



House of Commons  
Political and Constitutional  
Reform Committee

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# Constitutional implications of the Government's draft Scotland clauses

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**Ninth Report of Session 2014–15**

*Report, together with formal minutes relating  
to the report*

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## Summary

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During the Scottish independence referendum campaign, political commitments were made which led, after the “No” vote, to the convening of the Smith Commission, the purpose of which was to facilitate an agreement for further devolution of powers to the Scottish Parliament. Draft clauses were published by the Government in response to the Smith Commission’s report. We have reviewed those draft clauses which concern political and constitutional reform (draft clauses 1 to 9).

While we acknowledge the political reasons for swift publication of the clauses, we are concerned this seems to have been at the expense of broader consideration of the consequences for the future of the UK. We are disappointed there has been no attempt to provide for full pre-legislative scrutiny of the clauses by this Parliament. We call upon the incoming administration to recognise, and consult upon, the consequences for all parts of the UK when introducing legislation to implement the Smith Commission Agreement and other proposals on constitutional reform affecting the Union.

We further recommend that the Government establish a mechanism for considering the effects of proposed devolution settlements in the round, together with the trends towards decentralisation in England, to ensure that change strengthens the Union.

We also recommend that the Wales Office take account of our conclusions and recommendations when preparing legislation to give effect to the Government’s proposals for further devolution to Wales.

Draft clause 1 claims to affirm the permanence of the Scottish Parliament. We consider the Scottish Parliament permanent and its abolition inconceivable. We do not think draft clause 1 weakens this fact. While the legal claims made in the clause could be misunderstood, it could provide a further political obstacle to attempted abolition. We explored possible mechanisms for entrenchment of the Scottish institutions, but do not recommend redrafting to incorporate such mechanisms. We do note that the policy aim could be achieved more effectively by codification of the UK’s constitution.

We consider that draft clause 2 does not give the Sewel Convention the force of statute, but may strengthen the Convention politically. We believe it fails to acknowledge that the Convention extends to legislation affecting the competences of the devolved institutions. We recommend that the presence of the word “normally” in the Sewel Convention, and the applicability of the Convention to legislation affecting the competences of the devolved institutions, be addressed in any redrafting of draft clause 2.

We find draft clauses 3 to 9 to be largely uncontroversial, save that the drafting of clause 3 is unhelpfully impenetrable. We recommend that: the drafting of clause 3, in particular, be reconsidered; the cost of the Electoral Commission’s functions in relation to Scottish Parliament elections be considered; and consideration be given to some additional safeguard for ensuring that changes to Scottish Parliament electoral boundaries must have broad cross-party support.

# Introduction

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## Background to the inquiry

### *The Scottish referendum and “The Vow”*

1. On 18 September 2014 a referendum was held in Scotland on the question “Should Scotland be an independent country?” A total of 3,619,915 valid votes were cast: 1,617,989 for “Yes” and 2,001,926 for “No”. The margin of victory for “No” was 10.6% (55.3% to 44.7%).<sup>1</sup>

2. During the final days of the referendum campaign the leaders of the three major UK pro-union parties made a combined pledge to the Scottish electorate that further powers would be devolved to the Scottish Parliament and Government in the event of a “No” vote. This pledge, which came to be known as “The Vow”, was published in a Scottish national newspaper on 16 September 2014.<sup>2</sup>

3. The Labour, Liberal Democrat and Conservative parties in Scotland had all examined the prospects for further devolution in policy commissions and had each previously published their proposals for further transfers of power to Holyrood.<sup>3</sup> The Vow in effect committed the parties to working together to an agreed timetable to agree proposals for further devolution in the event of a “No” vote.

4. To reinforce the commitments in The Vow, the Prime Minister, the Deputy Prime Minister, the Leader of the Opposition, Rt Hon Alistair Darling, leader of the Better Together campaign, and the former Prime Minister Rt Hon Gordon Brown MP tabled the following motion:

That this House welcomes the result of the Scottish independence referendum and the decision of the people of Scotland to remain part of the United Kingdom; recognises that people across Scotland voted for a Union based on the pooling and sharing of resources and for the continuation of devolution inside the United Kingdom; notes the statement by the Prime Minister, Deputy Prime Minister and Leader of the Opposition regarding the guarantee of and timetable for further devolution to Scotland; calls on the Government to lay before Parliament a Command Paper including the proposals of all three UK political parties by 30 October and to consult widely with the Scottish people, civic Scotland and the Scottish Parliament on these proposals; and further calls on the Government to publish heads of

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1 Figures provided by the Electoral Management Board for Scotland at [www.electionscotland.info](http://www.electionscotland.info).

2 “The Vow”, *The Daily Record*, 16 September 2014

3 Scottish Conservatives, *Commission on the Future Governance of Scotland*, May 2014; Scottish Liberal Democrats: *Federalism: the best future for Scotland*, October 2012; Scottish Labour Party, *Powers for a purpose – Strengthening Accountability and Empowering People*, March 2014

agreement by the end of November and draft clauses for the new Scotland Bill by the end of January 2015.

Though issues of devolution after the referendum have been debated in Government and backbench time, as well as on the adjournment, on a number of occasions since the result of the Scottish referendum, this motion has not been put before the House for debate.

### ***The Smith Commission***

5. Following the “No” vote in the referendum, the Prime Minister invited Lord Smith of Kelvin to convene a commission (known as the Smith Commission). Lord Smith was given the following remit:

To convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce, by 30 November 2014, Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. This process will be informed by a Command Paper, to be published by 31 October and will result in the publication of draft clauses by 25 January. The recommendations will deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.<sup>4</sup>

6. The Government’s Command Paper, summarising the policy proposals already published by the three pro-union parties, was issued on 13 October 2014.<sup>5</sup> It also made reference to the proposals of the Scottish Government, endorsed by the Scottish National Party, and of the Scottish Green Party—both of which parties had agreed to participate in the Smith Commission process.

7. Lord Smith’s Commission completed its work and published the Smith Commission Agreement, giving heads of agreement on the further powers to be devolved, on 27 November 2014. This was intended to embody a brokered position on which draft legislation could be based.

8. Lord Smith argued in his foreword to the Agreement that the new powers recommended by the Commission would make devolution “more responsive, durable and stable”. He claimed that enhanced powers would strengthen the Scottish Parliament’s ability “to pursue its own vision, goals and objectives,” and would be accompanied by greater responsibility and accountability.<sup>6</sup>

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4 [www.smith-commission.scot/about/](http://www.smith-commission.scot/about/)

5 Scotland Office, *The parties’ published proposals on further devolution for Scotland*, Cm 8946, October 2014

6 [Report of the Smith Commission for the future devolution of powers to the Scottish Parliament](#), November 2014, p 4

9. The Agreement comprised three pillars, the first of which was “providing a durable but responsive constitutional settlement for the governance of Scotland”.<sup>7</sup> The constitutional aspects of the Agreement were as follows:

- UK legislation to state that the Scottish Parliament and Government are permanent institutions;<sup>8</sup>
- a statutory footing for the Sewel Convention,<sup>9</sup> under which the UK Government does not normally invite Parliament to legislate on Scottish devolved matters without the consent of the Scottish Parliament;
- devolution of all powers over elections to the Scottish Parliament and local authorities<sup>10</sup>—subject to a requirement for the Scottish Parliament to vote in favour of any changes to its franchise and electoral system by a “super-majority” of at least two-thirds of the Parliament;<sup>11</sup>
- devolution of relevant powers in sufficient time to allow the Scottish Parliament to extend the franchise to 16- and 17-year-olds for the 2016 Scottish Parliament elections;<sup>12</sup> and
- devolution of all powers over the arrangements and operations of the Scottish Parliament and Government, including:
  - powers over the overall number of Members of the Scottish Parliament or the number of constituency and list MSPs (subject to a super-majority requirement);<sup>13</sup> and
  - powers over the disqualification of MSPs from membership and the circumstances in which a sitting MSP can be removed.<sup>14</sup>

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7 *Ibid.*, para 16

8 *Ibid.*, para 21

9 *Ibid.*, para 22

10 *Ibid.*, para 23

11 *Ibid.*, para 27

12 *Ibid.*, para 25

13 *Ibid.*, para 27

14 *Ibid.*, para 26



### ***The draft Bill clauses and the legislative timetable***

10. On 22 January 2015 the Government published a further Command Paper which set out its policy on implementing the Smith Commission Agreement and which contained draft clauses to show how the measures included in the Agreement “would look in law”.<sup>15</sup> Part 1 of the draft clauses (clauses 1–9) relates to the Smith Commission Agreement’s Pillar 1.

11. The Government has acknowledged that “further work will be required so that the clauses are ready for introduction into Parliament in a Scotland Bill. [This work] will include the production of the usual documents and material that accompany a Bill on introduction.”<sup>16</sup>

12. The draft clauses, taken together, represent a major change to the United Kingdom’s constitutional arrangements: they provide for very substantial devolution of powers over income tax and welfare to the Scottish Parliament, assignment to the Scottish Government’s budget of the first ten percentage points of all VAT raised in Scotland, a wholesale revision of the fiscal framework for Scotland within the UK, and new borrowing powers for the Scottish Government. As the Secretary of State for Scotland put it in his foreword to the Command Paper: “The Scottish Parliament will have one of the most extensive arrays of tax and spending powers of any devolved parliament in the developed world. The devolution of powers relating to disability and housing payments—and the ability to create new welfare payments—will deliver a Scottish welfare system with a starting value of around £2.5 billion a year.”<sup>17</sup>

13. The Government made no specific provision for pre-legislative scrutiny of these clauses by parliamentary committees, nor has there been sufficient time for a thorough examination in Parliament of the implications of the Smith Commission proposals for the future shape of the United Kingdom. Once the outcome of the referendum result was known, we undertook an inquiry into the future of devolution in the UK, though it has been beyond the scope of that inquiry, given the time available at the end of the Parliament, to consider the full consequences for the UK of the detailed proposals made for further devolution to the Scottish institutions. As far as we are aware there has been no examination of the overall consequences for the UK constitution of the implementation of the Smith Commission Agreement, and no process—apart from the consideration of legislation—for the UK Parliament to assess the overall effect of the proposals on the Union.

