacy*

13. Consumers throughout the UK are protected by the same consumer protection and competition laws, and the same regulatory arrangements for financial services, energy, telecommunications and postal services. While we support this in principle, the mechanisms through which these are enforced and delivered have not always worked as well as they might to secure equity for consumers in Scotland. This is one of the key consumer issues arising from the current overlap of responsibilities between the UK and Scottish Governments, which has been brought sharply to the forefront by recent UK Government proposals for major changes to the delivery of: enforcement of consumer protection; consumer advice, information and education; and policy advocacy on consumer issues[10].

14. For example, as we have recently highlighted,[11] there is a complex and confusing legal framework for consumer protection in Scotland. Consumer protection legislation is reserved to the UK Parliament, but responsibility for its enforcement lies with Scottish local authorities' trading standards departments. Following a strategic review of trading standards in Scotland[12], we concluded that there are a number of areas of concern for consumers: the legal framework for consumer protection in Scotland is complex; the consumer interest is not embedded within Scottish Government, regulators or local regulatory services; local regulatory services do not focus on activities that could empower consumers; and there are no clear national priorities for local regulatory services and therefore no effective performance management.

15. This is not in the interests of consumers in Scotland, and requires to be addressed. Because many Scottish councils are much smaller than their English counterparts, trading standards services are often tiny, isolated and marginalized, leaving them struggling to deliver a full range of services to the public[13]. Yet the Scottish Government has no legislative locus to require councils to collaborate. Neither is there any clear mechanism for the Scottish Government to shape delivery of the greater enforcement role for trading standards services

[9] Scotland Act 1998 Schedule 5 Section C7

[10] Statement by Vince Cable, Secretary of State, Department for Business, Innovation and Skills: Public Bodies Bill -Changes to the UK Consumer and Competition Bodies, 14 October 2010—http://www.bis.gov.uk/policies/consumer-issues

[11] *Local Regulation and the Consumer Interest in Scotland*, Consumer Focus Scotland, June 2010—http://www.consumerfocus.org.uk/scotland/publications/local-regulation-and-the-consumer-interest-in-scotland-a-discussion-paper

[12] *Up to Standard: a Review of Trading Standards Services in Scotland,* Consumer Focus Scotland, June 2010

[13] Accounts Commission, Made to Measure, October 2002

envisaged by the UK Government in its recent proposals for change. We would therefore suggest that a slight adjustment to legislative powers to give an administrative role here for the Scottish Government would add value for consumers in Scotland.

16. Another key issue here is the current division between responsibility for consumer protection laws and consumer education,[14] information, advice and advocacy, which lies with Westminster, and responsibility for delivery of financial capability and inclusion and legal education and advice, which lies in Scotland. While consumer education and advice are viewed as reserved matters, legal education, housing advice and financial inclusion and capability are seen to be devolved (even though financial services policy is reserved). Yet it is difficult to see how these matters can be separated in practice, as they are closely intertwined in people's lives, as well as in administrative and policy terms.

17. We consider that it would be in the interests of consumers in Scotland if responsibility for delivery of consumer education and advice, together with the funding for their provision, were to be devolved to the Scottish Government. This would not affect the continued reservation of consumer protection laws as currently defined. Such a change would allow the Scottish Government to consider the delivery of education, information and advice on consumer matters, legal rights and responsibilities, housing advice, money advice and financial capability as one integrated policy, improving the access and availability of such information and advice for consumers in Scotland.

18. We also believe that it would be beneficial for consumers in Scotland if primary responsibility for the delivery of consumer advocacy in Scotland were to lie with the Scottish Government and Parliament rather than with Westminster. While consumer protection (in its narrow sense) and consumer law could remain reserved, many of the key issues affecting consumers on a day to day basis are devolved. Even where they are reserved, they will often impact differently on consumers in Scotland than on those in other parts of the UK: the different legal system, institutional landscape, and delivery of devolved policy by the Scottish Parliament and Government must all be taken into account and reflected when representing the Scottish consumer voice.

19. As the full impact of the recession unfolds, its profound impact on the lives of consumers makes it all the more critical that the consumer voice is heard at strategic level in the Scottish Government and the Scottish Parliament. Going forward, it will be important to ensure that there is a strong, expert and accountable body that will speak for consumers of both public and private essential services in Scotland, whether devolved or reserved, and to act in their interests. The UK Government's proposals for change to the delivery of consumer advocacy are not based on a specific and in-depth appraisal of the situation in Scotland. There are clear gaps at present in the consumer advocacy arrangements for Scotland. There is, for example, a clear need to establish an effective voice for consumers of public transport, as the current arrangements for public transport advocacy in Scotland are crowded, fragmented and complex. There is also a need to establish an effective voice for consumers of broadcasting services in Scotland. The Communications Consumer Panel, which is part of Ofcom and which has a Panel Member for Scotland, is soon to be disbanded, leaving a significant gap in the consumer landscape.

(2) *Regulation issues*

21. Where markets are reserved, it is important that UK authorities and regulators take into account how those markets operate within the devolved context and to demonstrate that they are working effectively with the Scottish Government and relevant stakeholders to ensure that these markets are working for consumers in Scotland. It is also vital that issues of devolved policy that may arise as a result of regulatory or supplier activity are addressed in light of the UK legal and regulatory framework.

