

The Scotland Bill implements and improves upon the Smith Commission recommendations

By Democratic Audit UK

*The Government recently published the Scotland Bill, which in essence should implement the recommendations of the post-referendum, cross-party Smith Commission, and provide for new powers in a range of areas. **Adam Tomkins** – a member of the commission representing the Scottish Conservative and Unionist Party – argues that this is most welcome, and can move us from a situation in which debate in Scotland can move from being about the insufficient range of powers available, to a detailed scrutiny of how power is actually used.*



Glasgow (Credit: [Giuseppe Milo](#), CC BY 2.0)

The publication of the [Scotland Bill](#) – a follow up to the Smith Commission of which I was a member – is hugely welcome. The Bill legislates for those elements of the [Smith Commission Agreement](#) that require primary legislation. Other elements of Smith will be implemented without the need for fresh legislation. Once implemented the Smith Commission Agreement will make the Scottish Parliament one of the most powerful sub-state legislatures anywhere in the world. In terms of the proportion of public spend that Holyrood will be responsible for, and in terms of the proportion of the Scottish Ministers' budget that Holyrood is responsible for, the Scottish Parliament will indeed be a powerhouse parliament. This is what we were promised in the run-up to last September's referendum; and this is what David Cameron's government is on course to deliver (with the active support, I hope, of the Labour and Liberal Democrat parties).

The Smith Commission Agreement is wide-ranging, and today's Scotland Bill reflects this. Thus, there are provisions on fracking, equalities, tribunals, road traffic, gaming, employment support, broadcasting, HM Coastguard, fuel poverty, energy and competition policy, as well as a host of other subjects. But at the core of the Agreement, and at the core of the Bill, are two matters: tax and welfare.

A highlight of the Smith Commission Agreement was that Scottish Ministers should become responsible for the setting of all rates and bands of income tax for Scottish taxpayers. Income tax on dividends and savings would remain reserved to Westminster, and the UK's other main tax on income (national insurance) would likewise remain reserved, but thereafter income tax on earnings would be the Scottish Ministers' responsibility, not the Chancellor of the Exchequer's. In addition, a number of smaller taxes would be devolved in full and a share of VAT receipts in Scotland would be assigned to the Scottish Ministers (VAT cannot, alas, be devolved for as long as the UK remains a member state of the European Union, as to do so would be contrary to EU law).

[Draft clauses](#) designed to convert the Smith Commission's "heads of agreement" into legislative provisions were

published by the Coalition Government in January. Those clauses succeeded in translating Smith's proposals on tax into statutory language, as was recognised earlier this month in the very fair and balanced [report from Holyrood's all-party Devolution \(Further Powers\) Committee](#), chaired by Bruce Crawford MSP, a senior and very widely respected member of the SNP. The same is the case for today's Bill. Smith's recommendations on tax are implemented in full.

In contrast, the Devolution Committee's report was critical of the way in which the draft clauses dealt with the Smith Commission's recommendations on welfare. The Committee was right to be critical: in [the Times on 26 January 2015 \(£\)](#) I published an article in which I was similarly critical of the ways in which the draft welfare clauses fell short. In order to understand what had gone wrong we need to understand what Smith agreed on welfare.

The Smith Commission Agreement divides welfare spending in Scotland into three areas: the state pension; working-age benefits designed to assist those with very low incomes; and working-age benefits for those with additional needs. It was agreed that the state pension should remain reserved to Westminster. The main benefit in the second category is universal credit (UC). Smith agreed that UC should remain largely reserved, save that Scottish Ministers should have limited flexibilities to vary its delivery and to vary the housing element of UC (so that, for example, the so-called bedroom tax could not be imposed on Scots without the Scottish Ministers' consent).

As regards the final category, Smith agreed that the vast bulk of benefits for those with additional needs should be devolved in full, including carer's allowance, attendance allowance, disability living allowance, personal independence payments, as well as others (indeed, the only major benefit in this category to remain reserved is child benefit). Smith underscored that the Scottish Parliament will have the power to create new benefits in all these newly devolved areas. In addition (and it was the Scottish Conservatives who brought this idea to the Smith Commission table) it was agreed that the Scottish Parliament should have the power to top-up any reserved benefit. Thus for example, if the UK Government were to cut a UK benefit (such as child benefit or universal credit) the Scottish Parliament would have the power to cancel out that cut in Scotland by topping it up from its own resources. To pay for this, the Scottish Parliament would either have to find savings elsewhere in its budget, or it could increase rates of income tax, or both.

It was this top-up power — critical (in my mind) to the success of the Smith package — that was mistranslated in January's draft clauses. But no longer: today's Scotland Bill gets it absolutely right (the key provision, if you want to look it up, is clause 21; [see para 159 of the Bill's explanatory notes](#)).

The reason why this matters is simple. If Scottish Ministers do not like the tax and spend decisions taken by the United Kingdom Government in Westminster, the Smith Commission Agreement — and now the Scotland Bill — gives them the power to do something about it. In short, they will be able to put our money where their mouths are. They can fill what they perceive to be gaps in public spending on welfare and social security. They can create new benefits. They can top-up, for Scots, even those benefits which continue to be reserved to Westminster. And they have the tax powers to pay for it all. This is why the Prime Minister said yesterday that it is finally time for the SNP to put up or shut up. At last, we can move the argument on from nationalists' bleating that they don't have sufficient powers to a forensic examination of how they choose to use their powers.

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[This post originally appeared on Adam Tomkins' 'Notes from North Britain' blog and can be read here](#)

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