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15 Scotland Office, *Scotland in the United Kingdom: An enduring settlement*, Cm 8990, January 2015, p 11

16 *Ibid.*, pp 11–2

17 *Ibid.*, pp 7–8

14. The Scotland Office has established a stakeholder group, and the Secretary of State has announced that “the Government will seek to bring together a wide forum of stakeholders to ensure that the clauses are given full consideration ahead of introduction.”<sup>18</sup> The Government intends that a Bill to give effect to the Smith Commission Agreement should be introduced very early in the new Parliament: the Parliamentary Under-Secretary of State for Scotland, Rt Hon David Mundell MP, told us that the legislation “will be brought forward regardless of who is in Government after the general election”.<sup>19</sup>

**15. Given the urgency which the Government has attached to the legislation for further devolution to the Scottish Parliament, and the commitments already made to the people of Scotland, we must assume that there will be no opportunity for the new Parliament to undertake pre-legislative scrutiny of its proposed provisions. While we welcome the Government’s commitment to give the draft Scotland clauses some measure of consideration ahead of their introduction in such a Bill, we find it disappointing that no attempt has been made to provide for full and formal pre-legislative scrutiny of the clauses by this Parliament before its dissolution.**

**16. The draft clauses will have significant consequences for the future of the United Kingdom. While we acknowledge the political imperatives which led the UK pro-Union parties to make commitments for further devolution to a swift timetable, we are concerned that this seems to have been at the expense of broader consideration of the implications of these commitments for the future of the UK. Parliament’s first significant engagement with these proposals will be when they are introduced as a Scotland Bill. It is not clear to us that the legislative process is the most effective means for Parliament to consider the future shape of the Union.**

## **Our inquiry**

17. We resolved to undertake pre-legislative scrutiny of the draft clauses which concern issues of political and constitutional reform. Our colleagues on departmental select committees have similarly been examining aspects of the draft clauses relevant to their respective remits. We announced the inquiry on 22 January 2015, the day the draft clauses were published, and invited interested parties to consider the following questions:

- Are the proposals of the Smith Commission and the UK Government in respect of the constitutional arrangements for further devolution to Scotland, as set out in the draft clauses, sound? If not, how could the draft clauses be improved?
- Do the provisions of the draft clauses deliver the policy intentions of the Smith Commission and UK Government? Could the wording of the draft clauses be improved or changed?

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18 Scotland Office, *Scotland in the United Kingdom: An enduring settlement*, Cm 8990, January 2015, para 9.4.5

19 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q539

18. Oral evidence relevant to the inquiry was taken in three sessions,<sup>20</sup> and we received twelve memoranda. The witnesses from whom we took oral evidence are listed at page 40 and the memoranda received are listed at page 41. We are very grateful to all those who gave oral and written evidence to our inquiry.

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20 In addition to two oral evidence sessions specifically relating to the constitutional implications of the draft Scotland clauses, the witnesses for which are listed at page 40, the Committee also questioned government ministers about the draft clauses in an oral evidence session relating to the Committee's broader inquiry on the future of devolution after the referendum (Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q539). At this session the Committee took evidence from Rt. Hon Greg Clark MP, Minister of State for Universities, Science and Cities, Cabinet Office, Rt Hon David Mundell MP, Parliamentary Under-Secretary of State for Scotland, and Baroness Randerson, Parliamentary Under-Secretary of State for Wales.

# 1 Permanence of the devolved institutions (clause 1)

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## Policy

19. As the Scotland Office told us: “there has never been any question in the past 16 years that the Scottish Parliament and Scottish Government are anything other than permanent”.<sup>21</sup> Nevertheless, in the light of the referendum campaign and the undertakings made in The Vow, the permanence of the Scottish institutions has now become an issue to be addressed as part of the proposed new constitutional settlement.

20. The Vow opened with a declaration of the permanence of the Scottish Parliament:

The Scottish Parliament is permanent and extensive new powers for the Parliament will be delivered [...]<sup>22</sup>

This declaratory statement that the Parliament is permanent does not presently have any foundation in law. The Scotland Act 1998 (“the 1998 Act”) states that “there shall be a Scottish Parliament” but does not provide that the institution shall be a permanent feature of the United Kingdom’s constitutional framework.<sup>23</sup> Nor does the 1998 Act set out any special procedures or grounds under which the Parliament could be dissolved or abolished. The Vow’s statement that the Scottish Parliament “is permanent” must therefore have been intended as a political claim rather than a legal one.

21. It is therefore unsurprising that the Smith Commission Agreement put the issue of the permanence of the devolved institutions at the centre of the proposed new constitutional settlement, with the first draft clause focusing on the permanence of the Scottish Parliament. We examine below whether draft clause 1 can effectively implement the terms of the Smith Commission Agreement.

## Implementation

### *Drafting issues*

22. The Smith Commission Agreement contains two statements about the proposed permanence of the Scottish Parliament which are potentially contradictory. In Lord Smith’s foreword to the report he proposes that the Scottish Parliament “will be **made** permanent in UK legislation”.<sup>24</sup> In the main body of the report, however, it is proposed that “UK legislation will **state** that the Scottish Parliament and Scottish Government are

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21 Scotland Office ([DSB 05](#))

22 “The Vow”, *The Daily Record*, 16 September 2014

23 Scotland Act 1998, [section 1](#)

24 [Report of the Smith Commission for the future devolution of powers to the Scottish Parliament](#), November 2014, p 5 (emphasis added)

permanent institutions.”<sup>25</sup> The Smith Commission Agreement does not, therefore, provide unambiguous guidance on what the parties to the Agreement want legislation to achieve with regard to the permanence of the devolved Scottish institutions.<sup>26</sup>

23. Draft clause 1 attempts to implement this aspect of the Smith Commission Agreement by adding a new subsection (1A) to section 1 of the Scotland Act 1998. Under the proposal the 1998 Act, as amended, would begin thus:

(1) There shall be a Scottish Parliament.

(1A) A Scottish Parliament is recognised as a permanent part of the United Kingdom’s constitutional arrangements.

24. Dr Mark Elliott, Reader in Constitutional Law at the University of Cambridge, argued in his written evidence that draft clause 1 does not actually **state** that the institutions are permanent much less **make** them so.<sup>27</sup> It does not, after all, simply state that the Scottish Parliament **is** permanent but rather that it is “recognised” as such. Professor Tom Mullen of the University of Glasgow, Professor Aileen McHarg of Strathclyde University and the Law Society of Scotland all argued to the committee that the difference is of legal significance.<sup>28</sup> They contended that the clause as drafted appears not to offer a prescription that is identifiably the will of Parliament but merely sets out a statement of fact: it is not what lawyers call a “normative statement” and it is thus incapable of having legal effect. As Professor Mullen put it in his written evidence: “the use of the phrase ‘is recognised’ seems more appropriate for a statement of fact. It is not clear, therefore, whether a court would treat it as a normative statement capable of being given legal effect.”<sup>29</sup>

25. The Scotland Office has nevertheless insisted that:

The recommendation that UK legislation state that the Scottish Parliament and the Scottish Government are permanent institutions has been delivered by the draft clause. The clause does not replicate exactly the language used in the foreword or the recommendation [in the Smith Commission report]; that is because the Smith Commission Agreement contains “heads of agreement” or a set of agreed recommendations and does not purport to be detailed legal instructions.<sup>30</sup>

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25 [Report of the Smith Commission for the future devolution of powers to the Scottish Parliament](#), November 2014, para 21 (emphasis added)

26 See also Dr Mark Elliot ([DSB 01](#)) para 2.

27 Dr Mark Elliot ([DSB 01](#)) para 10

28 Prof Tom Mullen ([DSB 11](#)), Law Society of Scotland ([DSB 12](#)), Qq1 and 6 [Prof A McHarg]

29 Prof Tom Mullen ([DSB 11](#))

30 Scotland Office ([DSB 05](#))

### **Parliamentary sovereignty and permanence of the Scottish Parliament**

26. Even if clause 1 were to be worded as a normative statement, the question arises as to whether any statute could actually make the Scottish institutions truly permanent given the principles on which the UK constitution works.

27. Orthodox constitutional theory rests on the notion of parliamentary sovereignty.<sup>31</sup> According to this principle, the UK Parliament is the supreme legislative authority in the UK: Parliament can enact or repeal any law; Parliament cannot be overruled by the courts (they cannot challenge the procedures of Parliament; and primary legislation, while subject to interpretation by the courts, cannot be struck down by them); Parliament cannot bind its successors (no Parliament can pass laws that future Parliaments cannot change); and Parliament cannot relinquish any part of its sovereignty.<sup>32</sup>

28. On this basis, we were told by both Dr Elliott and Dr Michael Gordon of the University of Liverpool, orthodox constitutional theory would hold that the ceding of powers by Parliament to devolved institutions (or any other body) cannot be permanent and irreversible.<sup>33</sup> As Dr Gordon put it in his written evidence: “from this perspective, any legislative attempt by one Parliament to place any kind of limitation on the freedom to legislate of future Parliaments would be legally ineffective.”<sup>34</sup> Both Dr Gordon and Dr Elliott stressed to us that in the interpretation of statute the courts did seem to have moved away from constitutional orthodoxy to an extent, and that there was now some doubt about precisely where the boundaries now lay (an issue discussed further below).<sup>35</sup> However, on the basis of the evidence we have evaluated we consider it highly unlikely that the courts would go so far as to accept the absolute permanence of the devolved institutions, were an attempt to be made to enshrine it in statute: we were told that there were significant legal precedents which acknowledged the principle of parliamentary sovereignty.<sup>36</sup>

29. The Scotland Office told us that in formulating the draft clause it had taken into consideration “the constitutional principle that one Parliament may not bind its successors”.<sup>37</sup> Dr Gordon described the “cautiousness” of the language of “recognition” as “superfluous”.<sup>38</sup> Had the Department formulated the clause as a normative statement it would not have risked violating the principle of parliamentary sovereignty, since like any other statutory provision it would be liable to express repeal.