22. We welcome the fact that some UK regulators have established offices in Scotland in recent years, and have made considerable efforts to ensure that they feed back intelligence about what is happening in Scotland and engage constructively with the Scottish Government. We are concerned, however, that the current financial situation may lead to a reduction in resources for this important work.

23. In terms of how issues affect people's daily lives, no one policy area works in isolation from others. The Scotland Act 1998 recognised that cross-border authorities that are accountable to the UK Parliament would continue to be significant in the social and environmental life of Scotland. The Act provides that UK Ministers should consult Scottish Ministers before exercising certain functions in relation to cross-border public authorities,[15] and allows for their functions to be modified by Order in Council.[16] This is particularly important in light of the current Public Bodies Bill, which proposes wide-ranging powers for UK Ministers to change the functions of public bodies or abolish them without full parliamentary scrutiny. There is clear scope under the 1998 Act for the Scottish Government to put in train measures to increase the accountability of bodies such as UK regulators whose activities have a clear impact on issues devolved to the Scottish Parliament, and we would like to see this happen. The UK Parliament could also do more to recognise this impact when setting up or changing existing statutory bodies by routinely assessing this during the passage of every relevant bill.

[14] "Consumer education" broadly includes information and advice about matters falling within the definition of "consumer protection" in Schedule 5 of the Scotland Act 1998.
[15] Section 88
[16] Section 89

(3) *The post office network in Scotland*

24. The Scottish Government and Scottish Parliament currently have no direct responsibility for the post office network, despite its vital importance to social cohesion, access to services, and the sustainability of many local communities in Scotland. We believe that the Bill offers an ideal opportunity to address this issue, by giving the Scottish Government a clearer role in relation to the post office network in Scotland.

25. The post office network in Scotland needs to reform and modernise if it is to be sustainable, and to widen the range of services that it offers to customers. Increasing the number of Scottish local government services that are delivered through post offices could help secure a sustainable post office network and improve consumers' access to a range of important services. However, Scottish service providers need to be confident that post offices offer an attractive route through which they can deliver services to customers. At present they have very little scope to influence this situation.

26. Giving the Scottish Government a clearer remit in relation to the post office network would bring considerable benefits for consumers in Scotland. It would ensure that the vital role of the post office network is recognised, taken into account and developed within the overall strategies for public service delivery, social inclusion and economic development in Scotland. It would also give the Scottish Government a clear locus to intervene to ensure that forthcoming changes to the post office network, such as the roll out of the Post Office Locals model, take account of the particular interests of consumers in Scotland.

27. We are not arguing that responsibility for the post office network should be fully devolved to the Scottish Parliament. The network is a coherent UK-wide network, and post offices and consumers in Scotland clearly benefit from being part of this single network. The integrity of the network must be protected whatever solution is applied. However, we believe that giving the Scottish Government a clearer role in relation to the network would bring significant benefits for consumers in Scotland. It would also help to protect the integrity of the network by ensuring that key issues of particular importance to post office consumers in Scotland are fully recognised, taken into account and acted upon.

28. We have no set view on how this role for the Scottish Government in relation to the post office network might be achieved. Some policy areas where it may be worth investigating whether the Scottish Government might be given a role could include the post office access criteria in Scotland; the Scottish element of the post office subsidy; or the role of post offices and public service delivery. However, it is essential that a comprehensive impact analysis is carried out before any of these, or any other approaches are taken forward, to explore how any measure would work in practice and ensure that there would be no unintended or detrimental consequences for consumers in Scotland or in other parts of the UK.

January 2011

Written evidence submitted by the Royal Society for the Protection of Birds

Executive Summary

- RSPB Scotland is part of the RSPB; this submission has been prepared by RSPB Scotland based on their experience of working with the Scottish Parliament and Scottish Government. This submission is focussed on matters where policy is recommended to be further devolved or re-reserved where this has the potential to impact on environmental outcomes.
- The RSPB welcomes Clause 24, which presents the Scottish Government with an opportunity to develop and implement a comprehensive **"green tax policy"** to drive forward its environmental objectives. In the next Scottish Parliament, the successor Committee to the Rural Affairs and Environment Committee should therefore hold an inquiry into the opportunities to achieve environmental objectives from the operation of the Parliament's fiscal powers (including borrowing powers, Landfill Tax and other devolved taxes).
- If the **Landfill Tax** is devolved, Scottish Ministers should be encouraged to maintain or increase the current level of hypothecated taxation through Landfill Tax, and to retain the LCF model or equivalent as a crucial source of environmental funding but with greater flexibility in the allocation of funding to remote and rural projects.
- If **Stamp Duty** is devolved, the current model of implementation with regard to 100% relief from Stamp Duty Land Tax for charities needs to be retained.
- **Marine nature conservation** powers should ultimately be devolved. Such powers are not currently included in the Bill, and given the delayed implementation of the UK and and Scottish Marine Acts we see some justification for not devolving nature conservation powers at this time. However, if they remain absent from the Scotland Bill, there should be a review in the near future into how the two Marine Acts are working together with a view to future devolution.

Background

1. RSPB Scotland has extensive experience of working with colleagues across the UK and overseas, encompassing a wide range of constitutional arrangements. This experience together with our conservation and

environmental expertise leads us to conclude that the arrangements in themselves do not necessarily affect the quality of environmental outcomes. As a result, we do not have constitutional preferences and comment only where anomalies have arisen, or these issues impede the achievement of positive environmental outcomes.