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31 Sovereignty is defined as supreme authority, *i.e.* having the final say, within a given territory.

32 The standard statement of orthodox constitutional theory is A V Dicey, *Introduction to the Study of the Law of the Constitution* (London, 1915).

33 Dr Mark Elliott (DSB 01) para 13, Dr Michael Gordon (DSB 03) paras 6–7

34 Dr Michael Gordon (DSB 03) para 6

35 Dr Mark Elliott (DSB 01) paras 19–21, Dr Michael Gordon (DSB 03) paras 7–9

36 Dr Mark Elliott (DSB 01) para 13, Dr Michael Gordon (DSB 03) para 7, Q6 [Prof I Loveland]

37 Scotland Office (DSB 05)

38 Dr Michael Gordon (DSB 03) para 12

### **Political significance**

30. Dr Elliott has described the draft clause as “legally vacuous.”<sup>39</sup> We heard from him, and other constitutional lawyers, that this description of the clause is apt not only because it has not been phrased as a normative statement but also because, even if it were, it could not constitutionally have the effect of making the Scottish institutions permanent.<sup>40</sup>

31. The Minister told us he did not accept the description of the provision as “legally vacuous”.<sup>41</sup> He argued that some might consider that the present section 1 of the Scotland Act 1998—which states that “there shall be a Scottish Parliament”—was “superfluous” but that nevertheless he considered that it gave “a very clear statement of intent.”<sup>42</sup> We take a different view: it is precisely because the section in question gives a clear expression of the intended will of Parliament that it is not superfluous. Because the UK Parliament has provided that there shall be a Scottish Parliament, there is a Scottish Parliament: the provision is neither superfluous nor legally vacuous.

32. Dr Elliott told us that the apparent legal vacuity of the clause did not mean that it was of no consequence.<sup>43</sup> Many of our witnesses also appeared to agree that the provision for a statutory recognition of the permanence of the Scottish devolved institutions would constitute a political (if not a legal) obstacle to any attempted abolition of those institutions, though we did receive one submission arguing that draft clause 1 would not have any substantial political effect.<sup>44</sup>

33. The Minister also appeared to support the view that the real significance of the new clause was political rather than legal, stressing to us that the continued existence of the Scottish Parliament was “a prerequisite of our United Kingdom.”<sup>45</sup> He told us that the Scottish people would find the expression of permanence “helpful and reassuring” and would not be interested in having “a lengthy legal debate about its ongoing validity.”<sup>46</sup>

### **Alternative approaches**

34. We considered whether there were other methods which might achieve the policy objective of permanent establishment of the Scottish Parliament with greater certainty under the UK’s existing constitutional arrangements.

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39 Q3; [publiclawforeveryone.com/2015/01/22/the-draft-scotland-bill-and-the-sovereignty-of-the-uk-parliament/](http://publiclawforeveryone.com/2015/01/22/the-draft-scotland-bill-and-the-sovereignty-of-the-uk-parliament/)

40 Qq1–3, 63

41 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q530

42 *Loc. cit.*

43 Dr Mark Elliott ([DSB 01](#)) para 16

44 Prof Tom Mullen ([DSB 11](#))

45 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q531

46 *Loc. cit.*

### ***“Contingent entrenchment”***

35. We heard from Dr Elliott and Dr Gordon that the courts had in recent years appeared to have moved towards a view that they could, in certain circumstances, act to limit parliamentary sovereignty by holding that there were justiciable issues in respect of UK statutes of a constitutional character.<sup>47</sup> While Dr Elliott told us that it remained highly unlikely that the courts would go so far as to overturn the principle that no Parliament could bind its successors, he indicated that they appeared to be starting to accept that in certain circumstances a Parliament could, through statute, impose restrictions on the manner in which its successors could amend or repeal legislation.<sup>48</sup> Dr Gordon indicated that “Parliament may be recognised as possessing the power to alter the future law-making process (or the ‘manner and form’ in which valid legislation is enacted) in ways which may ‘bind’ its successors”.<sup>49</sup>

36. Such an approach might thus allow what Dr Elliott has called the “contingent entrenchment” of the Scottish institutions, by stipulating certain preconditions for their abolition, such as “a special majority in the UK Parliament, the consent of the Scottish Parliament, or the consent of the Scottish electorate as expressed through a referendum”.<sup>50</sup>

37. The Scotland Office told us that it had not taken this approach in drafting the clause since it considered that “it would be inappropriate to add conditions to any future repeal, as we felt that would invite a scenario that was never envisaged in 1998 and is not envisaged today—a future UK without a Scottish Parliament”.<sup>51</sup>

### ***Federacy or formal federation***

38. We also heard about more radical ways of entrenching the devolved Scottish institutions within the UK’s constitutional arrangements, including under a constitutional arrangement known as “federacy.” Dr Eve Hepburn of the University of Edinburgh described to us how under a federacy a smaller unit within an otherwise unitary state was granted a very high degree of political and economic autonomy, though defence, diplomacy and monetary policy usually continued to be treated as common concerns. What differentiated a federacy from other arrangements between a smaller unit and a larger unitary state was the fact that the arrangement could only be amended or terminated by the mutual agreement of both parties.<sup>52</sup>

39. A more radical option yet would be a formal federation, such as in the Federal Republic of Germany. Under the federation model, all constituent parts of the UK would receive constitutionally-guaranteed equal autonomy. Professor Sionaidh Douglas-Scott of the University of Oxford told us that the creation of a federacy or a formal federation would

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47 A justiciable matter is one on which the courts can adjudicate.

48 Dr Mark Elliott ([DSB 01](#)) para 19

49 Dr Michael Gordon ([DSB 03](#)) para 6

50 Dr Mark Elliott ([DSB 01](#)) para 17. See also Q8, Mark Ryan ([DSB 02](#)) para 3, Dr Michael Gordon ([DSB 03](#)) para 13.

51 Scotland Office, ([DSB 05](#))

52 Dr Eve Hepburn ([DSB 04](#)) paras 16–19; see also Q62.



involve “an issue not of entrenching certain procedural limits [as in the case of ‘contingent entrenchment’], but rather of certain substantive limits and an actual renunciation of sovereignty”.<sup>53</sup>

40. Here again the issue arises of whether Parliament can, under present arrangements, expressly relinquish any part of its sovereignty. The possibility of establishing a written (or codified) constitution and a dedicated constitutional court also arise in this context. We note that in its contribution to the Government’s recent paper on the implications of devolution for England the Conservative Party has contemplated the possibility that a future constitutional convention could consider the case for a Statute of the Union.<sup>54</sup> While the Minister of State for Universities, Science and Cities, Rt Hon Greg Clark MP, was not able to indicate what the scope of any such statute might be, the proposal appears to hold out the prospect that a territorial constitution might in future be established which could define the Union with greater certainty and establish the permanence of its key institutions.<sup>55</sup> It is nevertheless worth noting that written constitutions can, of course, still be amended to abolish institutions and create new ones—so even the approaches outlined above would not entirely guarantee the absolute permanence of the Scottish devolved institutions.

## Our view

**41. The Scottish Parliament is, to all intents and purposes, a permanent institution. The political circumstances in which the Parliament could cease existence are at present inconceivable. It is, as the Parliamentary Under-Secretary of State for Scotland told us, “a prerequisite of our United Kingdom”.**

**42. While draft clause 1, on the permanence of the Scottish Parliament, may seek to recognise the Scottish Parliament and Scottish Government as constitutionally permanent, we doubt whether such a provision would have the effect of making the institutions permanent in constitutional terms. While we note that clause 1 as presently drafted has been described as “legally vacuous”, we consider that there is no mischief in the clause as drafted. The existence of such a statutory recognition of the permanence of the Scottish devolved institutions is likely to constitute a further political (if not a legal) obstacle to any attempted abolition of those institutions.**

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53 Q62

54 First Secretary of State and Leader of the House of Commons, *The Implications of Devolution for England*, [Cm 8969](#), December 2014, p 27

55 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Qq516–22

43. While there are potential mechanisms which would allow for contingent entrenchment of the Scottish institutions—such as the stipulation of certain preconditions for their abolition, such as a majority of at least two-thirds in the House of Commons, the consent of the Scottish Parliament or the wish of the Scottish electorate expressed through a referendum—the introduction of any mechanism into UK legislation which made express provision for the abolition of the Scottish Parliament, however stringent the conditions to be met, would potentially frustrate the policy aim of providing reassurance about the permanence of the institutions. We do not recommend that the clause be redrafted to provide for contingent entrenchment.

44. That said, we note that it would be possible to achieve the Government's policy aim more effectively if the UK's territorial constitution were codified in a way which clearly set out the respective competences and powers of UK and devolved institutions. A Statute of the Union, or a full written constitution, could provide greater legal certainty over the status of the Scottish institutions, were any further certainty required.