2. This submission is focussed on matters where policy is recommended to be further devolved or re-reserved where this has the potential to impact on environmental outcomes. Our comments are therefore focussed on the devolution of Landfill Tax (including key considerations for implementation), Stamp Duty, further devolved taxes, and matters concerning the marine environment.

3. This submission follows previous contributions from Scottish Environment LINK to the Calman Commission on Devolution in the form of oral evidence given on 10 October 2008 by Lloyd Austin of RSPB Scotland, and written evidence submitted by RSPB Scotland to the Scotland Bill Committee at Holyrood on 14th January 2011.

Question: *What are the fiscal and financial implications of the provisions in the Bill for Scotland?*

Green tax opportunity: Clause 24 of the Scotland Bill

4. Clause 24 of the Scotland Bill allows for the creation of further devolved taxes. Parts 5.109 and 5.208 of the Calman Commission report refer to "green taxes" as an important policy lever in relation to environmental issues.

5. Implementation of Clause 24 could present the Scottish Government with an opportunity to develop and implement a comprehensive "green tax policy" to drive forward its environmental objectives, which would complement the devolution of other green taxes such as Landfill, and we see great potential for future Scottish Governments to use these powers.

6. We welcomed Calman's recognition that the Scottish Parliament could achieve more positive benefits for the environment with fiscal policy options, and we have recommended to the Scotland Bill Committee at Holyrood that the new powers under Clause 24 of the Bill be considered in this light.

7. We further recommended that, in the next Scottish Parliament, the successor Committee to the Rural Affairs and Environment Committee should find time to hold an inquiry into the opportunities to achieve environmental objectives from the operation of the Parliament's fiscal powers (including borrowing powers, Landfill Tax and other devolved taxes).

Landfill Tax

8. Taxing waste going to landfill encourages us to produce less waste while delivering positive environmental benefits. It is a good working example of a hypothecated or "ring-fenced" tax—it has compensated for an environmentally damaging activity by funding projects which improve the environment for the benefit of biodiversity and the communities who live near landfill sites.

9. In particular, allowing landfill operators to contribute towards environmental projects through the Landfill Community Fund (LCF) has enabled valuable biodiversity work to take place across Scotland and delivered many positive environmental outcomes (*Please refer to the Appendix to this document which contains short case studies of LCF-funded projects in Scotland).*

10. RSPB Scotland has recommended that if Landfill Tax is devolved, the Scottish Government should, at a minimum, strive to implement a similar scheme by allowing landfill operators to pay a percentage of their Landfill Tax into an LCF or similar.

11. In 2010/11 the potential value of credits available through the Landfill Community Fund, and therefore available for project applications, was £74.25 million (around £4 million in Scotland). For nature conservation organisations the LCF has therefore been a lifeline at a time when funding for the natural environment is being squeezed ever more tightly, and is one of the few remaining funding streams for biodiversity work.

12. Biodiversity objectives should be a priority of any similar hypothecated scheme in Scotland and need not infringe upon any community benefit, as healthy biodiversity in itself would deliver positive environmental outcomes for nearby communities. We would encourage Scottish Ministers to retain this model of implementation.

13. The existing UK-wide system of hypothecated taxation through the Landfill Tax has worked well. However, there are some issues which will need careful consideration if a devolved Landfill Tax is to function as effectively in delivering positive environmental outcomes, and we have advised the Scotland Bill Committee at Holyrood on these matters as follows:

— Will Landfill operators who currently work on a UK basis be restricted in where they can distribute their funds? Will such operators be prevented from distributing credit in Scotland? Failure to resolve this issue could result in a substantial reduction of funding available to suitable projects in Scotland.

— Current guidelines from ENTRUST, the regulator of the LCF, recommend that funding should be allocated to projects within 10 miles of a landfill site (although this guideline can be flexed slightly if the applicant can prove that there has been a significant disamenity to nearby communities). Though we do not advocate complete abolition of the "10 mile rule", we would like to see greater flexibility in how it is applied, particularly across the rural and remote parts of Scotland. In areas like the Central Belt or the South East of England, for example, a 10 mile stretch is likely to pass through many different communities, whereas 10 miles in any given direction in the Highlands and Islands is not likely to take you out of one community and into the next. Economies of scale means that landfill from many communities is often processed in a central location, and therefore it is reasonable that a project which would deliver significant biodiversity outcomes, and therefore a community benefit, should be eligible for funding regardless of distance from the landfill site. The dispersed nature of communities in the Highlands and Islands means that the way in which the LCF currently operates puts rural communities at a disadvantage. A devolved scheme could build in greater flexibility from the start, without severing the link between disamenity to communities near landfill sites and successful funding applications .

— Who will regulate a Scottish LCF or similar scheme? Will ENTRUST, the current UK regulator of the LCF, continue to regulate a new Scottish scheme, or will a new enforcing body be established? How will such a body be funded? Whilst we have no preference or recommendations either way, we reiterate the need for any new scheme in Scotland to be effective in delivering positive environmental outcomes as a compensation for the environmental "bad" caused by landfill sites. Such a scheme will require effective regulation by a competent body.