## 2 Entrenching the Sewel Convention (clause 2)

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### Policy

45. During the passage of the Scotland Act 1998, Lord Sewel, the then Parliamentary Under-Secretary of State for Scotland, stated that, in the event of Scottish devolution being enacted: “we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament”.<sup>56</sup> Although no wording to this effect was inserted into the 1998 Act, Lord Sewel’s words have been treated as a solemn and binding undertaking.

46. The resulting “Sewel Convention” is set out (in words almost identical to those used by Lord Sewel) in the Memorandum of Understanding between the UK Government and the devolved administrations:

[T]he UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.<sup>57</sup>

47. When considering whether the Convention applies in respect of any given piece of proposed legislation, Government departments take advice from the Scotland Office which will, in turn, enter into discussions with the Scottish Government (the latter effectively mediates between the UK Parliament and the Scottish Parliament in the operation of the Sewel Convention). Where the UK Government and the Scottish Government agree on the inclusion of provisions affecting devolved matters in a Westminster Bill, the Scottish Government will invite the Scottish Parliament to give its consent. This consent takes the form of a Legislative Consent Motion (informally known as a “Sewel Motion”).<sup>58</sup>

48. We heard in evidence that the Convention has been scrupulously adhered to since 1999, with only one (inadvertent) breach.<sup>59</sup> Hardly anyone can envisage a likely situation in which it would be deliberately breached; and its entrenchment had not been an issue until it was raised during the referendum campaign. Its permanence is now unavoidably an issue, in tandem with that of the permanence of the devolved institutions.

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56 HL Deb, 21 July 1998, [col 791](#)

57 [Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee](#), October 2013, para 14

58 *Loc. cit.*; Cabinet Office, [Devolution Guidance Note 10: Post-Devolution Primary Legislation affecting Scotland](#), 23 August 2011; [Standing Orders of the Scottish Parliament](#), 4<sup>th</sup> Edition, 8<sup>th</sup> Revision, June 2014, Chapter 9B

59 Q15; *cf.* Scottish Affairs Committee, Fourth Report of Session 2005–06, [The Sewel Convention: The Westminster Perspective](#), HC 983, Q23; Scottish Parliament Procedures Committee, 7th Report, 2005 (Session 2), [The Sewel Convention](#), SP Paper 428, Vol. 1: Report, para 145

49. The Smith Commission Agreement gave the undertaking that “The Sewel Convention will be put on a statutory footing”,<sup>60</sup> although without specifying how this was to be achieved. Clause 2 is intended to give effect to this part of the Agreement.<sup>61</sup>

## Implementation

### *Drafting issues*

50. The text which is proposed to be inserted at the end of section 28 of the 1998 Act by virtue of draft clause 2 reads as follows;

“(8) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

51. We heard in oral evidence from Professor McHarg<sup>62</sup> and in written evidence from Dr Adam Tucker and Dr Adam Perry<sup>63</sup> that the draft clause failed to acknowledge the full scope of the Sewel Convention as it is currently applied in practice. The clause refers only to the Convention’s applicability in respect of devolved matters: it was pointed out to us that the Convention is also applied to legislation affecting the competences of the devolved institutions.

52. This is reflected in the UK Government’s Devolution Guidance Note 10, which states that a Bill requiring Scottish parliamentary consent under the Sewel Convention is one which “contains provisions applying to Scotland and which are for devolved purposes, **or which alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers**”.<sup>64</sup> DGN10 is referred to in the Command Paper as follows: “It is expected that the practice developed under Devolution Guidance Note 10 (DGN10) will continue. DGN10 has no legal effect but sets out how the UK Government departments legislating in Scotland will meet the terms of the Convention.”<sup>65</sup> This practice is not reflected in the drafting of clause 2.

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60 [Report of the Smith Commission for the future devolution of powers to the Scottish Parliament](#), November 2014, para 22

61 [Cm 8990](#), para 1.2.2

62 Q13

63 Dr Adam Tucker and Dr Adam Perry ([DSB 07](#)) paras 5–9; cf. Law Society of Scotland ([DSB 12](#))

64 Cabinet Office, [Devolution Guidance Note 10: Post-Devolution Primary Legislation affecting Scotland](#), 23 August 2011, para 4 (emphasis added). This interpretation of the Convention is also reflected in: Scottish Parliament Procedures Committee, 7th Report, 2005 (Session 2), [The Sewel Convention](#), SP Paper 428, Vol. 1: Report, para 91 (Lord Sewel himself is here quoted noting that the scope of the Convention had been extended since he first enunciated it); Scottish Affairs Committee, Fourth Report of Session 2005–06, [The Sewel Convention: The Westminster Perspective](#), HC 983, Ev 24–5 [Memorandum submitted by the Scotland Office]; [www.scottish.parliament.uk/parliamentarybusiness/Bills/19017.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/19017.aspx); and [www.scotland.gov.uk/About/Government/Sewel/KeyFacts](http://www.scotland.gov.uk/About/Government/Sewel/KeyFacts).

65 [Cm 8990](#), para 1.2.2

53. When we asked the Minister about this, he confirmed that the Sewel Convention did indeed apply to any Bill that purported to change the competences of the Scottish institutions: it had applied to the passage of the Scotland Act 2012 and would similarly apply in respect of the proposed new Bill.<sup>66</sup>

54. The Department insists that clause 2 does put the Sewel Convention “on a statutory footing”, in line with the Smith Commission Agreement.<sup>67</sup> However, clause 2 clearly does not give the Convention the force of statute.<sup>68</sup> Like clause 1, it is not framed as “a normative statement capable of being given legal effect”,<sup>69</sup> but rather as a “recognition” of an established fact: in this case, “the existence of the convention as a convention”.<sup>70</sup> It does not amend section 28(7) of the 1998 Act (which states that “this Section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland”)<sup>71</sup> but rather supplements it by effectively adding the Convention as section 28(8). As we heard from Michael Clancy, of the Law Society of Scotland, there are clear legal precedents for the lawful breach of a convention. While it might be considered “unconstitutional” for Parliament to disregard a convention, to do so would not be justiciable.<sup>72</sup>

55. Mr Mundell told us only that “the intention now is to formalise” the Convention, though he did not explain to us what exactly this meant or how it is achieved by clause 2.<sup>73</sup>

### ***Placing the Convention on a “statutory footing”***

56. Even if the Convention were to be framed as statute law, this would, under orthodox constitutional theory, still not represent the entrenchment of the devolved institutions’ competences, since these could at any time be unilaterally changed or abolished by the UK Parliament if it so chose.

57. The Minister himself told us:

I am sure constitutional experts would argue that this Parliament would always be able to legislate on matters that had been devolved, but I think that by setting those proposals out in that clause, it makes it again absolutely clear that the intention would not be to do so and that to take the step of seeking to do so without the agreement of the Scottish Government would be a very

66 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q534

67 Scotland Office ([DSB 05](#))

68 Dr Mark Elliott ([DSB 01](#)) para 24, Dr Adam Tucker and Dr Adam Perry ([DSB 07](#)) paras 10–1, We were told by Dr Gordon that clause 2 places the Convention on a statutory footing only “in a rather formal sense. The idea of placing a constitutional convention on a ‘statutory footing’ is quite ambiguous, and while the proposed amendment of section 28 of the Scotland Act 1998 does achieve this objective, it could also have been interpreted to require something more far-reaching”—Dr Michael Gordon ([DSB 03](#)) para 16.

69 Prof Tom Mullen ([DSB 11](#))

70 Q12; cf. Dr Mark Elliott ([DSB 01](#)) para 26

71 Q13 [Prof A McHarg]

72 Q13 [Mr M Clancy]; cf. Law Society of Scotland ([DSB 12](#)). The precedent cited is *Madzimbamuto v Lardner-Burke* PC [1969] 1 AC 723.

73 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q533

significant step, which again would place questions over the future of the United Kingdom.<sup>74</sup>

The salient point here appears to be that the force of the Convention is actually a matter of political reality, regardless of its legal status.

58. For the above reasons, clause 2 also appears (like clause 1) to be “legally vacuous”, *i.e.* merely declarative and without statutory force—or, as Professor Ian Loveland of City Law School put it, “like a bowl of jelly”.<sup>75</sup>

### ***Non-legal significance***

59. The clause can still be seen as strengthening the Convention in political (and perhaps, indirectly, in legal terms) as a convention.<sup>76</sup> However, even this was disputed in evidence that we received.<sup>77</sup>

## **Alternative approaches**

### ***Giving the Convention statutory force***

60. We were told that if the Sewel Convention were to be given the force of statute law, it could be seen as a “manner and form” constraint imposed by a Parliament on its successors (as discussed in Chapter 1 above), such that the courts might act to enforce it as a limit on the scope of Parliament’s legislative power.<sup>78</sup> A possible model cited in this regard is section 4 of the Statute of Westminster 1931, under which the UK Parliament could only legislate for a Dominion at the request and with the consent of that Dominion.<sup>79</sup>

61. Professor Loveland suggested to us that one way of placing the Sewel Convention on a statutory footing would be by means of

an explicit prohibition on the power of the House of Lords at Third Reading to assent to any Bill on a devolved matter until such time as the consent of the Scottish Parliament to that Bill had been expressed in a form specified by the Act.<sup>80</sup>

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74 *Loc. cit.*

75 Q13. It is noteworthy that section 28(7) as it stands is, from the standpoint of orthodox constitutional theory, also “legally vacuous”, *i.e.* merely declarative, since it purports to make inalienable something which is in fact inherently inalienable.