14. If the Landfill Tax is devolved, Scottish Ministers should be encouraged to maintain or increase the current level of hypothecated taxation through Landfill Tax, and to retain the LCF model or equivalent as a source of environmental funding but with greater flexibility in the allocation of funding to remote and rural projects. RSPB Scotland will be encouraging the current and future Scottish Governments to commit themselves to this approach if Landfill Tax is devolved.

Stamp Duty

15. We note the measures to devolve Stamp Duty and have no view on whether or not it should be devolved. However, as with Landfill Tax, we reiterate the need to retain the current model of implementation with regard to 100% relief from Stamp Duty Land Tax for charities.

Question: *Which of the recommendations of the Calman Commission on Scottish Devolution are not implemented by the Bill, and why?*

Marine powers

16. We note that there is no provision in the Bill to devolve marine nature conservation at this time. During the passage of the Marine (Scotland) Bill, RSPB Scotland supported the Scottish Environment Link position that marine nature conservation should be devolved, given the unique opportunity to do so at that time.

17. The Executive Devolution of marine nature conservation agreed by the UK and Scottish Governments has the potential to address environmental concerns previously outlined by RSPB Scotland and LINK, but both the UK and Scottish Marine Acts are still in the early stages of implementation. In light of this, we can see some justification for not devolving nature conservation powers at this time.

18. However, ultimately, we remain of the view that marine nature conservation powers should be legislatively devolved and, if it does not form part of this Scotland Bill, we look forward to a review in the near future into how the two Marine Acts are working together and would welcome the opportunity to participate in that debate.

19. If no devolution takes place under this Bill we advise that, in the course of the debate, both the UK and Scottish Governments need to commit to such a review by 2015.

January 2011

Written evidence submitted by Brian Wilson

CROWN ESTATE COMMISSIONERS

The Crown Estate Commissioners (CEC) administer and collect rents from a wide range of Crown property rights in Scotland including much of the foreshore and the seabed. They are unaccountable to anyone in the areas most affected by their activities—indeed, the assertion of such non-accountability is a remarkable feature of the Crown Estate Act of 1961—and they have for years been the focus of much justified criticism.

The Crown Estate played a crucial role, for example, in the evolution of the aquaculture industry in Scotland by making the initial decision to allocate rights over sea lochs to multinational companies, without consultation with local communities. This action shaped the way the industry developed and largely precluded the possibility

of smaller, more locally-controlled companies participating within it. The point is not, however, to muse over the "ifs" and "buts" of Scottish aquaculture but to make the point of principle that it is entirely wrong for an unelected, unaccountable body to have such control over a significant matter of public policy.

Since then, the Crown Estate has made some efforts to improve its consultation procedures; however, this merely ameliorates the source of complaint rather than removing it and there is plenty evidence that the Crown Estate's willingness to consult in any meaningful way ebbs and flows according to the personnel in situ at any given time. What they have never conceded is the RIGHT of affected communities to be involved in such decision-making or to benefit financially even where substantial royalties accrue.

There are numerous examples of how the Crown Estate has exercised its role within matters of economic development in a manner which is controversial and requires to be called to account. However, the most serious and urgent issue at present is the development of offshore renewable energy where there is a real and urgent danger that the interests of coastal communities will be marginalised or ignored. This is not something that should be stitched up between Government departments, either in Whitehall or Edinburgh, without a statutory need to take regard of the community interest.

At present, it is taken for granted that community benefit will flow from land-based renewable energy developments, particularly if the land on which they are built is community-owned (which is the case as far as more than half the land of the Western Isles is concerned). The waters surrounding these islands are touted as the best in Europe for future renewable energy developments. Yet it is perfectly feasible under current arrangements, whereby licensing of the seabed is in the hands of the Crown Estate, will go directly to the most adjacent communities even if these developments are ten or a hundred times the size of what is happening on land. This cannot be right, either in principle or practice.

Since the establishment of the Scottish Parliament, virtually all of the planning and environmental regulation of Crown property rights has been devolved. In addition, the property rights themselves are devolved and a wide range of Crown property rights are also already administered by the Scottish Government.

I have argued for many years that control of these resources should be in the hands of those whose livelihoods and community interests depend upon them. In this context, that means Local Authorities and local communities.

However, the unelected Crown Estate Commissioners stand in the way of such local decision-making and potential benefit by acting as gatekeepers and guardians to the Crown Estate. The Scotland Bill provides a rare legislative opportunity to take the first step in reforming the way the Crown Estate is administered by passing the responsibilities of the CEC to the Scottish Parliament. A debate can then be had as to how best to devolve these powers to local communities. For my own part, I should make clear that the objective should not be for devolution of these powers—or the revenues associated with them—to stop in Edinburgh, and I very much hope that if the Committee endorses the general sentiments of this submission, it should also be quite specific on that point. It is the proper recognition of coastal communities' role and interests that should be the objective; not the swelling of Holyrood's centralised coffers.

The Calman Commission made two recommendations for reform concerning a Scottish Crown Estate Commissioner and the exercise of the power of direction. Only one of these—the appointment of a Scottish Commissioner—is dealt with in the Bill. This is a wholly unsatisfactory solution—or avoidance of a solution—to a long standing issue and I would urge the Committee to consider ending the involvement of the CEC in the administration of Scotland's public Crown lands and in collecting the revenue that flows from them.

I therefore suggest that an amendment be considered either to the Crown Estate Act 1961 (to the effect that it does not apply to Scotland) in Section 18 of the Bill or to the Scotland Act 1998 to remove the reserved powers over the management of the Crown Estate contained in Schedule 5 paragraphs 2(3) and 3(3)(a).

January 2011

Written evidence submitted by the Scottish Islands Federation

SCOTLAND'S BILL, CLAUSE 1(8)

Regarding the proposals in the Bill relating to the Crown Estate Commissioners, and the modernisation and improvements of important public rights currently managed by the Crown Estate Commissioners in Scotland under the Crown Estate Act 1961, the Scottish Islands Federation would like to make a number of points as follows.

The Scottish Islands Federation feels it is appropriate and timely for the property rights that make up the Crown Estate in Scotland to be managed and administered in Scotland as part of an integrated and holistic approach to natural resource management in Scotland.

The Scottish Government is already deeply involved in the management of Crown property rights and, through Marine Scotland, has extensive powers over the marine environment in terms of planning and strategic management, powers that are increasingly relevant in view of the potential of the Scottish sea-bed for marine renewable energy.

Furthermore, the Scottish Islands Federation feels that this would also provide the trust ports and harbours in Scotland with full control of the seabed which they currently lack, thus giving them the ability to plan their own future.

The Scottish Parliament, 10 years after devolution, could thus have the responsibility for the management and revenues of *all* Scotland Crown property rights together under its jurisdiction, as well as protect the sea-bed as a resource for future generations.

The advantages for Scotland would be:

— The income generated by the Crown Estate in Scotland would remain in Scotland.

— The income derived from the Crown Estate in Scotland, or part of it, could be put into a national marine fund for Scotland to which groups could apply to for marine and coastal projects.

— A Scottish Crown Estate could have in built safeguard to prevent the gross overexploitation of the sea-bed by fishermen at present and extend current Marine Protected Areas if required.

— A devolved Scottish Crown Estate may also be in the position of acting on the urgent need for a three mile protected area all around Scotland, which is necessary for the regeneration of the sea-bed, as well as manage and police it.

— A Scottish Crown Estate would have all the associated records and systems that the present Crown Estate has in place to manage the Scottish marine reserves and would be closer and more accountable to local people in the areas concerned.

To that effect, the Scottish Islands Federation recommends dispensing with the current clause 1(8) in the Scotland Bill and replacing with the following:

"The Crown Estate Act of 1961" is amended as follows: After section 1(7), insert "Section 1(8) This Act does not apply to Scotland".

January 2011

Written evidence submitted by Scottish Financial Enterprise

Scottish Financial Enterprise represents Scotland's financial services industry. It is funded by its members, which are drawn from all sectors of the industry as well as from professional bodies, educational institutions and public sector interests. Common to all members is an interest in promoting and supporting the continued success of our industry in Scotland and around the world.

General Views on the Scotland Bill

As an industry we appreciate the fact that a lot of work has been carried out to reach this stage of the Scotland Bill. We welcome the fact that we have been asked to participate in the process.

Where powers sit within the UK constitution is a matter for voters and their elected representatives. It is the exercising of those powers, once allocated, that can affect the prospects for our industry's competitive position, its continued success and its continued contribution to Scotland's prosperity. We believe it is important to contribute to debates on how powers are used, since impacts can be judged and calculated; but debates on how they are distributed between different legislatures, we leave to others.

The objective for all governments, in an open economy like that of the UK, should be to help create the conditions to improve the competitiveness of financial services. It follows that we would always be concerned by any policy proposals that may bring additional cost to our industry and thereby undermine our competitiveness within the UK and internationally; or make it more difficult to serve a customer base drawn from the whole of the UK**.** These will be the touchstones for our examination of proposals to exercise tax powers, at all levels of government.

Content of the Bill

We think it would be valuable to clarify the scope and meaning of the Bill in a number of areas.

The new section 80B of the Scotland Act, provided for in section 24 of the draft Bill, appears quite widely drawn. It seems to allow Her Majesty, by the passage of an Order in Council, to add any kind of tax ("a tax of any description") to the list of devolved taxes (and thereby devolve them). It also appears to provide for her to make any other changes she sees fit, to any other enactment, in accordance with what She (or Her Government, in practice), considers "necessary or expedient".

This very broad power appears to allow any tax to be devolved, at any time, by the relatively discreet mechanism of an Order in Council.

It also seems to open up the possibility not only of taxes being introduced in Scotland that do not apply at all in the rest of the UK (as recommended by the Calman Commission) but also additional taxes on activities or incomes already taxed at UK level.

These proposals therefore seem, to the inexpert reader, to go further than those of the Calman Commission as generally understood. While we have no view on where taxation powers are assigned within a constitutional framework, for the reasons outlined above, we think it is important that the extent of the changes introduced by the Bill are clear and understandable, not least for reasons of accountability and transparency. We therefore invite the Committee to explore the precise scope of these powers in more detail.

It is also very important, in our view, that HMRC should be responsible for identifying and tracking Scottish Income Taxpayers, in so far as that is made necessary by the provisions in the Bill. They are best placed to do this. The Association of British Insurers make this point clearly in their submission, which we fully support.

Conclusion

The UK, and Scotland in particular, needs to grow its economy. Private businesses will lead that growth; but government policy, at all levels, should not only encourage the retention of existing businesses but also the attraction and support of new ones.