76 Dr Mark Elliott ([DSB 01](#)) paras 27–8

77 Prof Tom Mullen ([DSB 11](#))

78 Dr Michael Gordon ([DSB 03](#)) para 17

79 Dr Mark Elliott ([DSB 01](#)) para 25. In the cases of Australia and Canada this provision was subsequently repealed by means of UK legislation, passed at the request and with the consent of those Dominions, namely the [Canada Act 1982](#) and the [Australia Act 1986](#).

80 Q13

62. If the Scotland Act 1998 were amended to give the Sewel Convention the force of a statute, a future UK government might still seek to legislate on a matter covered by the Convention without the consent of the Scottish Parliament. However, Professor McHarg argued that in such a case the UK government would fall foul of the courts' established view that the 1998 Act, as amended, would, as a significant constitutional statute, not be liable to implied repeal.<sup>81</sup> The government would then have to try and explicitly repeal the Act to achieve its purposes and take the political consequences.

### **Defining “normally”**

63. A likely problem with any attempt to entrench the Sewel Convention in statutory form (by whatever means) is the fact that the Convention relates to what happens “normally”. The Scotland Office insists that, because the Convention has always been adhered to, “there has been no need to unpack the words ‘not normally’”.<sup>82</sup> However, it is hard to see how any clear statutory prescription (as distinct from a parliamentary convention) could be made to rest on such an imprecise term.<sup>83</sup> Retention of the word “normally” sits ill with the Government's stated intention to “formalise” the Convention.<sup>84</sup>

64. This would be a particular problem if the Convention were to become by this means justiciable and therefore open to interpretation by the courts. This could be avoided by adding what is known as an ouster clause, the purpose of which is to seek to oust a matter from the jurisdiction of the courts. Such a clause in this case could assert parliamentary privilege and forbid the courts from determining this issue—although it would still be for the courts to interpret and apply any such provision.<sup>85</sup>

65. One way to address this would be to elaborate the circumstances in which the UK Parliament would be allowed to legislate on a devolved matter without the consent of the Scottish Parliament. Dr Gordon suggested that a possible model is provided in the European Union Act 2011, which provides specific conditions for exemption from the “referendum locks” under which referendums must be held on UK assent to changes to EU treaties.<sup>86</sup> The Royal Society of Edinburgh suggested to us that “abnormal” circumstances might be defined as “for example, a state of war or national emergency (economic, environmental or disease)”,<sup>87</sup> or in order to abide by the UK's international obligations.<sup>88</sup>

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81 Q17. The legal precedent here is *BH v Lord Advocate* [2012] UKSC 24; 2012 SC(UKSC) 308, per Lord Hope at para 30.

82 Scotland Office (DSB 05)

83 Qq13 [Prof I Loveland], 65–6; cf. Mark Ryan (DSB 02) para 5, Dr Michael Gordon (DSB 03) para 16, Dr Adam Tucker and Dr Adam Perry (DSB 07) para 15, Royal Society of Edinburgh / British Academy (DSB 09) para 26, Prof Tom Mullen (DSB 11). It might be argued that the presence in the Convention of the word “normally” actually makes it quite meaningless even as a mere Convention, since effectively anything could be described as “abnormal” where what constitutes abnormality is not further defined.

84 Oral evidence taken on 3 March 2015, HC (2014–15) 700-ix, Q533

85 Mark Ryan (DSB 02), para 5; cf. Q14

86 Dr Michael Gordon (DSB 03) para 18

87 Royal Society of Edinburgh / British Academy (DSB 09) para 29

88 Q66 [Prof M Keating]

66. Alternatively, the Convention as it stands might be given the force of statute but with an added requirement for the UK Government to state why it sought to legislate on a matter covered by the Convention without the consent of the Scottish Parliament. A Minister could, for example, be required to make a statement to the UK Parliament regarding the consent of the Scottish Parliament to a Bill (along the lines of section 19 of the Human Rights Act 1998). Any government wishing to proceed with legislation without the consent of the Scottish Parliament would still be able to do so, but at a political cost.<sup>89</sup>

## Our view

67. **Draft clause 2 fails to acknowledge that the Sewel Convention in practice extends to legislation affecting the competences of the devolved institutions. This significant deficiency must be addressed in any redrafted version.**

68. **Despite what the Scotland Office claims, clause 2 does not put the Sewel Convention “on a statutory footing” (in the sense of giving it the force of a statute), in line with the Smith Commission Agreement. In its proposed form it can only be said to strengthen the Convention in political terms.**

69. **If the Convention were to be given the force of statute, this would still, according to orthodox constitutional theory, not represent any entrenchment of the competence of the Scottish Parliament. There is a case that if the Convention were to be given the force of statute, it would constitute a “manner and form” constraint on the power of future Parliaments to legislate in respect of the matters covered by the Convention.**

70. *The presence of the word “normally” in the Convention is clearly problematic when it comes to giving it the force of a statute, and we recommend that this be addressed in any redraft of the clause. One way to do so would be by elaborating in detail the circumstances in which the UK Parliament would be allowed to legislate on a matter covered by the Convention without the consent of the Scottish Parliament. Alternatively, the Convention might be given the force of statute as it stands but with the addition of a requirement for the government to set out its reasons for legislating on a matter covered by the Sewel Convention without the consent of the Scottish Parliament where it seeks to do so.*

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89 Dr Michael Gordon ([DSB 03](#)) para 18; Dr Adam Tucker and Dr Adam Perry ([DSB 07](#)), paras 16–7



## 3 Operation of the devolved institutions and elections (clauses 3 to 9)

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### Operation of the Scottish Parliament and Government (clause 3)

#### *Policy*

71. The Smith Commission Agreement provided that the Scottish Parliament would be granted powers “to make decisions about **all matters** relating to the arrangements and operations of the Scottish Parliament and Scottish Government, including:

- powers over the overall number of MSPs or the number of constituency and list MSPs.
- powers over the disqualification of MSPs from membership and the circumstances in which a sitting MSP can be removed.”<sup>90</sup>

72. Draft clause 3 “provides for the Scottish Parliament to have powers on **matters** relating to the operation of”<sup>91</sup> the devolved institutions, with a number of exceptions listed.

#### *Implementation*

73. Professor Douglas-Scott told us that the clause was “very confusingly drafted”.<sup>92</sup> It was described to us by Mr Clancy as “a bit of a thicket”<sup>93</sup> and by Dr Hepburn as “quite impenetrable”,<sup>94</sup> with, as Professor McHarg put it, “exceptions to exceptions to exceptions”.<sup>95</sup> However, as Mr Clancy told us, “it is quite difficult to see how one could amend it in a particular way to make it more readable other than rewriting big chunks of the Bill and the existing Act.”<sup>96</sup> Nobody told us in evidence of any serious unworkability in the clause as drafted.

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90 [Report of the Smith Commission for the future devolution of powers to the Scottish Parliament](#), November 2014, para 26 (emphasis added)

91 [Cm 8990](#), para 1.3.1 (emphasis added)

92 Q68

93 Q20

94 Q70

95 Q20

96 *Loc. cit.*

## Super-majority (clause 4)

### *Policy*

74. Under clause 4, power over the following in respect of the Scottish Parliament (competence regarding which is devolved by other draft clauses considered here) can only be exercised if a “super-majority” (*i.e.* at least two-thirds of all MSPs) is obtained:

- the franchise;
- the system by which members are elected;
- the number of constituencies and number of regions; and
- the number of regional members to be returned for each region.

75. This provision has met with support from many of our witnesses<sup>97</sup> on the grounds that its purpose is to ensure a broad consensus of support for any proposed changes and to reduce the risk of “gerrymandering” to the advantage of any particular political party.<sup>98</sup>

76. It was suggested to us that requiring a two-thirds majority was an appropriate way of ensuring cross-party agreement on the issues to which it applies. Professor Michael Keating told us that:

a two-thirds majority would make it virtually impossible for any conceivable single party to change the electoral system in Scotland. One can imagine a single party getting two thirds, but it really is highly unlikely, given the proportional system. This guarantees that there must be cross-party agreement and that one single party is not able to abuse this power.<sup>99</sup>

77. Professor Douglas-Scott also pointed out the super-majority is particularly pertinent as the unicameral Scottish Parliament lacks the check provided by the existence of a second chamber.<sup>100</sup>

78. We were told by one group that in relation to devolved powers over elections, given the lack of a second chamber, “[e]very power transferred should require a super majority to be altered”.<sup>101</sup> We have not widened the ambit of our inquiry to consider whether the Smith Commission Agreement should have gone further in its requirement for a super-majority (except in relation to electoral boundaries—see below). However, we note the views

97 It was described to us by the Royal Society of Edinburgh and the British Academy as “welcome and desirable particularly for decisions relating to the electoral system for the Scottish Parliament as proposed by the Draft Clauses”—Royal Society of Edinburgh / British Academy ([DSB 09](#)) para 30—and by Professor Tom Mullen as “in principle, desirable”—Prof Tom Mullen ([DSB 11](#)). See also Qq28 [Prof I Loveland, Dr M Elliott], 39 [Mr W Sullivan, Mr D Torrance, Ms J Swann] 69, 70 [Dr E Hepburn] and 76.