February 2011

Written evidence submitted by the Scottish Federation of Housing Associations (SFHA)

1. Introduction

1.1 As the representative body for housing associations and housing co-operatives in Scotland, the Scottish Federation of Housing Associations (SFHA) welcomes the opportunity to respond to the Scottish Affairs Committee's call for evidence on the Scotland Bill, as introduced into the Westminster Parliament on 30 November 2010.

1.2 Housing associations and housing co-operatives in Scotland that are registered under the Housing (Scotland) Act 2001 are classified by the Act as Registered Social Landlords (RSLs). They own and manage 47% of the country's affordable rented housing stock. This represents 279,144 homes across Scotland. This is concentrated in some of the poorest communities in our country.

1.3 The SFHA has confined its evidence to the clauses relating to insolvency and land taxation. We comment in passing upon the absence of clauses relating to the Calman Commission's recommendation in respect of Housing Benefit.

2. Clause 12—Insolvency

2.1 The SFHA is opposed in the strongest possible terms to the provision contained within clause 12 of the Scotland Bill which serves to re-reserve to Westminster responsibility for legislation relating to the insolvency of social landlords in Scotland.[17]

2.2 Housing is a devolved matter and there are no proposals to change this, which is as it should be. The devolved powers enable the Scottish Parliament to legislate on all aspects of housing policy, such as land, tenancies, leases and regulation, including regulation of social housing (an integral part of which is the regulatory regime for addressing the risk of insolvency among RSLs).

2.3 Housing associations and co-operatives make a significant contribution to Scotland's social housing system. They are not for profit organisations and are accountable to their members. Their constitutional forms range from charities, companies limited by guarantee and Industrial and Provident Societies. They have been subject to regulation since the 1970's, currently by the Scottish Housing Regulator (SHR). The sector is strong and there have been no cases of RSL insolvency in the past 40 years. However, we must not be complacent given the economic and financial environment in which RSLs now operate. Consequently, there needs to be a provision so that a regulatory authority can deal appropriately and timeously should any cases of potential insolvency arise in the future. Also, in line with the position since 2001, the Scottish Parliament needs to be able to legislate in respect of that authority in light of changing circumstances in Scotland.

2.4 In 2001, by virtue of an amendment to the Scotland Act 1998, responsibility for legislation relating to the insolvency of social landlords in Scotland was devolved to the Scottish Parliament. The amendment order was agreed unanimously in the Scottish Parliament and passed by Westminster.

2.5 This amendment has enabled the 2001 Housing (Scotland) Act and, more recently, the 2010 Housing (Scotland) Act to address the potential insolvency of Registered Social Landlords (RSLs). The Housing (Scotland) Act 2010 established the Scottish Housing Regulator as an independent body to safeguard tenants' interests and to regulate the financial well-being and governance of RSLs. The 2010 Act gave the SHR similar powers as existed in the 2001 Act, but added some additional powers to allow the SHR to act quickly where an RSL is facing insolvency, in so doing safeguarding the interests of tenants.

[17] Part 1, clause 12 of the Scotland Bill, which seeks to amend Part 2 of Schedule 5 to the 1998 Act, section C2 (specific reservations: insolvency)

2.6 The SFHA's view is that it is of paramount importance that the power to legislate over any changes to the existing powers of the SHR, including that relating to the winding up of RSLs, should remain with the Scottish Parliament. This means that the Scottish Parliament can act timeously where any new powers relating to the winding up of RSLs are deemed to be necessary, or to revise the 2010 Act powers should there be a need to do so in the future. Depriving the Scottish Parliament of these powers would mean that it would no longer be possible for it to legislate holistically on matters affecting the financial health of RSLs. Instead, responsibility would be split, with Westminster being responsible for one crucial aspect of regulation. We see no benefits in fragmenting responsibility in this way. But we do see risks:

— of delay where speedy action might be required, given the Scottish Parliament's greater capacity to respond quickly to specifically Scottish problems; and

— of the current Scottish system losing its coherence over time in light of Westminster legislating on a UK basis (that inevitably would be skewed towards the circumstances of the RSL sector in England, which would not necessarily be the same as those for RSLs in Scotland).

2.7 Consequently, the SFHA wants the existing exemption for the winding up of RSLs to be confirmed in the forthcoming Scotland Act, or for proposals to reserve the powers to do so to be removed from the Scotland Bill.

3. Land Taxation

3.1 The SFHA welcomes the proposal in clause 29 to disapply Stamp Duty Land Tax in Scotland and in clause 28 to allow the Scottish Parliament to agree its own arrangements for taxation on transactions relating to land.[18] The SFHA looks forward to contributing to these discussions with the Scottish Government.

4. Housing Benefit

4.1 The SFHA lobbied the Calman Commission in September 2008[19] and February 2009[20] about the potential to devolve Housing Benefit and other welfare benefits to the Scottish Parliament. The recommendation in the Commission's Final Report was:

> "There should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing Benefit and Council Tax Benefit systems (as they apply in Scotland) when these are connected to devolved policy changes, and for the UK Government—if it agrees -to make those changes by suitable regulation." (Recommendation 5.19)[21]

4.2 The UK Government, despite earlier indications to the SFHA and others from the Secretary of State for Scotland about the intentions to implement Calman's recommendations in full, has since decided that its own proposals for Welfare Reform, specifically Universal Credit, will address the earlier concerns raised with the Calman Commission in respect of this issue.