98 Q39 [Mr D Torrance]. See also Q28 [Prof I Loveland] and Qq76–77.

99 Q76

100 Q70

101 United Against Separation ([DSB 10](#))

expressed to us,<sup>102</sup> and we did seek to clarify why the Scotland Office has drawn the line where it has. The Minister explained to us that the issues to which the requirement for a super-majority would apply are the “most fundamental”, “the issues that are of the most significance to an election and changes to the current arrangements for the Scottish Parliament”, but not issues “around the administration of elections”.<sup>103</sup>

### *Implementation*

79. Professor McHarg suggested to us that the super-majority requirement could be circumvented by means of a request to the UK Parliament to act (if the political composition of both Parliaments coincided sufficiently).<sup>104</sup> She described this as a “loophole”; it appears to be an inevitable consequence of the sovereignty of the UK Parliament. Any administration in Scotland seeking to circumvent the super-majority requirement by an appeal to Westminster would of course need to secure the consent of the Scottish Parliament to Westminster legislation, and would have to face the political consequences.

## **Administration and conduct of elections (clause 5)**

### *Policy*

80. Clause 5 aims to devolve to the Scottish Parliament full legislative and executive competence in relation to conduct of elections to the Scottish Parliament (but not in relation to UK Parliament or European Parliament elections).<sup>105</sup> Executive competence in this regard is already due to be devolved to the Scottish Government under the Scotland Act 2012 and the Scottish Parliament already has legislative competence in relation to the administration and conduct of Scottish local government elections.

81. There are some important exceptions:

- the Scottish Parliament will have no powers over the regulation of political parties (including donations); and
- general elections to the Scottish Parliament cannot be held on the same day as UK general elections (except “early” general elections), European Parliament general elections, or ordinary local government elections in Scotland (the polls must be two to six months apart).

82. Under clause 4, any changes to the voting system will require a two-thirds super-majority to be obtained. This protects against the possibility that such changes could be enacted for the benefit of one political party and without a broader basis of support.

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102 See also Qq20 [Prof I Loveland] and 28 [Prof I Loveland, Dr M Elliott]

103 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q535

104 Q20

105 [Cm 8990](#), para 1.4.1

### *Implementation*

83. We were not told by witnesses of any shortcomings in the drafting of this clause.

## **The franchise (clause 6)**

### *Policy*

84. Clause 6 aims to devolve to the Scottish Parliament legislative competence in relation to the franchise for elections to the Scottish Parliament and Scottish local government (but not in relation to UK Parliament or European Parliament elections).<sup>106</sup>

85. Under clause 4, any changes to the franchise will require a two-thirds super-majority. Here again, this provides an important safeguard against changes that might otherwise be enacted for the benefit of a particular political party and without a broad consensus of support.

### *Implementation*

86. The clause appears to implement the policy set out in the Smith Commission Agreement and the Command Paper, and we have received no evidence to suggest otherwise.

87. Devolution of the power specifically to reduce the voting age to 16 for elections to the Scottish Parliament and Scottish local government is being carried out through an Order in Council under section 30 of the 1998 Act. The Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 was laid before Parliament on 21 January 2015 and approved by the House of Commons on 2 February 2015<sup>107</sup> and by the House of Lords on 26 February 2015.<sup>108</sup>

88. Professor Keating told us that there was consensus in Scotland in favour of the change to the voting age: “I suspect that this is an idea whose time has come”.<sup>109</sup> By using a section 30 Order the Government says it will be possible for the change to take place in time for the Scottish Parliament elections in 2016 and the Scottish local authority elections in 2017.<sup>110</sup> Mr Mundell told us “There was a view expressed by the Scottish Government and a cross-party view in the Scottish Parliament that this issue was a priority and should be taken forward separately” from the proposed Bill.<sup>111</sup>

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106 [Cm 8990](#), para 1.4.5

107 HC Deb, 2 February 2015, [col 98](#)

108 HL Deb, 26 February 2015, [col 1798](#)

109 Q79

110 [Cm 8990](#), para 1.1.4

111 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q539

89. It might be argued that it is inappropriate to bring about such a change through secondary legislation, which Parliament can accept or reject but not amend;<sup>112</sup> Professor Douglas-Scott told us that giving the vote at such a young age is very unusual internationally.<sup>113</sup> It is, however, the devolution of this decision that is being expedited under the section 30 Order, not the decision itself: as Professor Keating explained to us, the decision is not being taken through secondary legislation and there will still be a parliamentary process at Holyrood.<sup>114</sup>

90. Although the decision will only affect the franchise for Scottish elections, it may set a precedent for the rest of the UK. The House of Lords Select Committee on the Constitution has recently observed that the Scottish Parliament is likely to use its new powers in order to reduce the voting age for Scottish Parliament and Scottish local government elections and this “may lead to pressure for similar changes to the franchise in the other devolved territories”, and in turn to the franchise for UK parliamentary elections.<sup>115</sup> The Government’s recent proposals for further devolution to Wales envisage that the National Assembly for Wales should in future decide the franchise for Assembly elections, including the ability to lower the voting age to 16 if it wishes.<sup>116</sup> Though regarding the section 30 route as “preferable”, Professor Douglas-Scott suggested to us that the opportunity for debate might be lost.<sup>117</sup> Certainly, once implemented for the Scottish Parliament and Scottish local government elections, any debate in the UK Parliament about the principle of 16- and 17-year-olds voting in, for example, general elections seems likely to be against a landscape in which, for a substantial section of the electorate, a voting age of 16 for certain elections is regarded as the norm. Yet, as Professor Keating told us, Westminster is “not obliged to do it just because the Scottish Parliament has decided to do it”.<sup>118</sup> The Minister observed that when the debate was held in relation to the Order he did not think it took up the full allocated time.<sup>119</sup> As he said, there “needs to be wider debate and discussion in other parts of the United Kingdom”, and “the experience in Scotland is something that people in the rest of the UK can reflect on.”<sup>120</sup> We ourselves have called for

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112 House of Lords, Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015, Ninth Report of the Select Committee on the Constitution, Session 2014–15, [HL Paper 119](#), paras 13–15

113 Q79 [Prof Douglas-Scott]

114 Q79

115 House of Lords, Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015, Ninth Report of the Select Committee on the Constitution, Session 2014–15, [HL Paper 119](#), paras 8–9

116 Wales Office, *Powers for a Purpose: Towards a lasting devolution settlement for Wales*, [Cm 9020](#), February 2015, para 2.2.15. The Assembly already has the power to lower the voting age to 16 for a referendum on devolving income tax powers.

117 Q79

118 *Loc. cit.*

119 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q536

120 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q537

a motion on allowing votes at 16 for Westminster elections to be debated in the 2015 Parliament, as a precursor to possible legislation.<sup>121</sup>

91. We note that the Order does not require the Scottish Parliament to enact any change to the voting age only by a super-majority, as will be the case once the draft clauses are enacted.<sup>122</sup> Mr Mundell's evidence to us was that a super-majority was not required "because it had been agreed among the five parties as part of the Smith process and all the five parties had agreed that that would form the shape of the franchise of the Scottish Parliament going forward".<sup>123</sup> In view of the current consensus on the point it is arguable little would be achieved by requiring such a majority.

## Political campaign expenditure (clause 7)

### *Policy*

92. Clause 7 aims to devolve to the Scottish Parliament legislative competence over campaign expenditure and controlled expenditure in relation to elections to the Scottish Parliament (except in relation to certain combinations of elections).<sup>124</sup> The Scottish Parliament already has legislative competence in relation to rules on campaign expenditure relating to Scottish local government elections. As noted above, the regulation of donations to political parties remains a reserved matter.

### *Implementation*

93. We have received no observations directed to the policy or drafting of this clause, save that Professor McHarg described the reasons for not devolving powers over regulation of parties and donations to them as "fairly obvious".<sup>125</sup> Given that political parties generally operate across the UK, it may well be most appropriate that they should be regulated uniformly throughout the UK.

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121 Political and Constitutional Reform Committee, Sixth Report of Session 2014–15, [Voter engagement in the UK: follow-up](#), HC 938, para 102

122 House of Lords, Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015, Ninth Report of the Select Committee on the Constitution, Session 2014–15, [HL Paper 119](#), para 19

123 Oral evidence taken on [3 March 2015](#), HC (2014–15) 700-ix, Q538

124 [Cm 8990](#), paras 1.4.7–1.4.8

125 Q26

## Electoral Commission (clause 8)

### *Policy*

94. Clause 8 aims to devolve to the Scottish Parliament legislative competence over the functions of the Electoral Commission with respect to elections to the Scottish Parliament.

95. At present, the Scottish Government must reimburse the Commission for expenditure incurred in relation to Scottish local government elections.<sup>126</sup> There was no express provision in the Smith Commission Agreement about meeting the cost of the Electoral Commission's functions with respect to Scottish Parliament elections and the draft clauses make no provision. We have not had an opportunity to investigate this fully, but it seems to us an important issue.

### *Implementation*

96. Draft clause 8 appears to implement the policy in the Command Paper, and no evidence before us has criticised the policy or its proposed implementation.

## Boundary Commission for Scotland (clause 9)

### *Policy*

97. Clause 9 seeks to devolve to the Scottish Parliament legislative competence in relation to functions of the Boundary Commission for Scotland relating to Scottish Parliament boundaries, and to amend the 1998 Act so that the Commission would report to the Scottish Ministers (who would be required to lay the reports before the Scottish Parliament). It also (though this is not expressly referred to in the Command Paper's explanation of the clause)<sup>127</sup> devolves legislative competence in relation to the number of constituencies, regions and regional members (but not the specification of constituencies or regions). The Smith Commission agreed that the Boundary Commission for Scotland would continue to operate as a UK public body and would report to the Scottish Parliament in relation to boundary reviews for the Scottish Parliament.<sup>128</sup> The Command Paper says that the Commission will continue to have functions in relation to UK Parliament constituency boundaries.

98. Under clause 4, modification of the law relating to the number of constituencies, regions, and regional members is subject to the requirement for a two-thirds super-majority, providing a safeguard against changes to those matters for the benefit of a particular political party without a broad consensus of support.

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126 Political Parties, Elections and Referendums Act 2000, [section 13A](#)

127 [Cm 8990](#), para 1.4.10

128 [Report of the Smith Commission for the future devolution of powers to the Scottish Parliament](#), November 2014, para 24(3)

## Implementation

99. Professor Douglas-Scott described having an initial reservation about the devolution to the Scottish Parliament of the decision whether to adopt recommendations of the Boundary Commission for Scotland, as it was not clear to her whether there was scope for the Scottish Government to amend a report of the Commission. However, she could see no real room for abuse in the area.<sup>129</sup>

100. Professor McHarg told us that the existence of a commission which would remain a UK body could be seen as providing some safeguard against potential gerrymandering.<sup>130</sup>

101. Professor McHarg told us that boundary changes were not covered by the requirement for a two-thirds majority.<sup>131</sup> Professor Loveland described this as “perhaps very unfortunate”.<sup>132</sup> He told us: “It seems to me constituency boundaries are an extremely important part of the electoral system and my inclination again would be they are important enough that they should be subject to this higher degree of protection.”<sup>133</sup> It might further be argued that the amendments<sup>134</sup> may give the unicameral Scottish Parliament, at the instance of the Scottish Government, the power to adopt an unchallengeable<sup>135</sup> Order in Council purporting to implement the Commission’s recommendations about Scottish Parliament boundaries. In the UK Parliament such Orders must be approved by both Houses of Parliament.<sup>136</sup> Although we have not had the opportunity to explore more fully the implications of the proposed procedures for boundary changes, there appears to be a case for further consideration of additional safeguards such as the need for a super-majority in the Scottish Parliament for any such changes.

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129 Qq71–72

130 Q30

131 Q29

132 *Loc. cit.*

133 *Loc. cit.*

134 The amendments to [Sch 1 para 6](#) of the 1998 Act, effected by draft clause 9. That paragraph in its unamended form largely mirrors the Parliamentary Constituencies Act 1986, [section 4](#).

135 [Paragraph 6\(8\)](#) of Sch 1 says the validity of an Order in Council purporting to be made under the Schedule, reciting it has been approved by the Scottish Parliament, may not be called in question in any legal proceedings.

136 Parliamentary Constituencies Act 1986, [section 4](#)



## Our view

102. *Draft clauses 3 to 9 largely deliver as promised in the Command Paper in implementing the Smith Commission Agreement, but we recommend further consideration be given to their detailed drafting.*

103. *The drafting of clause 3 is confusing. As we were told, it is “a bit of a thicket”. We recommend that it be re-drafted if possible to clarify its effect.*

104. *The super-majority requirement contained in clause 4 is desirable and appears to implement the Smith Commission Agreement. It may be appropriate to extend the devolved powers to which it applies, but we do not make any recommendations about that.*

105. *The cost of meeting the Electoral Commission’s functions in relation to Scottish Parliament elections as devolved to the Scottish Parliament by draft clause 8 was not dealt with by the Smith Commission Agreement. We invite the Government to consider this.*

106. *Given the unicameral nature of the Scottish Parliament, we invite the Government to consider whether some additional safeguard (such as a super-majority requirement) should be introduced to the process, amended by draft clause 9, for implementing recommendations of the Boundary Commission for Scotland about Scottish Parliament boundaries.*

## 4 Conclusion

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107. The timetable for drawing up legislative plans for the devolution of further powers, which all the three main UK parties signed up to during the referendum campaign, can be seen in retrospect to have been somewhat over-ambitious and impractical. The result is a set of draft clauses which clearly fall far short of a credible draft Bill and require far more work. Some of them are, as we were told by one witness, “a bit of a guddle”.<sup>137</sup>

108. Clauses 4 to 9 seem to be uncontentious and probably do not require much more work; there might be a case for making more matters subject to a “super-majority”, as provided for in clause 4. Clause 3 is impenetrably drafted but this may be inevitable, given the complexity of what it seeks to do, if the wholesale redrafting of large parts of the 1998 Act is to be avoided.

109. The real problems lie with draft clauses 1 and 2, which address matters of very significant constitutional importance in a less than satisfactory manner. Arguably they do not even meet the brief set out in the Smith Commission report, insofar as it can effectively be met under our present constitutional arrangements.

**110. There are clearly difficulties in establishing beyond doubt the permanent status of the Scottish Parliament in the UK’s constitutional arrangements, given the constitutional principle of parliamentary sovereignty. The legal claims made in draft clause 1, while seeking to affirm the permanence of the Scottish Parliament, have the capacity to be misunderstood.**

**111. Nevertheless, the political fact is that the Scottish Parliament is effectively permanent and its abolition is inconceivable. Draft clause 1 does nothing to weaken this fact. As the Parliamentary Under-Secretary of State told us, it is an essential prerequisite of the United Kingdom. There are means whereby the Scottish Parliament could be recognised as a permanent constitutional institution, but these would require broad reform of the basis of the UK’s uncodified constitution. We have explored such means in the course of this Parliament as part of our inquiries into constitutional codification and a constitutional convention.**

112. Since the publication of the draft Scotland clauses, the Secretary of State for Wales has put forward proposals for further devolution to Wales. The Government has accepted several recommendations of the second report of the Commission on Devolution in Wales (the Silk Commission), including recommendations on recognising the permanence of the National Assembly for Wales and formalising the legislative consent procedure. The Government agrees that “the Assembly should be formally recognised as permanent and that the Assembly and Welsh Government are permanent parts of the United Kingdom’s constitutional arrangements”, and states that this should be “enshrined in legislation.”<sup>138</sup>

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<sup>137</sup> Q32

<sup>138</sup> [Cm 9020](#), para 2.2.4

The Government also proposes that “the convention [on legislative consent] should be formalised, and placed on a statutory footing, in a substantively similar manner as the Government intends in regard to the Sewel Convention in Scotland.”<sup>139</sup> *We recommend that the Wales Office, when preparing legislation to give effect to the Government’s proposals for further devolution to Wales, take account of the conclusions and recommendations of this report in respect of the drafting of the constitutional clauses for a Scotland Bill.*

**113. The incoming administration, when introducing legislation to implement the Smith Commission Agreement and other cross-party proposals on constitutional reform which affect the Union, must ensure that further proposals for constitutional reform are worked out in full recognition of their consequences for all parts of the United Kingdom and in full consultation with Parliament. It is axiomatic that adequate opportunity is given for a fully informed public debate on the Smith proposals before a full Bill is finally brought before Parliament.**

114. In March 2013 this Committee recommended that the Government should examine the case for a convention to look at the future constitutional structure of the UK, “because of the impact of the incremental political and constitutional change that has taken place over the past two decades, and the effects of devolution—including the lack of a devolved settlement in England—on relations between the different elements of the UK and how it functions as a whole.”<sup>140</sup> The cross-party commitments given to the people of Scotland mean that new powers for the Scottish Parliament are being introduced to an extremely tight timetable. *We recommend that the Government seek to establish, at the earliest opportunity, a mechanism for considering in the round the effect of the proposed devolution settlements in Scotland, Wales and Northern Ireland, together with the trends towards decentralisation in England, and examining the measures required to ensure that such changes strengthen the Union as a whole.*

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139 [Cm 9020](#), para 2.3.10

140 Political and Constitutional Reform Committee, Fourth Report of Session 2012–13, [Do we need a constitutional convention for the UK?](#), HC 371-I, para 112

# Conclusions and recommendations

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## The draft Bill clauses and the legislative timetable

1. Given the urgency which the Government has attached to the legislation for further devolution to the Scottish Parliament, and the commitments already made to the people of Scotland, we must assume that there will be no opportunity for the new Parliament to undertake pre-legislative scrutiny of its proposed provisions. While we welcome the Government's commitment to give the draft Scotland clauses some measure of consideration ahead of their introduction in such a Bill, we find it disappointing that no attempt has been made to provide for full and formal pre-legislative scrutiny of the clauses by this Parliament before its dissolution. (Paragraph 15)
2. The draft clauses will have significant consequences for the future of the United Kingdom. While we acknowledge the political imperatives which led the UK pro-Union parties to make commitments for further devolution to a swift timetable, we are concerned that this seems to have been at the expense of broader consideration of the implications of these commitments for the future of the UK. Parliament's first significant engagement with these proposals will be when they are introduced as a Scotland Bill. It is not clear to us that the legislative process is the most effective means for Parliament to consider the future shape of the Union. (Paragraph 16)

## Permanence of the devolved institutions (clause 1)

3. The Scottish Parliament is, to all intents and purposes, a permanent institution. The political circumstances in which the Parliament could cease existence are at present inconceivable. It is, as the Parliamentary Under-Secretary of State for Scotland told us, "a prerequisite of our United Kingdom". (Paragraph 41)
4. While draft clause 1, on the permanence of the Scottish Parliament, may seek to recognise the Scottish Parliament and Scottish Government as constitutionally permanent, we doubt whether such a provision would have the effect of making the institutions permanent in constitutional terms. While we note that clause 1 as presently drafted has been described as "legally vacuous", we consider that there is no mischief in the clause as drafted. The existence of such a statutory recognition of the permanence of the Scottish devolved institutions is likely to constitute a further political (if not a legal) obstacle to any attempted abolition of those institutions. (Paragraph 42)
5. While there are potential mechanisms which would allow for contingent entrenchment of the Scottish institutions—such as the stipulation of certain preconditions for their abolition, such as a majority of at least two-thirds in the House of Commons, the consent of the Scottish Parliament or the wish of the Scottish electorate expressed through a referendum—the introduction of any mechanism into UK legislation which made express provision for the abolition of the