4.3 The SFHA remains to be convinced that the new Universal Credit will address the hurdles to joined-up housing and social policy in Scotland that we highlighted to the Commission. We are therefore disappointed that Calman is not being implemented in full as originally envisaged.

4.4 Should there be a change to the decision not to include Housing Benefit in the Scotland Bill, the SFHA would wish to make a fuller submission.

January 2011

Written evidence submitted by Calum MacDonald

Executive Summary

1. The Calman Commission's recommendation that the Secretary of State should more actively exercise his powers of direction over the Crown Estate Commissioners in consultation with Scottish Ministers, needs to be included in the Scotland Bill in order to answer long-standing concern about the lack of accountability in Scotland of the Commissioners. I propose an amendment to Clause 18 of the Bill which would give effect to that Calman Commission recommendation by requiring the Secretary of State to exercise his powers of direction after consultation with Scottish Ministers and a National Committee for Scotland. This would enable the Crown Estate Commissioners to become more accountable to Scottish interests, along similar lines to the Forestry Commissioners in Scotland, while retaining their status as a reserved body.

[18] Part 2, clauses 28 and 29 of Scotland Bill
[19] SFHA Evidence to the Commission on Scottish Devolution's first phase of consultation, September 2008
[20] SFHA Evidence to the Commission on Scottish Devolution's second phase of consultation, February 2009
[21] Commission on Scottish Devolution's Final Report, p. 201, recommendation 5.19

INTRODUCTION

2. This submission only comments on Section 18 of the Scotland Bill, which is the section that deals with the Commission for Scottish Devolution's recommendations for the management of the Crown Estate in Scotland.[22]

3. The Crown Estate in Scotland consists of the Scottish Crown property, rights and interests that are managed by the Crown Estate Commissioners (CEC) under the Crown Estate Act 1961, as part of the UK wide Crown Estate managed by the CEC.

4. The operations of the CEC in Scotland have long been an issue and the Calman Commission noted in their report that, in addition to the submissions they received, concerns over this issue were frequently raised at their public engagement events.

5. As MP for the Western Isles from 1987 to 2005, I was aware of the deep disaffection amongst my constituents and in communities elsewhere on the West Coast of Scotland about the CEC's management of the Crown Estate. At the heart of all the complaints was a perceived lack of accountability. In particular, it proved impossible to identify any Minister who was willing to take active responsibility for overseeing the CEC in Scotland (although, technically, it was within the Secretary of State's remit). This lack of practical and effective accountability has been exacerbated by developments since devolution.

6. I was also a Scottish Commissioner on the Board of the Forestry Commissioners (FC) from 2006 to 2009 and Chairman of the National Committee for the Forestry Commissioners in Scotland. The FC's response to devolution has been exemplary by comparison with that of the CEC and holds relevant lessons for the implementation of the Calman Commission's recommendations.

7. The FC and CEC are two bodies with similar roles as guardians of the national land estate. In fact, both bodies emerged in the twentieth century from the same predecessor, the Commissioners of Woods and Forests. The Commissioners of Woods and Forests transferred 100,000 acres to the Forestry Commission when it was set up in 1919 and, having thus lost responsibility for the national forests, were renamed the Commissioners of Crown Lands.[23] Up to the 1950s, the Secretary of State for Scotland was both the Commissioner of Crown Lands in Scotland and the Minister responsible for the FC. When the CEC was set up to succeed the Commissioners of Crown Lands in 1956, that direct Ministerial role was replaced by a Board of Commissioners explicitly modelled on the FC. Bits of the national estate have since been swopped between the two bodies, emphasising their similarity of purpose as administrators of the national land estate.

8. The FC and CEC are both statutory corporations and, while the terminology differs, in that one manages the "National Forest Estate" and one manages "Crown land", the origins of the estate is the same and the CEC, like the FC, is "a public body charged with managing public resources for public benefits".[24]

9. Both have been retained as reserved bodies. In fact, the GB Headquarters of the Forestry Commission is in Edinburgh and a major GB Forest Research centre is based in Roslin, Midlothian. Although both bodies are reserved, both the FC and the CEC have to manage the public assets owned in Scotland under Scots law. However, while detailed provision was put in place at the time of devolution to enable the FC to work directly with Scottish Ministers, no equivalent arrangement has yet been put in place for the CEC.

10. The three key innovations which facilitated the new FC settlement after devolution were:

(a) that two Forestry Commissioners for Scotland were to be appointed by the Secretary of State in Westminster after consultation with Scottish Ministers—a provision closely akin to that now contained in Clause 18 of the present bill;

(b) that the two Scottish Commissioners were to be supported by a National Committee for Scotland whose members would be appointed by Scottish Ministers and which would be chaired by one of the Scottish Commissioners—see my recommendation in paragraph 14 below; and

(c) that the funding of most of the FC's operations in Scotland would be via the bloc grant allocated to the Scottish Parliament—this goes beyond the recommendations in the Calman report so will not be considered further here.

11. These innovations contrast markedly with the steps adopted by the CEC in the period after devolution, when they dropped the tradition of having a specifically Scottish Commissioner who was not the Chair, ceased to manage the Crown Estate in Scotland as a distinct unit of the Crown Estate with its own manager and accounts, and folded their activities in Scotland into those in the rest of the UK.