Scottish Parliament, however stringent the conditions to be met, would potentially frustrate the policy aim of providing reassurance about the permanence of the institutions. We do not recommend that the clause be redrafted to provide for contingent entrenchment. (Paragraph 43)

6. That said, we note that it would be possible to achieve the Government's policy aim more effectively if the UK's territorial constitution were codified in a way which clearly set out the respective competences and powers of UK and devolved institutions. A Statute of the Union, or a full written constitution, could provide greater legal certainty over the status of the Scottish institutions, were any further certainty required. (Paragraph 44)

### Entrenching the Sewel Convention (clause 2)

7. Draft clause 2 fails to acknowledge that the Sewel Convention in practice extends to legislation affecting the competences of the devolved institutions. This significant deficiency must be addressed in any redrafted version. (Paragraph 67)
8. Despite what the Scotland Office claims, clause 2 does not put the Sewel Convention "on a statutory footing" (in the sense of giving it the force of a statute), in line with the Smith Commission Agreement. In its proposed form it can only be said to strengthen the Convention in political terms. (Paragraph 68)
9. If the Convention were to be given the force of statute, this would still, according to orthodox constitutional theory, not represent any entrenchment of the competence of the Scottish Parliament. There is a case that if the Convention were to be given the force of statute, it would constitute a "manner and form" constraint on the power of future Parliaments to legislate in respect of the matters covered by the Convention. (Paragraph 69)
10. *The presence of the word "normally" in the Convention is clearly problematic when it comes to giving it the force of a statute, and we recommend that this be addressed in any redraft of the clause. One way to do so would be by elaborating in detail the circumstances in which the UK Parliament would be allowed to legislate on a matter covered by the Convention without the consent of the Scottish Parliament. Alternatively, the Convention might be given the force of statute as it stands but with the addition of a requirement for the government to set out its reasons for legislating on a matter covered by the Sewel Convention without the consent of the Scottish Parliament where it seeks to do so.* (Paragraph 70)

### Operation of the devolved institutions and elections (clauses 3 to 9)

11. *Draft clauses 3 to 9 largely deliver as promised in the Command Paper in implementing the Smith Commission Agreement, but we recommend further consideration be given to their detailed drafting.* (Paragraph 102)
12. *The drafting of clause 3 is confusing. As we were told, it is "a bit of a thicket". We recommend that it be re-drafted if possible to clarify its effect.* (Paragraph 103)

13. The super-majority requirement contained in clause 4 is desirable and appears to implement the Smith Commission Agreement. It may be appropriate to extend the devolved powers to which it applies, but we do not make any recommendations about that. (Paragraph 104)
14. *The cost of meeting the Electoral Commission's functions in relation to Scottish Parliament elections as devolved to the Scottish Parliament by draft clause 8 was not dealt with by the Smith Commission Agreement. We invite the Government to consider this.* (Paragraph 105)
15. *Given the unicameral nature of the Scottish Parliament, we invite the Government to consider whether some additional safeguard (such as a super-majority requirement) should be introduced to the process, amended by draft clause 9, for implementing recommendations of the Boundary Commission for Scotland about Scottish Parliament boundaries.* (Paragraph 106)

### Conclusion

16. There are clearly difficulties in establishing beyond doubt the permanent status of the Scottish Parliament in the UK's constitutional arrangements, given the constitutional principle of parliamentary sovereignty. The legal claims made in draft clause 1, while seeking to affirm the permanence of the Scottish Parliament, have the capacity to be misunderstood. (Paragraph 110)
17. Nevertheless, the political fact is that the Scottish Parliament is effectively permanent and its abolition is inconceivable. Draft clause 1 does nothing to weaken this fact. As the Parliamentary Under-Secretary of State told us, it is an essential prerequisite of the United Kingdom. There are means whereby the Scottish Parliament could be recognised as a permanent constitutional institution, but these would require broad reform of the basis of the UK's uncodified constitution. We have explored such means in the course of this Parliament as part of our inquiries into constitutional codification and a constitutional convention. (Paragraph 111)
18. *We recommend that the Wales Office, when preparing legislation to give effect to the Government's proposals for further devolution to Wales, take account of the conclusions and recommendations of this report in respect of the drafting of the constitutional clauses for a Scotland Bill.* (Paragraph 112)
19. The incoming administration, when introducing legislation to implement the Smith Commission Agreement and other cross-party proposals on constitutional reform which affect the Union, must ensure that further proposals for constitutional reform are worked out in full recognition of their consequences for all parts of the United Kingdom and in full consultation with Parliament. It is axiomatic that adequate opportunity is given for a fully informed public debate on the Smith proposals before a full Bill is finally brought before Parliament. (Paragraph 113)

20. *We recommend that the Government seek to establish, at the earliest opportunity, a mechanism for considering in the round the effect of the proposed devolution settlements in Scotland, Wales and Northern Ireland, together with the trends towards decentralisation in England, and examining the measures required to ensure that such changes strengthen the Union as a whole. (Paragraph 114)*

# Formal Minutes

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**Monday 16 March 2015**

Members present:

Mr Graham Allen, in the Chair

Paul Flynn  
Duncan Hames

Mr Andrew Turner

Draft Report (*Constitutional implications of the Government's draft Scotland clauses*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 114 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Ninth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Monday 23 March at 4.00 pm]



## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at [www.parliament.uk/pcrc-draft-scotland-bill-clauses](http://www.parliament.uk/pcrc-draft-scotland-bill-clauses).

### Monday 2 February 2015

*Question number*

**Dr Mark Elliott**, Reader in Public Law, University of Cambridge,  
**Michael P Clancy OBE**, Director, Law Reform, Law Society of Scotland,  
**Professor Ian Loveland**, Professor of Law, City Law School, and  
**Professor Aileen McHarg**, Professor of Public Law, Strathclyde University

[Q1-30](#)

**Willie Sullivan**, Director, Electoral Reform Society Scotland,  
**Juliet Swann**, Campaigns and Research Officer, Electoral Reform Society  
Scotland, and **David Torrance**, Journalist and Author,

[Q31-46](#)

### Monday 9 February 2015

**Professor Sionaidh Douglas-Scott**, Professor of European and Human Rights  
Law, University of Oxford, **Dr Eve Hepburn**, Senior Lecturer in Politics,  
University of Edinburgh, and **Professor Michael Keating FRSE FBA**, Professor  
of Politics, University of Aberdeen

[Q47-92](#)

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/pcrc-draft-scotland-bill-clauses](http://www.parliament.uk/pcrc-draft-scotland-bill-clauses). DSB numbers are generated by the evidence processing system and so may not be complete.

- 1 Dr Mark Elliott ([DSB0001](#))
- 2 Mark Ryan ([DSB0002](#))
- 3 Dr Michael Gordon ([DSB0003](#))
- 4 Dr Eve Hepburn ([DSB0004](#))
- 5 Scotland Office ([DSB0005](#))
- 6 Naomi Lloyd-Jones ([DSB0006](#))
- 7 Dr Adam Perry and Dr Adam Tucker ([DSB0007](#))
- 8 Adrian D Ward ([DSB0008](#))
- 9 Royal Society of Edinburgh and the British Academy ([DSB0009](#))
- 10 United Against Separation ([DSB0010](#))
- 11 Professor Tom Mullen ([DSB0011](#))
- 12 Law Society Of Scotland ([DSB0012](#))

# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the Committee's website at [www.parliament.uk/PCRC-publications](http://www.parliament.uk/PCRC-publications).

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2010–12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
Eleventh Report	Rules of Royal Succession	HC 1615 (HC 586)
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
Thirteenth Report	Political party finance	HC 1763

## Session 2012–13

First Report	Recall of MPs	HC 373 (HC 646)
Second Report	Introducing a statutory register of lobbyists	HC 153 (HC 593)
Third Report	Prospects for codifying the relationship between central and local government	HC 656 (Cm 8623)
Fourth Report	Do we need a constitutional convention for the UK?	HC 371 (Cm 8749)

## Session 2013–14

First Report	Ensuring standards in the quality of legislation	HC 85 (HC 611)
Second Report	The impact and effectiveness of ministerial reshuffles	HC 255 (HC 1258)
Third Report	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)

Fourth Report	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government	HC 440 (HC 1079)
Fifth Report	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
Sixth Report	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13	HC 593
Seventh Report	The Government's lobbying Bill	HC 601 (HC 801)
Eighth Report	Parliament's role in conflict decisions: an update	HC 649
Ninth Report	House of Lords reform: what next?	HC 251 (HC 1079)
Tenth Report	The Government's lobbying Bill: follow up	HC 891 (HC 535)
Eleventh Report	Impact of Queen's and Prince's consent on the legislative process	HC 784 (HC 224)
Twelfth Report	Parliament's role in conflict decisions: a way forward	HC 892
Thirteenth Report	Fixed-term Parliaments: the final year of a Parliament	HC 976 (HC 874)
Fourteenth Report	Constitutional role of the judiciary if there was a codified constitution	HC 802

#### Session 2014–15

First Report	Role and powers of the Prime Minister	HC 351
Second Report	A new Magna Carta?	HC 463
Third Report	Pre-appointment hearing: Registrar of Consultant Lobbyists	HC 223
Fourth Report	Voter engagement in the UK	HC 232 (HC 1037)
Fifth Report	Revisiting the Cabinet Manual	HC 233
Sixth Report	Voter engagement in the UK: follow up	HC 938
Seventh Report	Consultation on A new Magna Carta?	HC 599
Eighth Report	What next on the redrawing of parliamentary constituency boundaries?	HC 600
Ninth Report	Constitutional implications of the Government's draft Scotland clauses	HC 1022