12. I believe that there is an opportunity in the present Bill to put the Calman recommendations into greater effect by adapting the second of the innovations described in paragraph 10 above. This would go a very significant way towards addressing the current lack of accountability of the CEC in Scotland while retaining the reserved status of the CEC as recommended by Calman Commission.

[22] Report of the Commission on Scottish Devolution (2009)
[23] Crown Estate Review Working Group "The Crown Estate in Scotland" (2007) Annex 5
[24] House of Commons Treasury Committee "The management of the Crown Estate" (2010) page 2, paragraph 10

Question 1: *Which of the recommendations of the Calman Commission on Scottish Devolution are not implemented by the Bill and why? (Q.1)*

13. The Bill as drafted does not adequately reflect the recommendation that: "The Secretary of State for Scotland should, in consultation with Scottish Ministers, more actively exercise his existing powers of direction and, having consulted Scottish Ministers, should give consideration to whether such direction is required immediately."

14. The Bill should reflect this recommendation by the addition of a clause as follows: "a) The Secretary of State will exercise his powers of direction after consultation with Scottish Ministers; b) The Secretary of State will appoint a National Committee of Scotland in consultation with Scottish Ministers to advise on the exercise of these powers; c) the Scottish Commissioner will chair the National Committee of Scotland."

15. This change would give proper effect to the Calman recommendation about the more active exercise of the Secretary's powers of direction, by providing the Secretary of State with independent advice from within Scotland about the operations of the CEC, as well as providing for appropriate consultation with Scottish Ministers.

16. The change would promote the active engagement of Scottish interests through the appointment of appropriate stakeholders to the Advisory Committee; it would enhance accountability to the Scottish Parliament through the requirement of consultation with Scottish Ministers; while at the same time it would retain the full status of the CEC as a reserved body as recommended by Calman.

17. It would also bring the administration of the estate in Scotland presently under the management of the CEC more closely into alignment with the national estate that is under the management of FC, and thus lead to a more coherent, transparent and accountable administration of the national estate as a whole in Scotland.

Question 3: *What are the fiscal and financial implications of the provisions in the Bill for Scotland?*

18. My recommended amendment to the Bill would have a very small financial implication for Scotland. The costs of three appointed members of the National Committee attending five or six meetings a year should total less than £25,000 per annum. This cost should be shared between the CEC and Scottish Ministers, as should the task of providing the secretariat for the National Committee.

February 2011

Written evidence submitted by the Rail & Maritime Transport Union (RMT)

THE SCOTTISH GOVERNMENT'S POWERS OVER THE PROVISION OF SCOTTISH RAIL PASSENGER SERVICES

Currently under the terms of the 2005 Railways Act the Scottish Government has the power to plan, specify, let, manage and finance Scottish passenger services which begin and end in Scottish borders.

> This means that essentially the Scottish Government has almost complete freedom over the provision of such services but with one important exception. According to the answer by the Scottish Executive to Elaine Smith MSP below under the terms of the 1993 Railways Act (which was not changed by the 2005 Act) the Scottish Government or its entities such as Transport Scotland do not have the power to directly run the Scottish Passengers Services. That is to say they **must** put such services out to tender.
>
> > 16 November 2010
> >
> > **Elaine Smith (Coatbridge and Chryston) (Lab):**
> >
> > To ask the Scottish Executive, further to the answer to question S3W-35775 by Stewart Stevenson on 13 September 2010, whether it will specify which clauses of the Railways Act 1993 prevent Transport Scotland from directly and permanently operating ScotRail services once the current franchise expires.
> > (S3W-37013)
> >
> > **Mr Stewart Stevenson:**
> >
> > Section 25 of the Railways Act 1993 prevents a range of public bodies, including Scottish Ministers and their Executive Agency Transport Scotland, from being the franchisee of the Scotrail services, which are services designated under section 23(1) of the Railways Act 1993 as services to be provided under a franchise agreement.
> > SCOTTISH EXECUTIVE

It is worth quoting the relevant passage of the above answer to emphasize how restrictive this legislation is:

> "the Railways Act 1993 prevents a range of public bodies, including Scottish Ministers and their Executive Agency Transport Scotland, from being the franchisee of the Scotrail services."

That is to say that an Act of Parliament that is almost 20 years old dictates that the Scottish **Government must put Scotrail passenger services out to tender whether it wants to or not.**

The Scotland Act 1998 makes the provision and regulation of rail passenger services a reserved matter. The Scotland Bill currently running through the Westminster Parliament deals with devolving further powers to the Scottish Parliament. RMT understands that it is competent to amend the Bill so as to supersede the Railways Act 1993 and the Scotland Act 1998 which would provide the Scottish Government with the flexibility to decide whether it should be required to tender rail passenger services.

The issue is not what form of ownership (ie run by the Scottish government or a franchise) there should be of passenger rail services that begin or end in Scotland but whether the Scottish Government should be required to tender such services passenger services. In this respect support for such an amendment to the Scotland Bill is simply a "tidying up" exercise from rail powers devolved in the 2005 Act.

Perhaps another useful way of looking at the issue is that as the Scottish Government is responsible for the provision of Health and Education services it is appropriate that it should also decide whether to tender these services. As the Scottish Government under the terms of the 2005 Railways Act is now responsible for planning, specifying, letting, managing and financing Scottish passenger services which begin and end in Scottish borders then it should also be a matter for the Scottish Government to determine whether those services should be put out to tender or not.

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